

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

109

Regular Second Appeal No.4940 of 2014 (O&M)
Date of Decision: January 12, 2016

Ram Kumar and another

...Appellants

Versus

Smt. Hoshyari and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Shrey Goel, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASI, J. (ORAL)

CM No.11648-C of 2014

Prayer in this application is for condonation of delay of 125 days in re-filing the appeal.

For the reasons mentioned in the application which is duly supported by the affidavit of the applicant-appellant No.2, the present application is allowed.

Delay of 125 days in re-filing the appeal stands condoned.

RSA No.4940 of 2014

Challenge in this appeal is to the judgment and decree dated 18.03.2011 passed by the Additional Civil Judge (Senior Division), Panipat, whereby the suit filed by the appellants-plaintiffs for separate possession with consequential relief of permanent injunction, has been dismissed, appeal against which preferred by the appellants-plaintiffs dismissed by the Additional District Judge, Panipat, on 16.10.2013.

2. It is the contention of learned counsel for the appellants that the Courts below have not properly appreciated the pleadings and the evidence, which have been brought on record. He contends that the findings as

recorded are not sustainable as the respondents have not been able to prove the *bahi* on the basis of which it can be asserted that there had been past transaction between the parties in the year 1965. His further contention is that the *bahi*, if any, which was proved, is not a registered document and, therefore, was not admissible in evidence. Prayer has, thus, been made for setting aside the impugned judgments and decree passed by the Courts below and for decreeing the suit of the appellants-plaintiffs.

3. I have considered the submissions made by learned counsel for the appellants but do not find any merit in the same as the Courts below have rightly relied upon the provisions of Section 90 of the Indian Evidence Act, 1872, which deals with the transaction of due execution on the *bahi* Exhibit D-1 being more than 30 years old document. It has come on record that the said document has come from the possession of the person, who was the custodian of the said document and the evidence which has been produced on record, further supports the same.

4. As regards the contention that the transaction cannot, therefore, be relied upon, also cannot be accepted since the said document is admissible in evidence. That apart, the basic flaw in the case in hand is that the appellants-plaintiffs have given up defendants 15 and 16, who admittedly are co-sharers in the suit property. As they are not a party to the suit, the partition decree could not have been passed and accordingly, the Courts are correct in stating so.

5. 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.

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

January 12, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE