

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

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Regular Second Appeal No.3611 of 2015 (O&M)
Date of Decision: January 18, 2016

Bhajan Kaur and others

...Appellants

Versus

Parsin Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

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

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.8728-C of 2015

Prayer in this application is for condonation of delay of 821 days in re-filing the appeal.

It has been stated by the counsel for the applicants-appellants that the appeal was filed in time. Certain objections were raised by the Registry on 08.03.2013 on which the counsel for the applicants-appellants had taken back the file but inadvertently placed the same in an admitted case of Ferozepur District in the office of the counsel. The said returned paper book having been virtually misplaced, with great difficulty the same was traced out when the appellants approached the counsel to enquire about the appeal. On tracing out the said paper book, the objections were removed and the case re-filed which has resulted in the delay of 821 days in re-filing the appeal which was neither intentional nor *mala fide* but a *bona fide* mistake on the part of the Clerk of the counsel. The application is supported by the affidavit of the Clerk of the counsel.

For the reasons mentioned in the application, the present

application is allowed.

Delay of 821 days in re-filing the appeal stands condoned.

CM No.8729-C of 2015

Prayer in this application is for making good the deficiency in the Court fee.

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

The deficient Court fee is permitted to be made good and the same is taken on record.

RSA No.3611 of 2015

Counsel for the appellants has produced the certified copy of the judgment and decree dated 18.01.2011 passed by the Civil Judge (Junior Division), Rajpura, in compliance with the order dated 04.08.2015 passed by this Court, whereby his application for exemption from filing the said judgment and decree, was declined.

The said certified copy of the judgment and decree is taken on record.

Challenge in this appeal is to the judgment and decree dated 18.01.2011 passed by the Civil Judge (Junior Division), Rajpura, whereby the suit filed by respondent No.1-plaintiff for declaration to the effect that she is the owner in possession of 5 kanals and 7 marlas of land as detailed in the civil suit in pursuance to the registered sale deed dated 30.10.1970 executed in her favour by defendant No.2-Dalip Singh and for holding that the sale deed dated 13.05.1976 executed by Dalip Singh in favour of appellant-defendant No.1 is wrong, illegal, null and void and not affecting the rights of respondent No.1-plaintiff and in pursuance thereto, the

mutation sanctioned in his favour be declared as wrong and illegal, stands decreed, appeal against which preferred by the appellants-defendants has been dismissed by the Additional District Judge, Patiala, on 05.12.2012.

Learned counsel for the appellants has asserted that the appellant-defendant is a *bona fide* purchaser as on the basis of the revenue record which depicted Dalip Singh as the owner of the land, he had purchased the said land by way of a registered sale deed dated 13.05.1976. He being a *bona fide* purchaser and in pursuance thereto got his mutation also sanctioned, where again there was no objection raised by anyone, the suit as has been decreed in favour of respondent No.1-plaintiff, is illegal and cannot sustain and, therefore, the judgments and decree passed by the Courts below deserve to be set aside.

I have considered the submissions made by learned counsel for the appellants and with his able assistance, have gone through the impugned judgments but do not agree with his submissions.

It is not in dispute that respondent No.1-plaintiff has been able to prove the due execution of the registered sale deed dated 30.10.1970. Merely because the mutation was not got sanctioned by her, cannot be a ground for holding that she was not the owner in possession of the property, specially when the said sale deed clearly mentions that. A valid sale deed having been executed in favour of respondent No.1-plaintiff-Parsin Kaur, she became the owner of the property. The sale deed, therefore, at a subsequent date i.e. 13.05.1976 executed by Dalip Singh in favour of Gurdial Singh-defendant, would not be binding upon respondent No.1-plaintiff.

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.

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

In the light of the dismissal of the appeal, the application for stay i.e. CM No.8731-C of 2015, stands disposed of as infructuous.

January 18, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE