

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

104

Regular Second Appeal No.5337 of 2015 (O&M)

Date of Decision: January 29, 2016

Jeet Ram

...Appellant

Versus

Charan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Nandan Jindal, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.12702-C of 2015

Prayer in this application is for condonation of delay of 42 days
in re-filing the appeal.

The reason for the delay in re-filing the appeal is that after the
filing of the appeal on 06.05.2015, Registry raised certain objections and
the file was taken back by the Clerk of the counsel, who put the paper book
in wrong brief which was traced out with great difficulty and after removal
of the objections, the same was re-filed which has resulted in the delay of 42
days in re-filing the appeal. The application is supported by the affidavit of
the counsel.

For the reasons mentioned above, the present application is
allowed.

Delay of 42 days in re-filing the appeal stands condoned.

CM No.12704-C of 2015

Prayer in this application is for permission to place on record
the khasra girdawaris as Annexure A-1 and for exemption from filing the
certified copy of the same.

Application is allowed subject to just exceptions.

Khasra girdawari is taken on record as Annexure A-1 by granting exemption from filing the certified copy.

CM No.12705-C of 2015

Prayer in this application is for permission to lead additional evidence by calling for demarcation report by appointing a revenue official as a Local Commissioner for demarcation of the land in dispute.

The prayer made in the present application cannot be accepted as it would be covering up the lacuna, as has been left out in the case of the appellant-plaintiff. Further the step which is now being sought to be taken could/should have been taken by the appellant-plaintiff before the trial Court or the Lower Appellate Court which having not been done and having not been vigilant enough in pursuing the matter diligently, the present application cannot be allowed and, therefore, the same stands dismissed.

**CM No.12703-C of 2015 and
RSA No.5337 of 2015**

Prayer in this application is for condonation of delay of 309 days in filing the present appeal.

The reason assigned for the delay is that when the applicant-appellant approached the counsel in the month of April, 2015, who was pursuing his appeal before the Lower Appellate Court, with regard to the outcome of his appeal, the counsel informed him that the appeal has already been dismissed way back on 01.04.2014. Thereafter the applicant-appellant immediately applied for the certified copy and after obtaining the same, approached the counsel to file the appeal which has resulted in the delay of 309 days in filing the appeal which is neither intentional nor deliberate.

I have heard the submissions made by the counsel for the applicant-appellant, who had argued on the lines and grounds, as has been given in the application but do not find any merit which would require consideration by this Court.

The delay, as has been sought to be explained, is apparently at the hands of the applicant-appellant, who was not vigilant enough nor was he serious to pursue his matter. It appears that after filing of the appeal, he had simply forgotten about the same and has approached the counsel after a period of one year of the decision of the Lower Appellate Court. A person, who sleeps over his rights, cannot be helped in such circumstances. The delay is required to be explained in detail, especially when it is an inordinate delay but the explanation which has been put forth, cannot be accepted. The application, therefore, deserves dismissal, however, on the insistence of the counsel for the appellant, this Court has gone through the impugned judgments but do not find any illegality in the same as the appellant-plaintiff has not been able to correlate the land which he asserts is in his possession i.e. Khasra No.141/31 (0-1) except for his bald statement and the statement of the draughtsman, who had prepared the site plan Exhibit P-2. There is no other evidence apart for the jamabandi for the year 2007-2008 Exhibit P-1. The draughtsman also i.e. Baljinder Singh Kamboj PW-2 in his cross-examination has stated that at the time of preparation of the site plan Exhibit P-2, he has not seen any document of title of the appellant-plaintiff. That apart, the respondent-defendant has not only produced the jamabandi for the year 2007-2008 Exhibit D-1 showing that he is in possession of Khasra No.141/29 (0-2) gairmumkin ruri as he owned the same on the basis of a sale deed dated 19.06.2000 but has also placed on

record the site plan which was got sanctioned from the Municipal Committee, Zirakpur, and the sanction order for raising construction on the said land. Apart from the above, a transfer deed dated 18.09.2007 in favour of his son Jagtar Singh dated 18.09.2007 as also the ration card has also been placed on record showing his ownership and possession over the land i.e. Khasra No.141/29 (0-2). That apart, the Courts have proceeded to hold that the suit would not be maintainable as per the provisions contained under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961.

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.

January 29, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE