

RSA No.4522 of 2015 (O&M)

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

RSA No.4522 of 2015 (O&M)

Date of Decision: January 19, 2016

Mukhtiar Kaur

...Appellant

Versus

Gian Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Satbir Gill, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.10826-C of 2015

Prayer in this application is for condonation of delay of 51 days in re-filing the appeal.

It is the contention of the learned counsel for the applicant-appellant that the reason for delay in re-filing the appeal is that initially, the appeal was filed on 30.04.2015 but certain objections were raised by the Registry and the case file was returned back. After removing the objections, the appeal was re-filed which has resulted in the delay of 51 days in re-filing the same. The application is duly supported by the affidavit of the counsel.

For the reasons mentioned in the application, the same is allowed. Delay of 51 days in re-filing the appeal, stands condoned.

RSA No.4522 of 2015 (O&M)

CM No.10827-C of 2015

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

For the reasons mentioned in the application which is duly supported by an affidavit of the applicant-appellant, the same is allowed. The deficiency in Court fee which has been made good, is taken on record.

CM No.10828-C of 2015

Exemption is granted from filing certified copy of judgment and decree dated 15.09.2014 passed by the Civil Judge (Senior Division), Sangrur, subject to all just exceptions.

Application stands disposed of.

RSA No.4522 of 2015

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Sangrur, dated 15.09.2014, whereby, the suit for permanent injunction restraining defendants No.1 and 2, from interfering in the peaceful use of the electric connection No.AP-04/345 situated in Khasra No.434/1(0-8) in the revenue estate of village Gaggarpur, Tehsil and District Sangrur, and for restraining defendants No.3 and 4 from transferring the said electric connection to any other place and in the name of any other person at the instance of defendants No.1 and 2 without due course of law, stands decreed, appeal against which preferred by the appellant-defendant No.1, stands dismissed by the Additional District Judge,

Sangrur, on 11.03.2015.

It is the contention of the learned counsel for the appellant that the factum of oral partition between the three sons, namely, Gian Singh, Karnail Singh and Baldev Singh, by the predecessor-in-interest of the parties, Santa Singh, has been admitted by the respondent-plaintiff. He contends that as per the family partition, this electric connection came to the share of the appellant-defendant No.1 and since then, the said electric connection is being used and utilized by her for the purpose of irrigation. He contends that although the revenue records indicate that the land in question is still joint but as a matter of fact, the same has been partitioned as admitted by the respondent-plaintiff and therefore, the findings recorded by the Courts below that the respondent-plaintiff is having 1/3rd share in the electric connection in dispute, cannot sustain and deserve to be set aside. His further contention is that the respondent-plaintiff has not approached the Court with clean hands and has asserted that he is using the said electric connection exclusively, whereas, he is not found to be so by the Courts below and therefore, the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

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

Although the factum of the partition of the land by Santa Singh, between three sons during his lifetime, had been admitted by the

respondent-plaintiff but the specific khasra number which came to the share of each of the three brothers, has not been specified. The revenue record also does not reflect such partition having been taken place. In fact, what has been mentioned in the revenue record is that the land is joint and each and every person has been shown to be the owner in possession of the said land. In the light of the factum that the land still is reflected as a joint holding of all the co-sharers specially when the oral partition has not been reflected in the revenue records and further nothing has come on record with regard to the specific khasra numbers as to which number came to the share of which son, the conclusion drawn by the Courts below that the land is a joint holding is correct. Similar is the position with regard to the electric connection which admittedly, was got installed by Santa Singh, the predecessor-in-interest of the parties, the share in the electric connection of the respondent-plaintiff has rightly been found to be 1/3rd. It may be added here that the appellant-defendant No.1 has admitted in her cross-examination that the respondent-plaintiff is having 1/3rd share in 21 bighas, although 1/3rd share in the electric connection is denied but keeping in view the fact that there is no partition of the land which has come on record specifying the land with regard to their respective shares, the findings that the respondent-plaintiff has 1/3rd share in the electric connection, cannot be faulted with.

As regards the contention of the learned counsel for the appellant that the respondent-plaintiff has not approached the Courts

RSA No.4522 of 2015 (O&M)

with clean hands as he has asserted exclusive ownership and use of the electric connection, suffice it to say that in the light of the findings recorded by the Courts below, the respondent-plaintiff is only a co-sharer like any other co-sharer and therefore, is entitled to use the said connection as it is a joint property. The findings, therefore, of the Courts below cannot be faulted with.

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.

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.

CM No.10829-C of 2015

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, has become infructuous.

Disposed of as such.

January 19, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**