

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
111**

C.M. Nos. 2509-10-C of 2015 &
RSA No. 843 of 2015

Date of Decision: 29.01.2016

Mukesh Kumar and another

.....APPELLANTS

VERSUS

Gulab Singh and another

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**PRESENT: Mr. Vinod Gupta, Advocate,
for the appellants.**

AUGUSTINE GEORGE MASIH, J (ORAL)

C.M. No. 2509-C of 2015

Prayer in this application is for condonation of delay of 38 days
in re-filing the appeal.

For the reasons mentioned in the application, which is duly
supported by the clerk of the counsel for the appellants, the same is allowed.
Delay of 38 days in re-filing the appeal is condoned.

RSA No. 843 of 2015

Challenge in this appeal is to the judgment and decree passed
by the Civil Judge (Junior Division), Hisar dated 23.09.2013, whereby the
suit filed by the appellants-plaintiffs to the effect that they are co-owners in
possession of land measuring 197 Kanal 10 Marlas comprised in Khewat
No. 254/237, Khatoni No. 484 to 488 situated at Village Moda Khera,

Tehsil Adampur, District Hisar, detailed in Jamabandi for the year 2004-05 along with their father Gulab Singh-respondent No. 1-defendant No. 1 as coparceners and members of Joint Hindu Family and that the execution and registration of sale deed No. 1610 dated 29.07.2010 by Gulab Singh-respondent No. 1-defendant No. 1 in favour of respondent No. 2-defendant No. 2 in respect of 320/3965 share i.e. land measuring 16 Kanal situated at Village Moda Khera, Tehsil and District Hisar out of the joint land is null and void ab-initio, without legal necessity and without consideration and for permanent injunction has been dismissed, appeal against which preferred by the appellants-plaintiffs has also been dismissed by the Additional District Judge, Hisar on 20.09.2014.

2. It is the contention of the learned counsel for the appellants that the land, mentioned above, is an ancestral property and, therefore, the same could not have been sold by respondent No. 1-defendant No. 1 unless there was a legal necessity. That aspect having not been proved on the part of the respondents-defendants, the sale of an ancestral property cannot sustain. His further contention is that the sale deed No. 1610 dated 29.07.2010 is a result of fraud having been played upon respondent No. 1 by respondent No. 2-defendant No. 2 for no consideration and, therefore, the appellants-plaintiffs and respondent No. 1-defendant No. 1 are not bound by the said sale deed nor does it confer any right upon respondent No. 2-defendant No. 2. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserves to be set aside.

3. This contention of the learned counsel for the appellants cannot be accepted in the light of the admitted fact and that too, in the pleadings that the father of respondent No. 1-defendant No. 1 suffered a decree dated

22.04.1972, whereby the ancestral land was partitioned between his four sons. Once the land has been received by the respondents-defendants through a Court decree, the same no more continues to be an ancestral one and, therefore, the findings recorded by the Courts below, on this aspect, cannot be faulted with.

4. As regards the contention of the learned counsel for the appellants that a fraud has been played upon respondent No. 1-defendant No. 1 by respondent No. 2-defendant No. 2 and, therefore, the sale deed dated 29.07.2010 is not binding upon the appellants-plaintiffs as also respondent No. 1-defendant No. 1, suffice it to say that respondent No. 1-defendant No. 1 was a right person to take such a plea. Admittedly, no steps have been taken by respondent No. 1-defendant No. 1 for annulment of the said sale deed. That being so, this plea falls apart on the first ground as the suit property is not an ancestral property and, therefore, the appellants-plaintiffs have no right in the said property, which was claimed in the present suit being a co-sharer.

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, 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 present appeal, the same stands dismissed.

C.M. No. 2510-C of 2015

In the light of the dismissal of the main appeal, no separate

orders are required to be passed in this application for stay and, therefore,
the same stands dismissed.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

January 29, 2016

pj