

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
105.**

C.M. No. 8435-C of 2014 &
RSA No. 3630 of 2014

Date of decision: February 09, 2016

Balbir Singh

...APPELLANT

Versus

Sat Narain and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Aditya Jain, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 8435-C of 2014

Prayer in this application is for condonation of delay of 25 days
in re-filing the appeal.

It is the contention of the learned counsel for the appellant that
the appeal was filed on 31.03.2014 well within limitation but certain
objections were raised by the Registry and the paper-book was taken back
by the clerk of the counsel. Thereafter, the said paper-book was misplaced
and the same was found on 26.06.2014. After rectifying the said objections,
the appeal was re-filed, which has resulted in delay of 25 days in re-filing
the appeal. The application is supported by the affidavit of the clerk of the
counsel for the applicant/appellant.

For the reasons mentioned in the application, the same is
allowed. Delay of 25 days in re-filing the appeal stands condoned.

RSA No. 3630 of 2014

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Sonapat dated 12.05.2011, whereby the suit for declaration to the effect that the appellant-plaintiff is entitled to 1/3rd share of the mortgage amount along with the respondents as Jai Kishan, the original owner of the property, had taken an amount of ₹ 6,000/- from the appellant-plaintiff and the respondents-defendants to which he had contributed ₹ 2,000/- and it being 1/3rd, he was entitled to the said share, was dismissed, appeal against which preferred by the appellant was also dismissed by the Additional District Judge, Sonapat on 23.12.2013.

2. It is the contention of the counsel for the appellant that it is apparent from the evidence produced by the appellant before the trial Court that he is joint owner in possession of the property and had contributed his 1/3rd share of ₹ 2,000/- towards the mortgage amount. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside as the findings recorded by the Courts below cannot sustain being contrary to the evidence and pleadings on record. The Lower Appellate Court has also committed the same mistake as the trial Court and, therefore, both these judgments and decree deserve to be set aside and the suit of the appellant-plaintiff decreed along with the consequential benefit of permanent injunction, as prayed for.

3. I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments but do not find any merit in the said contentions.

4.

The registered mortgage deed dated 06.08.1980, which is the

subject matter of the present suit, was executed between Jai Kishan, Balbir Singh, Sat Narain and Shiv Dhan. Sat Narain and Shiv Dhan are real brothers of the appellant-plaintiff and both are the respondents-defendants. The document does not speak of any share having been contributed by the appellant-plaintiff. In the presence of a document, the oral assertion, as has been sought to be projected on behalf of the appellant-plaintiff, has rightly been discarded by the Courts below. That apart, the Courts have duly considered the ambit and scope of the evidence produced by the appellant-plaintiff and rightly concluded that he has not been able to prove that he has a share in the mortgage money, which was given to Jai Kishan. There being no contribution on the part of the appellant-plaintiff, he has correctly been held to be not entitled to any claim. The judgments and decree, thus, passed by the Courts below being in accordance with the pleadings and the evidence brought on record and based upon settled principles of law do not call for any interference by this Court.

5. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties as have been challenged, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

6. In view of the above, finding no merit in the appeal, the same stands dismissed.

February 09, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**