

RSA No.4013 of 2015 (O&M)

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

RSA No.4013 of 2015 (O&M)

Date of Decision: January 27, 2016

Om Parkash & others

...Appellants

Versus

Karan Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. B.S. Tewatia, Advocate
for the appellants.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.9785-C of 2015

Prayer in this application is for condonation of delay of 8 days in filing the appeal.

For the reasons mentioned in the application which is duly supported by the affidavit of Surajmal @ Toti Ram-appellant No.4, the same is allowed. Delay of 8 days in filing the appeal stands condoned.

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Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Palwal, dated 08.06.2012, whereby, the suit for permanent injunction restraining the appellant-defendants from interfering in the peaceful possession of the plaintiffs in the suit property, fully detailed in para 1 of the plaint

and from dispossessing them or raising any construction on the suit property with mandatory injunction directing the appellant-defendants to restore the possession of the respondent-plaintiff, has been decreed, appeal against which preferred by the appellant-defendants has been dismissed by the Additional District Judge (I), Palwal, on 30.03.2015.

2. It is the contention of the learned counsel for the appellants that the ownership over khasra No.91, as per the plaint is not disputed by the appellant-defendants. He, however, contends that there is no encroachment made by the appellant-defendants over the said khasra number and the findings as recorded by the Courts below cannot sustain and deserve to be set aside.

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

4. The findings as have been recorded by the Courts below are based upon the report of the Local Commissioner dated 31.04.2011, who had been appointed by the trial Court. No objections were filed to the report of the Local Commissioner nor was he called in the witness-box for cross-examination. In the light of these facts, the report of the Local Commissioner has rightly been accepted by the Courts below and has decreed the suit of the respondent-plaintiffs. The findings, thus, recorded by the Courts below cannot be faulted with.

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5. A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record 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.

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

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In view of the order passed in the main appeal, the present application for staying the operation of the impugned judgments and decree passed by the Courts below, during the pendency of the appeal, has become infructuous.

Disposed of as such.

January 27, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**