

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

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Regular Second Appeal No.5274 of 2015 (O&M)

Date of Decision: February 05, 2016

Jarnail Singh

...Appellant

Versus

Sucha Singh (now deceased) through LRs

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. T.S. Chandok, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.12563 of 2015

Prayer in this application is for condonation of delay of 528 days in re-filing the appeal.

The reason mentioned in the application for delay is that after the filing of the appeal, Registry had put on certain objections. The Clerk of the counsel inadvertently and unintentionally placed the paper book in the decided cases in the office of the counsel. The same was searched in the decided cases and ultimately the present appeal was filed after removing the objections which has resulted in delay of 528 days in re-filing the appeal. Affidavit of the Clerk of the counsel has been appended along with the application.

Although the justification, as has been given of this inordinate delay, appears to be not fully explained, however, keeping in view the interest of justice, the present application is allowed and the the delay of 528 days in re-filing the appeal stands condoned subject to deposit of ₹10,000/- with the Lawyers' Welfare Fund, High Court, within a period of four weeks.

RSA No.5274 of 2015

Challenge in this appeal is to the judgment and decree dated 27.09.2013 passed by the Additional District Judge, Jalandhar, whereby the appeal preferred by the respondents-defendants against the judgment and decree dated 12.09.2011 passed by the Additional Civil Judge (Senior Division), Jalandhar, decreeing the suit of the appellant-plaintiff for possession over the land measuring 26 kanals 17 marlas as detailed in the headnote, situated in village Chakrala, Tehsil and District Jalandhar, bearing Hadbast No.346 as entered in the jamabandi for the year 2005-2006, has been set aside and the suit dismissed.

2. It is the contention of learned counsel for the appellant that as per the sale deed dated 27.10.2004 executed in favour of the appellant-plaintiff, he was handed over the possession of the land in question. Respondents-defendants proceeded to take possession of the land as the appellant is a Non-Resident Indian and thus, not residing in the country. On the basis of the said illegal occupation of the land, the respondents have proceeded to get the revenue entries changed in their favour by order dated 25.10.2004. As per the said revenue entry, respondents are shown to be in possession of the land/property since sauni 2004. He, therefore, contends that the factum of the respondents having entered into possession after the purchase of the property having become apparent in the light of the specific mention in the sale deed that the possession has been handed over to the appellant-plaintiff by vendor Dalbir Kaur in her own right and being power of attorney of Karnail Singh, who are also Non-Resident Indians. He, thus, contends that the judgment and decree passed by the learned Additional District Judge, Jalandhar, cannot

sustain and deserves to be set aside and the judgment and decree passed by the trial Court affirmed.

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

4. There is no dispute that the sale deed dated 27.10.2004 Exhibit P-2 is in favour of appellant-plaintiff by Dalbir Kaur and Karnail Singh and there is a mention that the possession has been handed over but the attesting witness to this sale deed, Harbhajan Singh, when appeared as a witness, has not deposed that after execution of the sale deed, they visited the suit property and the vendors actually delivered the possession of the same to the appellant-plaintiff. The entry in favour of the respondents-defendants in the revenue record is dated 25.10.2004 but prior thereto, an application has been moved by the respondents-defendants before the Assistant Collector 2nd Grade, Kartarpur, on 19.08.2004 claiming correction of the khasra girdawari. The said official visited the spot in the presence of respectables of the village on 21.10.2004 and on the basis of the spot inspection, it was found that respondent-Sucha Singh was in possession of the suit land being gair marusi tenant at the rate of ₹4,000/- per acre from sauni 2004 and accordingly corrected the revenue entries. This clearly proves the factum of possession of the respondents-defendants on the suit property as a gair marusi tenant prior to the sale deed. Although the counsel for the appellant has asserted that an appeal was preferred against the said correction in khasra girdawari but he is unable to confirm whether the said entry has been changed in favour of the appellant-plaintiff or not till date.

5. That apart, a suit for injunction was filed by the

respondents-defendants against Jarnail Singh, the original owner, in which *ad interim* injunction was granted to him. The appeal against the *ad interim* injunction which was preferred was withdrawn on 10.09.2007. The suit ultimately for injunction preferred by the respondents-defendants was decreed on 01.05.2009 which has attained finality. The ownership of the appellant-plaintiff was accepted but the possession was shown to be that of the respondents-defendants as per the said judgment.

6. The observations of the Court below with regard to the recourse which should have been exercised by the appellant-plaintiff in the light of the fact that the land in dispute is agricultural land and the revenue entries depict the respondents-defendants as a gair marusi tenant, cannot be faulted with as admittedly if the entries as it exist, shows him to be a lessee then the suit would have been preferred under the Punjab Security of Land Tenures Act, 1953, and the present suit, as has been preferred, would not be the appropriate remedy.

7. The judgment and decree as passed by the learned Lower Appellate Court being in accordance with the pleadings and the evidence brought on record as also in law, do not call for any interference by this Court.

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

9. In the light of the dismissal of the appeal, the application for stay i.e. CM No.12564 of 2015, stands disposed of as infructuous.

February 05, 2016

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**