

RSA No.2092 of 2016 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.2092 of 2016 (O&M)

Date of Decision: May 02, 2016

Gram Panchayat, Karasan, Tehsil Naraingarh

...Appellant

Versus

Ram Chander & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Som Nath Saini, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.5556-C of 2016

Prayer in this application is for condonation of delay of 267 days in filing the appeal.

The ground for delay has been stated to be the negligence on the part of the earlier Sarpanch of the Gram Panchayat. It has been asserted that the appeal preferred by the Gram Panchayat, was dismissed by the District Judge, Ambala, on 22.04.2015, but the copy of the same was unfortunately not applied by the then Sarpanch of the Gram Panchayat. In the month of July, 2015, the whole record of the earlier Sarpanch was taken by the Block Development and Panchayat Officer and he also did not take any action to file the appeal. The elections of the Gram Panchayat

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had taken place and in the middle of February, 2016 and the present Sarpanch of the Gram Panchayat has taken over. He got the records of the case from the Block Development and Panchayat Officer. On 09.04.2016, the Gram Panchayat authorized the Sarpanch to file the appeal in this Court and to get the certified copies of the judgment and decree dated 22.04.2015 as also the 'grounds of appeal'. It is, then an application was moved for supplying the certified copy of the judgment and decree and also 'grounds of appeal', which has resulted in the delay of 267 days in filing the appeal. The application is duly supported by the affidavit of Rameshwar Dass, Sarpanch Gram Panchayat, Karasan.

For the reasons mentioned in the application, delay of 267 days in filing the appeal stands condoned.

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Allowed, as prayed for, subject to all just exception.

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Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Naraingarh, District Ambala, dated 11.12.2013, whereby, the suit for permanent injunction restraining the appellant-defendants from interfering in the bara marked as ABCD, situated in *Abadi deh* of village Karasan, Tehsil Naraingarh, District Ambala, and from encroaching the Nala and Pulia in the said bara, as shown in the site plan (Ex.P-3), has been

decreed, appeal against which, preferred by the appellant-defendant has been dismissed by the District Judge, Ambala, on 22.04.2015.

2. It is the contention of the learned counsel for the appellant that the Courts below have not properly appreciated the pleadings and the evidence brought on record. He contends that mere admission on the part of the Sarpanch of Gram Panchayat, Gulshan (DW-1), who was the sole witness, that the respondent-plaintiffs are owners in possession of the bara shown as ABCD in the site plan (Ex.P-3), would not exonerate the plaintiffs from showing their ownership over the suit land. He contends that there are only bald statements on the part of the respondent-plaintiffs with regard to the plea that they are in possession of the suit land, which itself cannot be accepted. His further contention is that the respondent-plaintiffs have admitted the factum of existence of a Nala and a Pulia thereon and therefore, no injunction could have been granted by the Courts below. Apart from that, he asserts that the document Ex.D-2 has not been considered by the Courts below, which is a compromise entered into and in which, the plaintiffs are also signatory where the respondent-plaintiffs themselves accept ABCD to be the ownership of the Gram Panchayat, therefore, the present suit could not have been decreed. Reliance has also been placed on the Division Bench judgment of this Court in **Sohan Lal Vs. State of Haryana, 2001 (4), R.C.R. (Civil), 483** to contend that the allegations in the written

statement having not been rebutted by the respondent-plaintiffs, would be deemed to have been admitted and therefore, the Courts below have wrongly relied upon the admission of Gulshan (DW-3), the then Sarpanch of the Gram Panchayat, to give the benefit thereof to the respondent-plaintiffs. Prayer has, thus, been made for setting aside the impugned judgments and decree passed by the Courts below and dismissing the suit of the respondent-plaintiffs.

3. I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments.

4. Even if the first contention of the learned counsel for the appellant that there is no documentary evidence produced on record by the respondent-plaintiffs showing themselves to be the owners in possession of the suit land is accepted as correct but from the evidence which has been led by the parties where neither the plaintiffs nor the respondents have produced any documentary evidence in support of their respective assertions except for the bald statements, the findings as recorded by the Courts below cannot be said to be without any basis. The respondent-plaintiffs have admitted the factum of there being a Nala and a Pulia thereon as per Ex.D-3, but that as is apparent from the the site plan is not situated on the suit land ABCD, rather it is adjacent thereto. This fact has been admitted by the then Sarpanch, Gulshan, who appeared as DW-1.

He has gone to the extent of stating that the respondent-plaintiffs are the owners of the suit land shown in the letters ABCD in the site plan (Ex.P-3) and that they are in possession of the same since the time of their forefathers. He has further admitted that the trees exist on the suit land and the bricks lying on the spot in ABCD, belong to the plaintiffs. Admission is the best proof of the facts as has been held by the Supreme Court in **S.R. Srinivasa Vs. S. Padmavathamma, 2010 (4) JT 296.** In the light of the admission of the sole witness of the appellant-defendant, who was Sarpanch of the Gram Panchayat, it is apparent that the respondent-plaintiffs are in possession of the suit land and for the grant of injunction, possession is a paramount importance, which fact has been proved by the respondent-plaintiffs.

5. As regards the contention of the learned counsel for the appellant that Ex.D-2 which is a compromise entered into between the Gram Panchayat and the respondent-plaintiffs and non-consideration thereof by the Courts below, suffice it to say that the appellant-defendants have not been able to prove the said document as it is only the photocopy of the compromise which was placed on record. No witness has been produced to support the said document which would show that this compromise has ever been entered between the parties as has been asserted. That apart, this document of compromise Ex.D-2, has not been put in cross-examination to any of the witnesses who had appeared for the

respondent-plaintiffs. The Courts below, therefore, rightly ignored the said document.

6. As regards the reliance of the counsel for the appellant upon the Division Bench judgment of this Court in *Sohan Lal's* case (supra), suffice it to say that the facts in that case were totally different from the one as in the present case nor was it a case of admission on the part of the other party with regard to the facts. No benefit, therefore, can be claimed by the appellant of this judgment in the present appeal. The findings, thus, recorded by the Courts below, cannot be faulted with.

7. No other point has been urged or argued by the learned counsel for the appellant.

8. A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below being in accordance with the pleadings and the evidence brought on record and further based upon the settled principles of law which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

9. No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the appeal, the same stands dismissed.

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In view of the order passed in the main appeal, no order is required to be passed in the present application for stay as the same has been rendered infructuous.

Disposed of as such.

May 02, 2016
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE