

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2899 of 2016 (O&M)

Date of Order:04.08.2017

Sunder Singh and others

..Appellants

Versus

Raj Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Vishwajeet Singh, Advocate,
for the appellants.

ANIL KSHETARPAL, J.

C.M.No.9513-C of 2017

This is an application for bringing on record the legal heirs of appellant no.3-late Smt. Sarla Devi.

The application is supported by an affidavit. The application is allowed, subject to all just exceptions and Smt. Savita Rani, legal representative, mentioned in paragraph 3 of the application is brought on record for the purpose of prosecuting the present appeal.

Amended memorandum of parties is taken on record.

C.M.No.7823-C of 2016

This is an application seeking condonation of delay of 78 days in filing the appeal.

For the reasons recorded in the application, which is supported by an affidavit, the application is allowed and delay of 78 days in filing the appeal is condoned.

C.M.No.7825-C of 2016

Allowed as prayed for.

Report of Local Commissioner, Annexure A-1, is taken on record.

RSA No.2899 of 2016 (O&M)

Plaintiffs are in regular second appeal against concurrent judgments passed by the Courts below.

Plaintiffs had filed a suit for permanent injunction restraining the defendants from cutting the kikar trees situated in the land, in question.

During the pendency of the suit, plaintiffs were allowed to amend the plaint and plaintiffs also added prayer for grant of injunction from dispossessing them from the land in dispute.

Learned trial court after appreciating the evidence available on the file, dismissed the suit. It was found by the Court that a local Commissioner was appointed and local commissioner did not find any kikar trees.

Plaintiffs filed first appeal and pleaded that there was another Local Commissioner appointed by the Court and that Local Commissioner had reported that defendants had encroached upon 13 marlas of land.

Learned first appellate court after appreciating the evidence available on the file, dismissed the appeal filed by the plaintiffs by observing that the suit is only for permanent injunction and it is not possible for the Court to ascertain as to whether defendants encroached upon 13 marlas of land before filing of the suit or during the pendency of the suit. Therefore, the Court was unable to grant any relief to the plaintiffs

I have heard the counsel for the appellants at length and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellants has submitted that once there was material available on the file that defendants have encroached upon 13 marlas of land, the Court ought to have molded the relief and granted a decree of possession.

Learned counsel for the appellants has further submitted that judgments of the Courts below are result of misreading of evidence.

I have carefully considered the arguments made by the counsel for the appellants. However, I am unable to agree.

Plaintiffs had filed a suit for permanent injunction with the assertion that there are certain kikar trees standing on the land and defendants be restrained from cutting and removing those trees. The learned trial Court appointed two Local Commissioners. First Local Commissioner did find certain kikar trees but the second Local Commissioner found the area to the extent of 13 marlas plus 01 marla encroached upon by the defendants. Plaintiffs amended the suit prayed for injunction, restraining the defendants from encroaching upon the land. The plaintiffs did not move any application for amendment of the plaint to seek the relief of possession.

In these circumstances, the Courts below rightly held that it is not possible to grant any relief to the plaintiffs as there is no evidence available on the file to record a finding whether the encroachment, if any, was before the filing of the suit or thereafter. Plaintiffs had only filed a suit for permanent injunction. Plaintiffs certainly have a right to file a fresh suit for seeking a relief of possession by establishing their title and entitlement. Even in two Courts, no application for amendment of the plaint, has been filed.

Finding no reason to interfere with the concurrent findings of fact arrived at by the Courts below, the regular second appeal is dismissed.

August 04, 2017
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(ANIL KSHETARPAL)
JUDGE

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