

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
RSA No. 127 of 2016(O&M)
Date of decision : May 13, 2016

Ravinder Kumar

..... Appellant

Versus

Shanta Rani and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Namit Gautam, Advocate
for the appellant.

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.420-C of 2016

This is an application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 55 days in filing the appeal is condoned.

The application stands disposed of.

RSA No. 127 of 2016(O&M)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit at the instance of the daughter of Gopi Chand seeking possession of ½ share by way of separate partition owing to repealing of Section 23 of the Hindu Succession Act, 1956(hereinafter called as 'the Act') w.e.f. 9.9.2005.

Learned counsel for the appellant submits that

earlier similar suit was filed which was dismissed by both the courts below and the matter reached upto this Court in RSA No. 3099 of 2006 decided on 8.1.2007 and permission was granted to file the suit on the same cause of action. The suit was filed in the year 2007. The cause of action had accrued in an earlier insituted suit prior to promulgation of the Act which prevented one of the parties, until and unless the son seek the partition but this fact has been ignored by both the courts below, thus urges this court to formulate substantial questions of law as carved out in the Memorandum of Appeal.

I have heard learned counsel for the appellant and appraised the paper book and of the view that appeal sans merits, for as per the judgment rendered by Hon'ble Supreme Court in **G. Sekar Vs. Geetha and others 2009 (6) SCC 99.** The suit would be maintainable had it been filed earlier and decided after promulgation of the Act. Once the permission has been granted vide order dated 8.1.2007 to file fresh suit which was filed on 10.3.2007 but by that time provisions of Section 23 of the Act were omitted, therefore, every female has a right to claim partition even if the brother do not want to, rightly so the suit has been filed.

There is no force in the plea of Mr. Namit Gautam that the second suit is barred by provisions of Section 11 of the Act much less provisions of Order 2 Rule 2 CPC.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the

aforementioned judgments and decrees of the courts below.

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

May 13 , 2016
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