

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

**RSA No. 1257 of 2016 (O&M)
Date of decision : March 30, 2016**

Hari Ram and others

..... Appellants

Versus

Smt. Purni Devi and others

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Ajay Kumar Gupta, Advocate
for the appellants.**

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

**Amit Rawal, J (oral).
CM No.3605-C of 2016**

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 259 days in refiling the appeal is condoned.

The application stands disposed of.

RSA No. 1257 of 2016 (O&M)

The appellants-plaintiffs are aggrieved of the

judgment and decree of lower appellate court whereby suit for permanent injunction restraining the defendants from raising construction on the suit property has been dismissed. In essence, the judgment and decree of the trial court has been set aside.

Learned counsel appearing on behalf of the appellants submits that though the suit for partition was dismissed but there was an occasion to seek injunction for the reason that the respondents were encroaching upon the area belonging to the co-sharers, which could not have been done. Regular Second Appeal bearing No. 5743 of 2015 is pending adjudication in this Court and slated for 24.5.2016. The trial court granted injunction but the fact remains that khata is joint and suit for partition was pending, therefore the defendants were restrained but the lower appellate court ignored these facts while allowing the appeal and committed illegality and perversity in setting aside the well reasoned judgment and decree of the trial court, thus, beseeches to indulge this Court to formulate substantial questions of law for adjudication by this Court.

I have heard learned counsel for the appellant and appraised the paper book and of the view that the view expressed by the trial court was owing to the fact that at that time the suit for partition was pending. But both the courts below dismissed the suit for partition. In case, the appellants-plaintiffs are aggrieved of any threat of encroachment, much less changing the nature of the property, they should have moved interim application in the pending RSA No. 5743 of 2015 but not by filing independent suit as well as challenging the judgment and decree. Moreover, the khata till date

shows the property to be joint in nature.

Keeping in view the aforementioned facts, I do not intend to differ with the finding rendered by the lower appellate court which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgment and decree of the lower appellate court. The same is affirmed.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

March 30, 2016
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