

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 6205 of 2015 (O&M)
Date of decision : February 25, 2016

Tarsem Singh

..... Appellant

Versus

Kamal Mohan and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Harsh Bungar, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).
CM No.15616-C of 2015

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 32 days in refiling the appeal is condoned.

The application stands disposed of.

CM No.15617-C of 2015

This is an application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 4 days in filing the appeal is condoned.

The application stands disposed of.

RSA No. 6205 of 2015 (O&M)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby defendants have been enjoined from obstructing/blocking or cultivating the passage bearing Khasra No.52 and 66 leading to the land of the plaintiffs bearing khasra Nos. 15//13/1(3K-4M), 14//2(4-12), 13/2(4-16), 14/1 (2-8), Hadbast No. 397 situated in village Firoz, Tehsil and District Jalandhar.

Learned counsel appearing on behalf of the appellant-defendant submits that the Aks shajra was contrary to the existing position. At the spot, request was made to appoint the Local Commissioner to ascertain that there was no rasta, however the request was not acceded to. The respondents-plaintiffs have failed to discharge onus as per Section 101 of the Indian Evidence Act, 1872 except a self serving statement and revenue record, no other corroborative evidence to show that the rasta was in existence has been placed on record, therefore the courts below have heavily relied upon the revenue record Ex.P-1 to P-7 and affirmed the verdict given in favour of the plaintiffs whereas DW-2 Tarsem Singh inspected the site and gave report Ex. DW2/A to show that there was no rasta in existence. The courts below did not weigh on examining evidence lead by the parties, thus, there is illegality and perversity in the

impugned judgments and decrees.

I have heard learned counsel for the appellant and appraised the paper book and of the view that there is no substance in the aforementioned submissions. On perusal of Ex. P-7 Aks shajra of the land in question and khasra Nos. 52 and 66 leading to the land of the plaintiffs bearing khasra Nos. 15//13/1(3K-4M), 14//2 (4-12), 13/2(4-16), 14/1 (2-8), Hadbast No. 397 situated in village Firoz, Tehsil and District Jalandhar, it is seen that there is rasta on it. In case, somebody has encroached upon the rasta as per the revenue record, the affected party always has a cause of action to knock the door of the court, rightly so, it has been done in the present case. Viz-a-viz documentary evidence, defendant has not brought on record any evidence contrary to that except a self serving statement by himself and DW-2, in essence has not been able to disprove or rebut the same.

Keeping in view the aforementioned observations, it would be a futile exercise to accept the plea of learned counsel for the appellant to appoint the Local Commissioner as such exercise was not done before the courts below.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

February 25 , 2016
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