

CM-5220-C-2016 in/and
RSA-1354-2010

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-5220-C-2016 in/and
RSA-1354-2010

Date of Decision: February 8, 2017

Subhash Garg & others

...Appellants

Versus

Vishwas Garg & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vivek Singla, Advocate
for the applicant-appellants.

Mr. Binderjit Singh, Advocate
for non-applicant-respondent No.1.

AUGUSTINE GEORGE MASIH, J. (Oral):

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Prayer in this application is for restoration of the appeal which was dismissed for non-prosecution on 01.04.2016 because of non appearance of the counsel for the appellants.

In the light of the facts as stated in the application which are duly supported by the affidavit of the counsel for the applicant-appellants, the present application is allowed. The appeal is restored to its original number and the same is taken on board for consideration.

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On 24.04.2012, in the begining when notice was issued, following order was passed by this Court:-

“Defendants/appellants are in second appeal against judgments and decrees passed by both the Courts below decreeing the suit of the plaintiff Vishwas Kumar for declaration and actual physical possession. The dispute primarily is between two brothers namely Subhash Garg and Harbans Lal on one side and youngest brother Vishwas Kumar on the other.

It is submitted that the two brothers have no other residential house except the one where they are now residing for the last almost 18 years, whose possession has been directed to be handed over to the plaintiff Vishwas Kumar.

After hearing learned Counsel for the appellants/defendants, I find no merits in the contentions, however, keeping in view the facts of the case and the close relationship between the parties, I deem it appropriate to summon father and the plaintiff-son i.e. respondent Nos.1 & 2 to explore the possibility of an amicable settlement.

Notice of motion to respondent Nos.1 & 2 only for 17.07.2012.

Parties to be present in Court on the next date of hearing.”

This Court has observed that in order to explore the possibility of an amicable settlement between the parties, who were brothers, they were directed to be present in person. As per order dated 12.10.2012, appellant No.1 and respondent No.1 were present in Court but respondent No.1 made a categorical statement that there is no possibility of any amicable settlement.

Thereafter, the case had been adjourned on various occasions on the request

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of the counsel for the appellant.

In the light of the above referred two orders, the appeal cannot be heard on merits. As per the observations made in the order dated 24.04.2012, the present appeal stands dismissed.

February 8, 2017
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No