

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

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Regular Second Appeal No.3525 of 2014 (O&M)
Date of Decision: February 15, 2016

Balwinder Singh and another

...Appellants

Versus

Sadhu Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Kewal Krishan, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.8162-C of 2014

Prayer in this application is for condonation of delay of 57 days
in re-filing the appeal.

The reason assigned for the delay is that the appeal was filed
within time but there were certain objections raised by the Registry.
The Clerk of the counsel had taken back the case file and misplaced the
same in the office. The same was traced out on being enquired by the
appellants and then after removing the objections, the appeal was filed
which has resulted in the delay of 57 days in re-filing the appeal. The
application is supported by the affidavit of the Clerk of the counsel.

For the reasons mentioned in the application, the same is
allowed.

Delay of 57 days in re-filing the appeal stands condoned.

RSA No.3525 of 2014

Challenge in this appeal is to the judgment and decree dated
30.11.2010 passed by the Civil Judge (Junior Division), Tarn Taran,
whereby the suit filed by the appellants-plaintiffs for joint possession of

land measuring 5 kanals 9 marlas being half share out of the total land measuring 11 kanals 18 marlas as detailed in the headnote, situated in revenue estate of village Vain Poin, Tehsil Khadoor Sahib, District Amritsar, on the basis of the sale deed dated 22.01.2004 executed by Balbir Singh son of Bhagat Singh, has been dismissed and the appeal preferred by the appellants-plaintiffs stands dismissed by the Additional District Judge, Tarn Taran, on 07.10.2013.

2. It is the contention of learned counsel for the appellants that Balbir Singh has appeared as a plaintiff witness before the trial Court and has admitted his signatures on the sale deed dated 22.01.2004. He contends that once the sale deed has been admitted by Balbir Singh to have been duly executed, the same was not required to be proved and mere non-production of the original registered sale deed would not be fatal to the case of the appellants-plaintiffs. He contends that the stand of the respondents that Balbir Singh did not have any title over the suit property cannot be accepted in the light of the fact that the revenue record all through reflected Balbir Singh as the owner of the property and the respondents-defendants only as cultivators. He contends that the revenue entries attach with it the presumption of truth and, therefore, the same should have been relied upon by the Courts below to have decreed the suit of the appellants-plaintiffs as prayed for. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside and the suit of the appellants-plaintiffs decreed.

3. I have considered the submissions made by learned counsel for the appellants and with his able assistance, have gone through the impugned judgments but do not find any weight in the arguments of the counsel.

4. It is not in dispute that the original sale deed dated 22.01.2004 has not been produced on record. There is no explanation which could be termed as plausible on the part of the appellants-plaintiffs as to why the said document i.e. the sale deed could not be produced in original. No application has been moved by the appellants-plaintiffs for leading any secondary evidence, what to say of producing any evidence in support thereof. Merely because Balbir Singh has appeared in the witness box and accepted his signatures on the photocopy of the sale deed dated 22.01.2004 would not be enough to prove the due execution of the sale deed on the basis of which title is being claimed by the appellants-plaintiffs. The findings, thus, recorded by the Courts below, cannot be faulted with.

5. The assertion of the counsel for the appellants that the correctness of the revenue entries is to be presumed, cannot be disputed, however, the said assumption and presumption is rebuttable. The best document, if any, which would have conferred title upon the appellants-plaintiffs, was the sale deed dated 22.01.2004, which admittedly has not been produced. Further the respondents-defendants have proved on record the sale deed/exchange deed dated 13.06.1951 Exhibit DW2/D executed by the predecessor-in-interest of the respondents-defendants namely Bela Singh and the then owner of the property Balbir Singh, along with which its true translated copy has also been produced as Exhibit DW2/E. The respondents have also proved the relevant khasra numbers correlating the old numbers with the new numbers and have also been able to identify the land which was actually exchanged which comes out to be the same which is the subject matter of the dispute in the suit. The respondents have further placed on record the plaint dated 02.09.2001

Exhibit DW1/B which was a suit filed by Balbir Singh against the respondents herein qua the same land claiming himself to be the owner in possession of the suit land but the said suit was withdrawn for want of proceedings before the Lok Adalat (although the counsel has said that the said suit did not pertain to the disputed property in the present suit). The said fact has not been disputed between the parties. Balbir Singh having already sold/exchanged the suit land in favour of the predecessor-in-interest of the respondents, who are admittedly in possession of the property and the suit which has been preferred by Balbir Singh claiming himself to be owner of the same property having been withdrawn, the findings as recorded by the Courts below that Balbir Singh has no title over the suit property, cannot be faulted with.

6. 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.

7. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

February 15, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE