

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

**RSA No.5074 of 2013 (O&M)
Date of Order:21.11.2017**

Lal Singh and another

..Appellants

Versus

Mohan Lal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mrs. Gurnam Kaur Turka, Advocate,
for the appellants.

Mr. D.S.Gurna, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

C.M.No.13665-C of 2013

Prayer in this application is for condonation of delay of 209 days in re-filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 209 days in re-filing the appeal is condoned.

Application is allowed.

RSA No.5074 of 2013

Defendants-appellants are in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for possession with the assertion that the plaintiff had purchased the suit property from one Smt. Shanti Devi vide sale deed dated 27/30.12.1985.

On the other hand, defendants pleaded that Smt. Shanti Devi

was not the owner of the property and in fact one Surinder Mohan was the owner and he had executed the sale deed in favour of Lal Singh, defendant no.2, on 06.07.1986.

Both the Courts after appreciating the evidence available on the file, decreed the suit filed by the plaintiff.

I have heard counsel for the parties at length and with their able assistance gone through the judgments available in the paper book.

Learned counsel for the appellants has submitted that the suit filed by the plaintiff was barred under Order 2 Rule 2 of the Code of Civil Procedure. She has further submitted that the parties had entered into a settlement on 19.04.1990.

On the other hand learned counsel for the respondent has submitted that the defendants-appellants did not press this issue of Order 2 Rule 2 of the Code of Civil Procedure before the Courts below, therefore, they are debarred from raising this plea in the second appeal. Learned counsel has further submitted that for proving bar to the maintainability of second suit under Order 2 Rule 2 CPC defendants-appellants were required to place on file the pleadings in the previous suit. Learned counsel for the respondent has further submitted that the previous suit was only for permanent injunction and the aforesaid suit was withdrawn as parties had settled the dispute.

With regard to argument of learned counsel for the appellants that the present suit was barred under Order 2 Rule 2 CPC, it is significant to note that learned trial Court while framing issues had framed issue no.4, which reads as under:-

“4. Whether the suit is liable to be dismissed under Order 2 Rule 2 CPC?OPD.”

Defendants did not lead any evidence in support of this issue. They did not even press this issue at the time of arguments. It has been noticed by the learned trial Court in para 20, which is extracted as under:-

“20. Onus to prove these issues were upon the defendants. Neither any evidence was led by the defendants to prove these issues nor were pressed at the time of arguments. Hence, these issues are decided against the defendants and in favour of the plaintiff.”

Even a reading of the judgment passed by the first appellate Court would show that no such argument was addressed before the first appellate Court.

Still further, once the pleadings in the previous suit have not been filed, the bar of subsequent suit under Order 2 Rule 2 CPC cannot be examined.

Next submission of learned counsel for the appellants is that there was a settlement between the parties on 19.04.1990, which has not been considered.

It is not disputed before me that this settlement deed has not been exhibited on the file. Once it is not part of the file, this Court cannot look into the document, which was not proved before the Courts below. The settlement deed, if any, has to be pleaded and proved. Once the appellants have failed to prove this fact, this Court cannot for the first time in exercise of jurisdiction in the regular second appeal examine this issue afresh.

For the reasons recorded above, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

The regular second appeal is dismissed.

November 21, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No