

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

**RSA No. 3122 of 2012 (O&M)
Decided on: 17.08.2017**

Gulab Nath and Ors.

.....Appellants

versus

Ranjit Singh and Ors.

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Amit Gupta, Advocate
for the appellants.

Mr. R.S. Chauhan, Advocate
for respondent No.1.

Mr. A.A. Pathak, Addl. A.G. Punjab.

Rajbir Sehrawat, J.(Oral)

CM-8332-C-2012

This is an application for condonation of delay of 141 days in re-filing the appeal.

For the reasons mentioned in the application the delay in re-filing the appeal is condoned.

CM-8331-C-2012

This is an application for condonation of delay of 26 days in filing the appeal.

Notice of the application is issued to the respondents.

Counsel appearing for the respondents have no objection if the

212

delay is condoned.

In view of the reasons mentioned in the application, the delay of 26 days in filing the appeal is condoned.

C.M. Is allowed.

CM-8333-C-2012

The present application has been filed by the appellants seeking leave to file appeal; claiming that Lajwanti who was a defendant before the Courts below has expired and they are claiming through above said Lajwanti; who further claimed through Karam Chand. They perceive their rights are being adversely affected. Learned counsel for the respondents have an objection that the present appellants cannot claim to be the legal representatives of the deceased-defendant qua the suit property. However, even if they are not the legal representatives of the said deceased defendant-Lajwanti, they can approach the High Court for a leave to appeal if they perceive their rights qua the suit property are being adversely affected.

In view of the above, irrespective of the status of the appellants qua the suit property, leave is granted to the appellants/applicants to file the instant appeal.

CM is allowed.

RSA No. 3122 of 201

The present appeal has been filed by the appellants who claimed through Lajwanti; widow of Karam Chand, against the concurrent findings recorded by the Courts below.

Brief facts of the case are that the plaintiff- Ranjit Singh had filed a suit claiming possession of the suit property, stating that earlier Karam Chand was cultivating the suit property as a tenant under the plaintiff on

212

payment of 1/3rd share of produce. Karam Chand expired on 28th July 1987 leaving behind no male descendent. Therefore, the plaintiff claimed; that the continuity of the tenancy was broken and the relationship of landlord and tenant came to an end. Hence, the plaintiff filed suit for possession.

The trial court decreed the suit by accepting the pleadings of the plaintiff on the ground that after death of Karam Chand no relationship between the plaintiff and any other person; as tenant; survives. The plea of defendant No.5 was discarded on the ground that since Karam Chand expired on 28th July 1987, therefore, no allotment of the suit property could have been made to him on 12.02.1988; because no property can be allotted to a dead person. These findings have been upheld by the lower appellate Court also. As stated above, the present appellants claimed to have stepped into the shoes of defendant No.5- Lajwanti and therefore, they claim on the basis of grounds taken in the present appeal.

Irrespective of the status or locus of the present appellants to file the appeal, it would suffice to observe that by no means, the present appellants can claim any right qua the suit property. At the best, they claimed through Lajwanti who herself claimed through Karam Chand. Even the claim of defendant No.5-Lajwanti was based on the fact that the land in question was declared surplus area and it was subsequently allotted to Karam Chand and therefore, the Karam Chand became the owner. After his death, she being the widow; inherited the property. However, the lower appellate court have rightly recorded the findings that the Karam Chand stood expired much before the date, of the alleged allotment in his favour. After the death of a person immediately even his own properties become subject to succession by legal heirs; since the succession cannot be kept in abeyance. Thus, there

212

is no question of a dead person being made owner of some property by allotment of that property to him after his death. Hence he never become the owner because no valid allotment letter was issued in his favour during his living time. There is no illegality in this findings recorded by the learned courts below.

It deserves to be mentioned here that it has been observed by learned courts below that even on the date of filing of the suit the land stood in the name of plaintiff Ranjit Singh in the revenue record. Therefore, he rightly filed the suit for possession of the suit property.

To rebut this stand of the plaintiff, the present appellants have raised an argument that the land was declared surplus and therefore the plaintiff was no more the owner of the suit property. Rather, it would be the State which would be the owner of the suit property.

Without commenting on the rival claim of the State or the present plaintiff qua the suit property, it would be sufficient to observe that in any case, the appellants are not concerned with the fact as to whom the land belongs or as to who is the owner. Admittedly, they have no right to remain in possession of the suit property either as a lessee or as a tenant or in any other authorised capacity. This fact is further shown by the fact that even in the revenue record the present plaintiff is recorded to be owner of the suit property.

The contention of the learned counsel for the appellants that the State has become the owner of the suit property cannot, per se, be accepted for the simple reason that for declaring land surplus certain statutory procedure is prescribed. In the present case there is nothing on record to show that the said statutory procedure was followed because even the

212

installments which were required to be deposited by said Karam Chand; after the alleged allotment to him have not been deposited. Therefore, this contention of learned counsel cannot be accepted; besides being totally irrelevant for the purpose of the present controversy.

No other arguments was raised.

In view of the above findings, there is no illegality or infirmity in the judgment and decree passed by the Courts below and the same are affirmed.

The present appeal is therefore dismissed, being devoid of any merits.

17th August, 2017

Manju

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No