

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
102**

C.M. Nos. 12272-73-C of 2013 and
RSA No. 4575 of 2013 (O&M)

Date of decision: May 10, 2016

Varinder Kaur and another

...APPELLANTS

Versus

Kashmir Singh and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ramesh Sharma, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 12272-C of 2013

Prayer in this application is for condonation of delay of 22 days
in re-filing the appeal.

For the reasons mentioned in the application, which is duly
supported by the affidavit of the clerk of the counsel which indicates that
after the objections were raised by the Registry and the paper-book returned
to the counsel, the time, which was taken, was for removing the said
objections which resulted in the delay of 22 days in re-filing the appeal, the
present application is allowed. Delay of 22 days in re-filing the appeal
stands condoned.

C.M. No. 12273-C of 2013

C.M. is allowed subject to just exceptions. Filing of certified
copy of judgment and decree dated 29.11.2011 and filing of typed copy of
judgment and decree dated 13.03.2013 is dispensed with.

RSA No. 4575 of 2013

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division) Baba Bakala dated 29.11.2011, whereby the suit for declaration to the effect that the decree dated 17.12.2004, which was alleged to have been procured by the respondents-defendants No. 1 to 3 against Jaswant Singh and his sons i.e. respondents No. 4 to 6 is null and void as the same is the result of a fraud and misrepresentation, has been dismissed, appeal against which preferred by the appellants-plaintiffs has also been dismissed by the Additional District Judge, Amritsar on 13.03.2013.

2. It is the contention of the learned counsel for the appellants that the judgments and decree, as passed by the Courts below, cannot be said to be in accordance with law for the reason that the decree impugned dated 17.12.2004 in Civil Suit No. 221 of 10.01.1990 being ex-parte. He contends that as a matter of fact, Jaswant Singh was never served and, therefore, the judgments and decree cannot sustain and in fact, the said decree was obtained in collusion with respondents-defendants No. 4 to 6. It is asserted that the appellants are the daughters and widow of deceased Jaswant Singh whereas respondents No. 4 to 6 are the sons of Jaswant Singh. They had forced Jaswant Singh to put in appearance before the Court and thereafter, colluded with the respondents-defendants No. 1 to 3 and because of which, the said decree was obtained. As a matter of fact, Jaswant Singh had expired during the pendency of the suit and steps were not taken to implead his legal representatives. He, on this basis, asserts that the judgments and decree, as passed by the Courts below, cannot sustain and deserve to be set aside.

3. This contention of the learned counsel for the appellants cannot be accepted in the light of the fact that after the issuance of the notice by the Court, Jaswant Singh has put in appearance before the Court and thereafter, he has even filed the written statement. It has come in evidence of the appellants-plaintiffs as also the respondents that Jaswant Singh died after a period of two years from the date of institution of the suit. An application for impleading the legal representatives of the deceased Jaswant Singh was also filed and his sons were impleaded as a party as per the assertions as contained in the order dated 22.09.2003 and the amendment made by the Punjab and Haryana High Court, the onus was also upon the dependants of the deceased Jaswant Singh, who were impleaded as a party. That apart, the evidence, which was brought on record, clearly establishes that the plaintiffs were aware of the pendency of the suit and if they had any grievance, they could approach the Court within a reasonable time to impugn the said judgment and decree. In any case, instead of filing a suit for declaration, the appellants should have filed an application for setting aside the ex-parte proceedings at the first instance, which has not been resorted to. The judgments and decree, as passed by the Courts below, being in accordance with the pleadings and the evidence brought on record, the same do not call for any interference by this Court.

4. No other point has been raised or argued by the counsel for the appellants.

5. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

6. There is no substantial question of law in the present appeal, which requires consideration of this Court.

7. In view of the above, finding no merit in the present appeal, the same stands dismissed.

May 10, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**