

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

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Regular Second Appeal No.2641 of 2015 (O&M)
Date of Decision: February 27, 2016

Smt. Ashrafi through SPA holder Shri Jaiparkash

...Appellant

Versus

Inderpal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Anil Kumar, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.6735-C of 2015

Prayer in this application is for condonation of delay of 300 days in re-filing the appeal.

The reason assigned for the delay is that after the filing of the appeal, Registry had raised some objections and the file was taken back by the Clerk of the counsel, who inadvertently placed the same in a different file, which could not be traced and with great difficulty, the same was searched and found after which the objections were removed and the appeal re-filed which has resulted in the delay of 300 days in re-filing the appeal. The application is supported by the affidavit of the counsel.

For the reasons mentioned in the application which is duly supported by the affidavit of the counsel, the present application is allowed.

Delay of 300 days in re-filing the appeal stands condoned.

**CM Nos.6736-37-C of 2015 and
RSA No.2641 of 2015**

Prayer in CM No.6736-C of 2015 is for condonation of delay of 1343 days in filing the appeal.

The reason assigned for the delay in filing the appeal is that the applicant-appellant is an old lady of 60 years and is unable to move and go

out of the house without help of others. She did not have any knowledge about the proceedings, procedure and the remedy available to her. She arranged the funds from her relatives and friends, who advised her to approach this Court. On the basis of the said advise, she appointed Jaiparkash son of Gopi Chand as her Special Power of Attorney and thereafter the counsel was engaged and the appeal filed which resulted in the delay of 1343 days in filing the appeal. The explanation for the delay as given, cannot be accepted and, therefore, the application deserves dismissal.

On insistence of the counsel for the appellant to consider the appeal on merits, the same was heard, wherein challenge is posed to the judgment and decree dated 28.01.2008 passed by the Civil Judge (Senior Division), Jhajjar, whereby the suit for declaration to the effect that the decree dated 10.10.1994 passed in Civil Suit No.836 titled as Inderpal Versus Sher Singh regarding land as detailed in the headnote total measuring 56 kanals 17 marlas and one house as mentioned therein was illegal, null and void and not binding upon the rights of the appellant-plaintiff, stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the Additional District Judge, Jhajjar, on 24.05.2010.

Counsel for the appellant has asserted that the property which is the subject matter of dispute was inherited by respondent-defendant No.2- Sher Singh. The same being ancestral property, the decree dated 10.10.1994 suffered by him in favour of Inderpal in Civil Suit No.836/1994, is not binding on her being not sustainable as she had a vested right in the said property as it was an ancestral property. He contends that the findings recorded by the Courts below cannot sustain as the said decree was obtained

without her consent and was a result of fraud and misrepresentation. He, thus, contends that the judgments and decree impugned deserve to be set aside.

These submissions as put forth by the counsel for the appellant cannot be accepted in the light of the fact that no evidence has been led by the appellant-plaintiff showing that the property was ancestral in nature. Similar is the position with regard to the plea of the decree having been obtained by fraud or misrepresentation. The onus to prove these two aspects was upon the appellant-plaintiff which she has failed to discharge. The judgments and decree as passed by the Courts below being in accordance with the pleadings and evidence brought on record as also in law, cannot be said to be without any basis.

Concurrent findings have been recorded by the Courts below which cannot be faulted with and further there is no substantial question of law which would persuade this Court to condone the inordinate and unexplained delay in filing the appeal.

In view of the above, the application for condonation of delay of 1343 days in filing the appeal stands dismissed. In the light of which the appeal is dismissed as barred by limitation.

Since the application and appeal stand dismissed, the application for placing on record the copy of Annexures A-1 to A-5 i.e. CM No.6737-C of 2015 is also dismissed.

February 27, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE