

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

RSA-5821 of 2015 (O&M)

Date of decision: 29.03.2016

Rajinder Singh

...Appellant

Versus

Dial Singh (since deceased) thr. LRs and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S. Bhinder, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

CM-14434-C-2015

For the reasons mentioned in the application, the
deficiency in Court fee is allowed to make good.

CM-14435-C-2015

This is an application for condonation of delay of 81
days in refiling the appeal. It is averred that the appeal was filed on
22.07.2015 within limitation but the same was returned with
objections on 23.07.2015. Thereafter, delay was caused as the
counsel has misplaced the brief.

Keeping in view the averments made in the application and the accompanying affidavit, and the fact that the objections were minor in nature, there appears to be sufficient cause for allowing the same. The delay of 81 days in re-filing the present appeal is hereby condoned subject to all just exceptions.

Main Case

The suit for joint possession and for declaration filed by the appellant/plaintiff was dismissed by the trial Court, vide judgment and decree dated 14.10.2013.

2. Aggrieved against the findings of trial Court, the appellant/plaintiff filed an appeal which was dismissed by the learned 1st Appellate Court, vide judgment and decree dated 21.04.2015.

3. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal has been filed by the appellant/plaintiff.

4. The only argument raised by the learned counsel is that the land was sold in favour of the respondent Dial Singh without a legal necessity. The sale deeds dated 03.06.1975 and 02.05.2002, executed by Dial Singh have been assailed in the

present appeal being without consideration and without legal necessity.

5. Heard, the learned counsel for the appellant.

6. It has come on record that the appellant has failed to prove that the nature of the suit property was Joint Hindu ancestral Coparcenary property. No doubt, the plaintiff has brought on record the intkhab prepared by PW-3, Ram Dial, Patwari Moharrir, but it is of no help as the intkhab was in Urdu. This witness took help of an outsider in transcribing the record in Punjabi. That interpreter was withheld, so the authenticity of the document is not established. Even before this Court, the veracity and the authenticity was not disputed. The findings of the Courts below that the plaintiff has not been able to prove the nature of the property to be Joint Hindu Family Coparcenary property. So far as legal necessity is concerned, a vendee is not supposed to see in every case that the amount earned from sale of land is spent for the purpose for which it has been sold. There is no allegation that the vendor-alleged karta of the family was an alcoholic, gambler, extravagant or otherwise man of vices. There is no proof that the entire family was joint in mess, residence and worship. So, it cannot be termed as Joint Hindu

Family. If a person sells his unprofitable agricultural land for starting business of transportation or for plying the trucks, it is for the welfare of the family and is an act of good management. The findings recorded by the trial Court were affirmed by the 1st Appellate Court. The learned counsel has not been to explain as to how the suit which was filed on 23.12.2004 is maintainable as the sale deed in question is dated 03.06.1975. Beyond the reiteration of argument raised by learned counsel before the Courts below, the learned counsel has not been able to refer to any fact or circumstance which has been ignored by the Courts below. Thus, in these circumstances, this Court finds no merit in the argument raised by learned counsel for the appeal. This Court concur with the findings of both the Courts below. Accordingly, the present appeal fails and the findings recorded by both the Courts below are hereby affirmed as such.

Dismissed in limine.

29.03.2016

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(JITENDRA CHAUHAN)
JUDGE