

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

**C.M. NOS.1644 TO 1648 C OF 2016 &
R.S.A. NO.590 OF 2016
DATE OF DECISION: FEBRUARY 08, 2016**

Mandhir Nayyar and others

.....Appellants

VERSUS

Vinod Kumar Nayyar and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. N. K. Malhotra, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.1645 C of 2016

Present is an application for condonation of delay of 67 days in
refiling the appeal.

As per the counsel, the said delay has occurred as he could not
remove the objection because of incomplete instructions. The said
application is accompanied by an affidavit of appellant No.1.

For the reasons mentioned in the application, the same is
allowed. Delay of 67 days in refiling the appeal stands condoned.

C.M. No.1646 C of 2016

In the present application, the counsel prays for condonation of
delay of 8 days in filing the appeal.

The said minor delay has occurred as counsel in the Court below could not send the papers in time. The application is duly supported by an affidavit of appellant No.1.

For the reasons mentioned in the application, the same is allowed. Delay of 8 days in filing the appeal stands condoned.

C.M. Nos.1644 and 1647 C of 2016

Prayer in C.M. No.1647 C of 2015 is for leading additional evidence in the shape of Annexures A-1 to A-10 regarding proving adoption in the instant case as earlier it was not in the knowledge of the applicant-appellants and the same has come to their knowledge from some reliable sources. Thereafter, appellant No.1, Mandhir Nayyar, visited Haridwar and got the documents, Annexures A-1 to A-10, which are relevant for proper adjudication of the case.

A perusal of the present application would show that it is totally vague and bereft of minimum basic facts, which are required to be considered. To mention one aspect about the factual insufficiency is with regard to the adoption, as it is not even mentioned as to who was adopted by whom and through which process. Even the names of the persons from whom it has come to the knowledge of the applicant-appellants about the documents, Annexures A-1 to A-10, have not been mentioned and hence, the said plea cannot be accepted.

The present application does not fulfill the mandate of the statute as the applicant-appellants have not been diligent and vigilant enough to pursue their case and produce relevant evidence at the appropriate time of trial. The explanation, which has been given, cannot be accepted in the given facts and circumstances of the present case, especially

when it is the pleaded case of the applicant-appellants that ceremony for adoption of Mohinder Nath Nayyar by Arjan Dass Ganak had taken place at Haridwar. No reasons have been given as to why the applicant-appellants have not earlier visited Haridwar to collect the said information before filing the suit or atleast during the pendency of the suit.

Therefore, there is no merit in the present application and the same stands dismissed.

So far as C.M. No.1644 C of 2016 is concerned, exemption is granted from filing typed and certified copies of judgements and decree and grounds of appeal.

However, since application for leading additional evidence in the shape of documents, Annexures A-1 to A-10, stands dismissed, question of granting exemption from filing certified and true typed copies of documents, Annexures A-1 to A-10 does not arise and the said prayer is declined.

C.M. No.1648 C of 2016 & R.S.A. No.590 of 2016

Challenge in this appeal is to the judgement and decree dated 25.09.2013 passed by the Civil Judge (Junior Division), Phillaur, whereby the suit for possession by way of partition by metes and bounds of the properties as detailed in the head note at Serial 'A', 'B' and 'C' with consequential relief of permanent injunction, restraining the respondent-defendants from demolishing the existing construction and raising any type of further construction in and over the property aforesaid illegally, forcibly, except in due course of law, has been dismissed on the ground that the appellant-plaintiffs have not been able to prove the adoption of Mohinder Kumar Nayyar by his maternal grand father, namely, Arjan Dass Ganak,

apart from the fact that they have further not been able to establish that Arjan Dass Ganak was the owner in possession of the properties as detailed at Serial `A', `B' and `C', appeal against which preferred by the appellant-plaintiffs has also been dismissed on 10.07.2015 by the Additional District Judge, Jalandhar.

It is the contention of learned counsel for the appellants that the impugned judgements and decree passed by the Courts below are not based on proper appreciation of the pleadings and evidence brought on record. He asserts that the properties mentioned at Serial `A', `B' and `C' of the head note clearly are the properties originally owned by Arjan Dass Ganak. He contends that the evidence, as produced, establishes the due adoption of Mohinder Nath Nayyar by Arjan Dass Ganak and, thus, the findings, cannot sustain. He has referred to Jamabandi, Exhibit P-8, which shows Vidya Wati daughter of Arjan Dass Ganak to be the owner in possession and it has been described as a *Gair Mumkin* shop. This relates to property No.`B', which is asserted to be in Khasra No.180 (0-2). He contends that Exhibit P-9 is the assessment register, which mentions the property bearing No.B/7/216 and this property has been proved to be that of Arjan Dass Ganak as it has been inherited by Vidya Wati daughter of Arjan Dass Ganak. He accordingly contends that the said property, which has been established to be that of Arjan Dass Ganak, would entitle the appellant-plaintiffs atleast to the prayer as made in the suit qua this property `B'. Claim has also been made qua property at Serial Nos.`A' and `C' as well. However, he could not specify the documents, which would clearly establish the ownership of Arjan Dass Ganak. He in fact has pressed hard qua property at serial `B'.

I have considered the submissions made by learned counsel for the appellants but do not find any merit in the same.

The evidence, as has been produced by the appellant-plaintiffs, has been discussed by the Courts below and on perusal of the same it is apparent that they have not been able to establish the adoption of Mohinder Kumar Nayyar by Arjan Dass Ganak. No documentary evidence has been brought on record, which would prove such a thing. The evidence, that too in the form of oral, is also sketchy and there is nothing clear and specific in this regard. The findings, as recorded by the Courts below, therefore, cannot be faulted with.

As regards properties at Serial Nos. 'A' and 'C', the evidence as has been produced by the respondent-defendants clearly establishes that it is owned by them. Further, onus in any case was on the appellant-plaintiffs to prove that it was owned by Arjan Dass Ganak, which they have not been able to connect, what to say establish. The Courts, therefore, have rightly come to a conclusion that the appellant-plaintiffs have failed to prove the said properties to be the ownership of Arjan Dass Ganak.

As regards property at serial No. 'B', which is stated to be the shop bearing Khasra No.180 (0-2), falling in the area of Phillaur Cantt. basing its claim on jamabandi, Exhibit P8 and the assessment register regarding property bearing No.B/7/216 (Ex.P9) respectively, show ownership of Vidya Wati daughter of Arjan Dass Ganak. No evidence has been brought on record, which would indicate that she had inherited the said property from Arjan Dass Ganak. Rather, there are two daughters, one is Vidya Wati and the second one is Dayawati. The appellant-plaintiffs have failed to show that Dayawati is also known as Vidya Wati and in fact there

is no mention in the plaint that there are in fact two daughters of Arjan Dass Ganak. This is an omission on the part of the appellant-plaintiffs, which hit hard with regard to the ownership of the property. That apart, the appellant-plaintiffs have failed to co-relate the said property at serial 'B' with the documents, Exhibits P-8 and P-9, especially in the light of denial by the respondent-defendants with regard to the assertion of the appellant-defendants. The findings, thus, recorded by the Courts below on this aspect also do not call for any interference.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by 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.

Since the main appeal stands dismissed, C.M. No.1648 C of 2016 for staying the operation of the impugned judgement and decree is also dismissed.

**February 08, 2016
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**(AUGUSTINE GEORGE MASIH)
JUDGE**