

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

RSA-5829 of 2014 (O&M)

Date of decision: 26.05.2016

Ishaq

...Appellant

Versus

Juned minor son of Jamalu

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. S.K. Bawa, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

CM-13814-C-2014

This is an application for condonation of delay of 38 days in refiling the appeal. It is averred that the appeal was filed within the period of limitation, however, it was returned with objections. Thereafter, delay has been caused as the clerk to the counsel misplaced the file and after a huge efforts, the same was traced on 25.10.2014. Thereafter, the appeal was refiled after removing the objections.

Keeping in view the averments made in the

application and the accompanying affidavit, and the fact that the objections were minor in nature, there appears to be sufficient cause for allowing the same. The delay of 38 days in refiling the present appeal is hereby condoned subject to all just exceptions.

CM-13816-C-2014

Keeping in view the averments made in the application which is supported by an affidavit, the same is allowed. The delay of 37 days in filing the present appeal is hereby condoned.

CM-13815-C-2014

Keeping in view the averments mentioned in the application, the same is allowed. The delay in making up the deficiency of Court fee, is condoned.

RSA-5829-2014

The suit for possession and declaration filed by the plaintiff/appellant (for short 'the appellant') was dismissed by the trial Court vide judgment and decree dated 16.02.2012.

2. Aggrieved against the findings of trial Court, the appellant filed an appeal which was dismissed by the learned 1st Appellate Court, vide judgment and decree dated 18.03.2014.

3. The 1st Appellate Court affirmed all the findings

recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal at the behest of the appellant.

4. It is contended that both the Courts below have gravely erred in dismissing the suit and ignoring the fact that it has come on record that Smt. Hajra had inherited the property from her husband Bona, who inherited the same from Jagrup. The property was shared by Bona along with his brother Andhu, who is father of the appellant. The land in dispute is an ancestral property in the hands of Smt. Hajra. Bona and Smt. Hajra had no male issue and thus, the appellant being nearest collateral of Bona is the rightful successor of the estate left by Bona. Smt. Hajra executed adoption deed dated 29.11.2007 which is null and void as the parties to the suit are meos by caste and governed by agricultural custom in matter of alienation, succession and adoption and according to that custom, a widow has no right to adopt any person from the family of her husband or from outside or the son of her daughter, without the consent of the collateral, reversioner, successors and heirs of her husband.

5. Heard, the learned counsel for the appellant and perused the record.

6. It is not in dispute that after the death of Bona, the suit property was inherited by his wife, Smt. Hajra. The parties to the lis are meo by caste and governed as per their custom. Bona and Smt. Hajra had no male issue. The appellant has laid his claim on the ground that the suit property is ancestral one and he being the nearest collateral is rightful successor to the estate left by Bona after death of his wife Smt. Hajra. The appellant has placed on record certain jamabandis, whereby the appellant has been shown to be co-sharer in the suit land. The argument of learned counsel that the suit property is ancestral one is devoid of merits as there is nothing on record to demonstrate the fact that the property in dispute was ancestral. No evidence or document has been brought on record in this regard. Further, the adoption deed dated 29.11.2007 was registered from the office of Sub Registrar and the same has been proved on record by DW-5, Mohd. Umar. Ex.D1 also bears the signatures of Jamalu and Samina, the natural parents of respondent. No doubt, the parties were meo by caste but their customary requirements are not mandatory rather they are directory. Once the adoption deed has been duly proved on record then the collateral has no right to claim inheritance in the property in the hands of widow inherited

from her husband. Thus, from the perusal of above facts and material on record, this Court feels that there is no merit in the present appeal and the findings recorded by the Courts below are based on true appreciation of facts.

7. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

26.05.2016

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(JITENDRA CHAUHAN)
JUDGE