

R.S.A. NO.6214 OF 2015 (O&M)

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

C.M. NOS.15659-60 C OF 2015 &

R.S.A. NO.6214 OF 2015

DATE OF DECISION: MAY 12, 2016

Sunita @ Satya Devi and another

.....Appellants

VERSUS

Anju Rani

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

**Present: Mr. Sukhwinder Singh Nara, Advocate,
for the appellants.**

**Mr. Narinder Singh Behgal, Advocate,
for the respondent.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.15659 C of 2015

Prayer in this application is for condonation of delay of 141 days in filing the appeal and the grounds pleaded are that the applicant-appellants were unable to arrange the fee of the lawyer and the expenses of filing of the appeal. The counsel, who was engaged in the Courts below, had delayed the delivery of the judgements and decree, because of which they could not file the appeal in time. Further, the appellants, after borrowing the money from the co-villagers, paid the fee to the counsel alongwith other expenses for filing the appeal, which has resulted in the delay of 141 days.

The said delay is neither deliberate nor intentional but has occurred because

of the financial constrains.

On the other hand, counsel for the respondent, contends that the grounds which have been mentioned are merely a concocted one and not factually correct. In fact, the applicant-appellants have been negligent in pursuing their case and have now approached this Court by way of present appeal after an inordinate unexplained delay, which cannot be accepted.

I have considered the submissions made by counsel for the parties and have gone through the application, which is duly supported by an affidavit of appellant No.1 and am of the considered view that the explanation, as has been put-forth by the applicant-appellants is quite reasonable and justified and, therefore, keeping in view the fact that the delay is neither deliberate nor intentional nor due to negligence on the part of the applicant-appellants in approaching this Court, the same stands condoned.

The application accordingly stands allowed.

C.M. No.15660-C of 2015 & R.S.A. No.6214 of 2015

Challenge in this appeal is to the judgement and decree dated 17.02.2014 passed by the Civil Judge (Junior Division), Naraingarh, District Ambala, whereby the suit of the respondent-plaintiff for possession by way of ejectment of the appellant-defendants from the residential house as detailed and mentioned in the head note of the suit situated in Village Shahzadpur, Tehsil Naraingarh, District Ambala, as per the enclosed site plan and recovery of arrears of rent and mesne profits, has been decreed partly to the extent of grant of possession, wherein the cross-objections, as filed by the appellant-defendants, challenging the sale deed dated 07.03.2008 in favour of the respondent-plaintiff have been dismissed,

appeal against which preferred by the appellant-defendants has also been dismissed by the Additional Sessions Judge, Ambala, on 02.05.2015.

It is the contention of learned counsel for the appellant that the basic plea, which was taken by the respondent-plaintiff, was that the appellant-defendants were her tenants in the demises premises and despite having served a legal notice for terminating the tenancy, the possession has not been delivered to her and, therefore, ejectment may be ordered. The said plea has not been proved and the findings returned by the Courts below on the issue, which was specifically framed in this regard, had gone against the respondent-plaintiff. On this basis, he contends that the suit itself should have been rejected as in the *abadi* area, there is no specified khasra number and the possession of the appellant-defendants having been admitted by the respondent-plaintiff, the presumption with regard to ownership was in their favour, which the Courts below have failed to appreciate. He further contends that the sale deed dated 07.03.2008, even if said to have been proved, would not confer any title on the respondent-plaintiff on the ground that the title of the vendor, Raj Rani, has not been shown to be better than the respondent-plaintiff and, therefore, she could not have conferred a better title upon the respondent-plaintiff, which would render her the owner of the suit property, especially when the appellant-defendants had claimed themselves to be owners of the suit property as they had constructed the said house. Learned counsel for the appellant-defendants further submits that the sale deed admittedly was executed on 07.03.2008 and even as per the admitted stand of the respondent-plaintiff, the tenancy came into existence in January 2008 and if that be so, the recital in the sale deed dated 07.03.2008 that the possession has been delivered to the respondent-

plaintiff would not be correct and is something which is contrary to the factual position on record, which would not be in accordance with law and, therefore, the Cross Objections, as filed by the appellant-defendants, should have been accepted by the Courts below. He, on this basis, asserts that the judgements and decree, as passed by the Courts below, cannot sustain and deserve to be set-aside.

On the other hand, counsel for the respondent-plaintiff submits that there is a categorical assertion in the plaint as also in the evidence led by the respondent-plaintiff that the property was purchased by her husband in the year 2007 from Smt.Raj Rani, when possession was handed over to her but the writing in the form of execution and registration of the sale deed had taken place on 07.03.2008. He, thus, contends that merely because the sale deed has been registered subsequent to the date of actual sale on which possession has been delivered to the husband of the respondent-plaintiff would not mean that the possession was not with her at that time when the tenancy was executed in January 2008. Unfortunately, prior to the registration of sale deed, her husband died and, therefore, the same was registered in favour of the respondent-plaintiff. That apart, he states that the counter claim, as has been projected by the respondent-plaintiff, primarily was to the validity of the sale deed, which onus has been duly discharged by the respondent-plaintiff by proving the due execution of the sale deed. Both the Courts below have returned a concurrent finding in this regard. He contends that even if the Courts below have not held that the tenancy had existed but never the less, the title of the suit property in question stands established, especially in the light of the fact that prior to the actual registration of the sale deed, the payment has been made and the possession

has been delivered to the predecessors-in-interest of the respondent-plaintiff. He accordingly contends that the judgements and decree as passed by the Courts below being in accordance with law, do not call for any interference.

I have considered the submissions made by learned counsel for the parties and with their able assistance have gone through the impugned judgements.

The basic question, which requires to be answered in the present case is whether the possession was delivered to the respondent-plaintiff in the year 2007, as has been pleaded and asserted. Learned counsel for the appellant-defendants has taken me through the cross-examination of the respondent-plaintiff, where no specific question has been put with regard to the possession having been taken in the year 2007. Only a suggestion has been put and the same has been specifically denied by the respondent-plaintiff. The cross-examination primarily is with relation to the possession of the appellant-defendants being prior to January 2008. This clearly establishes that the possession has been delivered to the respondent-plaintiff in the year 2007 and obviously only thereafter it is a proved fact on record that the appellant-defendants came in possession of the demised premises in January 2008, as has been brought on record on the basis of application, which has been submitted by the appellant-defendants for issuance of electricity and water connection. In the light of this factual position, the assertion of counsel for the appellant-defendants that the appellant-defendants are owners of the property, holding possession thereto in that capacity, cannot be accepted.

On the other hand, counsel for the respondent-plaintiff has been

able to prove the due execution of the sale deed dated 07.03.2008, the validity of which although was challenged by the appellant-defendants but the said cross-objections have been rejected by both the Courts below.

Therefore, in view of the abovesaid factual position, the assertions of counsel for the appellant-defendants cannot be accepted. The judgements and decree, as passed by the Courts below, being in accordance with the pleadings and the evidence led by the parties, cannot be faulted with.

No other point has been argued by learned counsel for the appellant-plaintiff.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by 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 appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.15660 C of 2015 for staying the operation of the impugned judgements and decree is also dismissed.

May 12, 2016
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE