

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

-.-

RSA 4995 of 2014 (O&M)
Date of decision: 27.04.2016

Hari Kishan

.....Appellant

Versus

Radhey Shyam and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Rajiv Sharma, Advocate
for the appellant

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

Rekha Mittal, J.

CM 11762 C of 2014

Prays in this application is for condoning delay of 04 years 352 days in refiling the appeal.

In view of the averments made in the application supported by affidavit and arguments advanced by counsel for the appellant, the application is allowed and delay of 04 years 352 days in refiling the appeal is condoned

Main case

The present appeal has been directed against the concurrent findings recorded by the Courts below whereby suit filed by Radhey Shyam-respondent No. 1 was decreed by the learned trial Court and the appeal preferred by Hari Kishan-appellant against the judgment and decree of the trial Court did not find favour with the first appellate Court and as a consequence, the findings recorded by the trial Court were affirmed.

Shri Gobind Ram, father of Hari Kishan and Radhey Shyam was owner in possession of 1/3rd share in agricultural land measuring 77 kanals 17 marlas, detailed in para 3 of the judgment of the learned trial Court. Gobind Ram (since deceased) defendant No. 1 suffered a decree dated 20.09.1997 in favour of Hari Kishan in suit titled Hari Kishan Versus Gobind Ram. Radhey Shyam respondent/plaintiff assailed the said judgment and decree and mutation sanctioned on its basis being illegal, null and void, primarily on the plea that Gobind Ram had no right to alienate the ancestral property in favour of defendant No. 1 Hari Kishan and no family settlement was arrived at between the parties, members of the coparcenary.

The learned trial Court, on due consideration of the materials on record in the light of submissions made by counsel for the parties, accepted claim of respondent No. 1/plaintiff, judgment and decree dated 20.09.1997 and mutation No. 1796 dated 17.01.1998 based thereon were held to be illegal and liable to be cancelled. The appeal preferred by Shri Hari Kishan was dismissed by the Additional District Judge, Faridabad vide judgment and decree dated 11.08.2008.

Counsel for the appellant has submitted that the learned trial Court determined the issue qua judgment and decree dated 20.09.1997 against the appellant on a solitary ground that the decree dated 20.09.1997 has not been got registered though it was specifically mentioned in the decree that the same shall come into operation subject to its registration as new rights were created in favour of Hari Kishan. It has been vehemently argued by learned counsel that Shri Hari Kishan was one of the members of the joint Hindu family and had a right by way of birth in the coparcenary property inherited by Shri Gobind Ram, his father from his ancestors and

there being a family settlement in favour of the appellant, there is no requirement in law to get the decree dated 20.09.1997 registered for creating title in favour of Hari Kishan. It is further argued that the Courts below have failed to examine the matter in right perspective and thus, committed perversity in holding that the judgment and decree dated 20.09.1997 is liable to be set aside.

I have heard counsel for the appellant, perused the records particularly the judgments passed by the Courts below.

It is pertinent to mention at the outset that counsel for the appellant has not disputed that the suit property was coparcenary property in the hands of Shri Gobind Ram and as such the sons of Gobind Ram has a right by way of birth in the said coparcenary property. Perusal of the records would reveal that in the earlier suit filed by Hari Kishan against Shri Gobind Ram that culminated in the judgment and decree dated 20.09.1997, a plea was raised that a family settlement took place between Hari Kishan and Gobind Ram in which Gobind Ram gave his 1/3rd share to plaintiff Hari Kishan about two years ago. There is nothing on record suggestive of the fact that Radhey Shyam and third son of Gobind Ram namely Rattan Chand was a privy to any such family settlement when otherwise, plea in regard to family settlement gets falsified and belied in view of stand of Hari Kishan in the present case wherein he has asserted that the suit property was given to him by his father in lieu of services rendered by him in his old age and out of love and affection.

Counsel for the appellant by referring to para 17 of the the judgment passed by the trial Court has submitted that the judgment and decree dated 20.09.1997 has been set aside by the trial Court on the sole

ground that the same was not got registered. This contention has been raised by counsel by disregarding the observations made by the trial Court in para 16 of the judgment wherein it has been held that Gobind Ram being Karta of the joint Hindu family had no right to transfer the property in favour of his one son depriving the others from inheriting the suit land as they were also co-parceners in the suit property. It has further been held that Shri Gobind Ram being Karta of the joint Hindu family was obligated to look after the ancestral property as a trustee and he had right to alienate the property in case of legal necessity or for benefit of the estate. Counsel for the appellant is not in a position to say something that transfer of suit property by Shri Gobind Ram in favour of appellant Hari Kishan is either for legal necessity or for benefit of the estate. This is not the case of the appellant that Shri Gobind Ram received any consideration in lieu of transferring the property in question in favour of the appellant, by filing a written statement admitting his claim and thereafter suffering a statement before the Court in the earlier suit. In the given facts and circumstances of the case, I do not find any error much less illegality in the consistent findings recorded by the Courts below when otherwise, no question of law much less a substantial one arises for adjudication.

For the foregoing reasons, the appeal fails and is accordingly dismissed *in limine*. The application filed by the appellant for condonation of delay is only of academic relevance, in the circumstances.

(Rekha Mittal)
Judge

27.04.2016
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