

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

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Regular Second Appeal No.211 of 2015 (O&M)

Date of Decision: February 10, 2016

Bimla Devi and others

...Appellants

Versus

Tek Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Paramjit Singh Jammu, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.549-C of 2015

Prayer in this application is for condonation of delay of 89 days
in re-filing the appeal.

It has been stated that the appeal was filed within limitation but certain objections were raised by the Registry of this Court, on which the Clerk of the counsel had received the paper book and by mistake has placed it in the brief but did not disclose that there are certain objections which have been raised, to the counsel and, therefore, the remedial steps could not be taken. It is when the appellants called up the counsel to enquire about the fate of the case that the file was traced and thereafter the objections as raised by the Registry were removed and the paper book re-filed which resulted in the delay of 89 days in re-filing the appeal. The application is supported by the affidavit of the Clerk of the counsel.

For the reasons mentioned in the application, the same is
allowed.

Delay of 89 days in re-filing the appeal stands condoned.

RSA No.211 of 2015

Challenge in this appeal is to the judgment and decree dated 26.05.2012 passed by the Civil Judge (Junior Division), Sirsa, whereby the suit filed by the appellants-plaintiffs for declaration followed by possession by way of partition on the basis of the fact that the suit land being ancestral and the appellants-plaintiffs being coparceners of the said property, were entitled to the declaration and possession of the said property as detailed in the suit, has been dismissed, appeal against which preferred by the appellants-plaintiffs stands dismissed by the District Judge, Sirsa, on 23.04.2014.

2. It is the contention of learned counsel for the appellants that the findings recorded by the Courts below cannot sustain. He contends that the ancestral nature of the property has been fully established as respondent No.1-Tek Chand, who appeared as DW-1, in his cross-examination has admitted the fact that his grandfather namely Pathana Ram originally was owner of the property which came to his father Khazan Chand and his two brothers. Prior to the partition of the countries into Pakistan and India, their father died. They migrated to India and here land was allotted in village Karni Khera District Ferozepur, which was 8 kanals to each of the three brothers. This 8 kanals land which came to the share of respondent No.1-Tek Chand and the land purchased by him in village Mahuana Bodia was exchanged with the land of village Farwain Kalan, District Sirsa, which is the subject matter of the dispute. He, thus, contends that the factum of the land having been either inherited or having been purchased from the sources and the income which he got from the said land when put in the common pool, would render the land to be part of the coparcenary property entitling

the appellants-plaintiffs to the share therein. He, thus, contends that the findings as recorded by the Courts below need to be set aside and the suit of the appellants-plaintiffs decreed.

3. Having considered the submissions made by learned counsel for the appellants and on going through the impugned judgments, I do not find any substance in the said submissions of the counsel.

4. It is not disputed that the onus to prove that the land was ancestral in nature was upon the appellants-plaintiffs and it is also not in dispute that except for the oral assertions of the appellants, there is no documentary evidence on record which would substantiate the contention that the land was indeed ancestral. Even if as per the assertion of the counsel for the appellants, who places reliance upon the cross-examination of DW-1 Tek Chand, who is respondent No.1, the same would only take the land to two degrees indicating the succession but the requirement of the settled preposition of law is prior three degrees through succession. The said basic ingredient being absent, the findings as recorded by the Courts below, cannot be faulted with, with regard to the nature of the land. In any case, the respondents-defendants have proved that the suit property was self-acquired property of respondent-defendant No.1-Tek Chand as he has produced the sale deeds Exhibits P-4 to P-9 by which he had exchanged same land and also purchased the suit property in his own name as well as in the name of his son Labh Chand-respondent No.2. It may be added here that in the cross-examination, on a specific question having been put to him with regard to the factum as to whether he had bought the land in village Mahuana Bodia out of sources and income of the land which he got in lieu of the land which he had left out in Pakistan, the said suggestion has been

specifically denied and he has stated that the said land has been purchased by him through his own sources and income. That apart, one Jamnu Ram has appeared as DW-4, who has specifically stated that respondent No.1-Tek Chand has not inherited any property from his father Khazan Chand, rather he himself has purchased the property even in Pakistan before partition. The said evidence has also not been rebutted by the appellants-plaintiffs. The findings, thus, as recorded by the Courts below, cannot be faulted with as the same is based upon proper appreciation of the pleadings and the evidence brought on record.

5. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

6. No substantial question of law is involved in the appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

7. In the light of the dismissal of the appeal, the application for stay i.e. CM No.550-C of 2015, stands disposed of as infructuous.

February 10, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE