

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

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Regular Second Appeal No.643 of 2014 (O&M)
Date of Decision: February 16, 2016

Ajmero Devi and others

...Appellants

Versus

Ranpat and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Arvind Singh, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.1474-C of 2014

Prayer in this application is for condonation of delay of 137 days in re-filing the appeal.

The reason assigned for the delay is that after the filing of the appeal within limitation, certain objections were raised by the Registry and the Clerk of the counsel collected the paper book for removal of the same and re-file it. Inadvertently the said case file was placed in a different brief and the same was when traced out, objections removed and re-filed which resulted in the delay of 137 days in re-filing the appeal. The application is supported by the affidavit of the counsel.

For the reasons mentioned in the application which is duly supported by the affidavit, the present application is allowed.

Delay of 137 days in re-filing the appeal stands condoned.

RSA No.643 of 2014

Challenge in this appeal is to the judgment and decree dated 17.05.2010 passed by the Civil Judge (Senior Division), Kaithal, whereby the suit filed by the appellants-plaintiffs for possession as detailed in the

suit, has been dismissed on the ground that the suit has been filed in the representative capacity which is not maintainable as the land is specified and even the persons, who have alienated and to whom the same has been sold, are known. Apart from that, it has been found that the decree dated 27.08.1957 which has been relied upon by the appellants-plaintiffs, stated that whoever would be the successor to the property of Maria would be entitled to the claim. The respondents-defendants having proved the adoption of Rattan Singh on 08.09.1997 to be legal and valid by Maria, became Class I heir and, therefore, were entitled to inherit the property of Maria to the exclusion of others including the appellants-plaintiffs and thirdly that the appellants-plaintiffs have not been able to identify the property with the old khasra numbers correlating it with the new khasra numbers after the consolidation. Appeal against the said judgment and decree has been dismissed by the District Judge, Kaithal, on 27.02.2013, upholding the findings, as has been recorded by the trial Court.

2. It is the contention of learned counsel for the appellants that the suit for possession is maintainable in a representative capacity as there were different pieces of land which have been sold to large number of people and, therefore, the proceedings, as has been initiated are in accordance with law and the Courts have wrongly not appreciated the said aspect. That apart, he contends that respondents-defendants have not been able to prove the due adoption of Rattan Singh on 08.09.1957 and, therefore, the findings qua Rattan Singh also cannot sustain. Similar is the contention with regard to the old khasra numbers and the new khasra numbers which he asserts that excerpts have been produced which clearly are indicative of the property

and are enough for identification of the property in dispute. He, thus, contends that the judgment and decree passed by the Courts below cannot sustain.

3. Having considered the submissions made by learned counsel for the appellants, I do not find any merit in his contentions as on going through the impugned judgments, the findings, as has been recorded by the Courts below, leaves no manner of doubt with regard to the findings so recorded as they are based on proper appreciation of the pleadings and the evidence brought on record.

4. Firstly the Courts have rightly concluded that the property sold by the persons and the person to whom it has been sold is clear and specific and, therefore, there is no question of a suit being filed in the representative capacity. As regards the proof of adoption of Rattan Singh by Maria on 08.09.1957 is concerned, the said aspect has also been duly proved on the basis of evidence which has been brought on record. The property has rightly been observed by the Courts below to be not identified as the khasra number which were prior to the consolidation and after the consolidation, have not been correlated with each other and mere excerpts would not be enough. The findings, thus, recorded by the Courts below, cannot be faulted with which would call for any interference by this Court.

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 appeal, the same stands dismissed.

7. In the light of the dismissal of the appeal, the application for stay i.e. CM No.1475-C of 2014, stands disposed of as infructuous.

February 16, 2016

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**