

RSA No.5370 of 2015 (O&M)

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

RSA No.5370 of 2015 (O&M)

Date of Decision: February 11, 2016

Hakam Singh & others

...Appellants

Versus

Gram Panchayat, Barnala & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. K.S. Chahal, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.12784-C of 2015

Prayer in this application is for condonation of delay of 134 days in re-filing the appeal.

The reason assigned in the application for delay in re-filing the appeal is that the appeal was filed within the limitation but Registry of this Court has raised certain objections. The Clerk of the counsel had taken back the paper-book and thereafter, it was misplaced in the office of the counsel. The same was, with great difficulty, traced out and the appeal was re-filed which has resulted in the delay of 134 days in re-filing the same. The application is duly supported by the affidavit of the Clerk of the counsel.

For the reasons mentioned in the application, the same is

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allowed. Delay of 134 days in re-filing the appeal, stands condoned.

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Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Mansa, dated 15.09.2012, whereby, the suit preferred by the appellant-plaintiffs for declaration to the effect that they are owners in possession of the disputed property measuring 3 Kanals and 12 Marlas as detailed in the suit to the shares mentioned therein with a consequential relief of injunction restraining the respondent-defendants from interfering and dispossessing them from the disputed property illegally and forcibly, has been dismissed holding therein that the civil suit is not maintainable as the same is barred under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter referred to as '1961 Act) and the appeal against the said judgment and decree preferred by the appellant-plaintiffs has been dismissed by the District Judge, Mansa, on 27.11.2014.

2. It is the contention of the learned counsel for the appellants that the land was allotted to the appellant-plaintiffs by the Consolidation Officer and thereafter, a rapat was also entered showing them to have been given the possession thereof. He contends that since they are owners in possession of the land, the prayer as made in the suit should have been accepted and the mutation sanctioned in their favour. He, thus, contends that the

judgments and decree passed by the Courts below deserve to be set aside.

3. This contention of the learned counsel for the appellants cannot be accepted firstly on the ground that the Consolidation Officer was not competent to allot the land which was beyond its jurisdiction specially when the jurisdiction of the Court is barred under Section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. Further, Section 13 of the the 1961 Act bars the jurisdiction of the Civil Court specially when admittedly the land in dispute is *shamlat deh*. The findings, thus, recorded by the Courts below cannot be faulted with specially when the same are based on statutory provisions which bars the jurisdiction of the Civil Court.

4. 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.

5. No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the 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, has been rendered infructuous.

Disposed of as such.

February 11, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**