

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

RSA No.3106 of 2016 (O&M)

Date of Decision: August 03, 2017

Ajit Singh Lamba (since deceased) through LRs

..... Appellant

Versus

Trivendra Paul Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Harmanpreet Kaur, Advocate
for the appellant.

DEEPAK SIBAL J. (ORAL)

CM No.9387-C of 2017

On 16.03.2017, this Court had passed the following order:

“The present application under Order XXII Rule 4 read with Section 151 of the Code of Civil Procedure has been filed for bringing on record the legal representatives of deceased Ajit Singh Lamba (appellant), who died on 13.11.2016.

The legal representatives mentioned in para No.2 in the application are the widow and son of deceased-appellant. Being natural legal heirs, they are allowed to be substituted as appellants in place of deceased Ajit Singh Lamba. There appears no ground to exclude the son of the deceased.

Accordingly, the application stands disposed of.

An amended memo of parties be filed on or before the next date fixed in the main case i.e. 5.7.2017.”

In terms of the afore-quoted order, an amended memo of parties is sought to be placed on the record.

Allowed as prayed for.

CM stands disposed of.

CM No.8350-C of 2016

Through this application filed under Section 5 of Limitation Act, 1963, condonation of the delay of 29 days in filing of the appeal, is prayed for.

After going through the contents of the application and hearing learned counsel for the applicant/appellant, the application is allowed and the delay of 29 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.3106 of 2016 (O&M)

Respondent No.1, who was the plaintiff before the Trial Court had filed a suit seeking therein possession of a portion of property bearing House No.1100, 1100-A, 1100-B, Block No.IV, Railway Road, Ambala City (hereinafter referred to as 'the suit property'). Recovery of mesne profits was also sought for.

The case set up by respondent No.1/plaintiff before the trial Court was that he was the owner of the suit property as the same had devolved upon him through a Will dated 30.04.1995 executed by his father-late Sh. Inder Singh. Respondents No.2 to 4, who were defendants No.1 to 3 before the trial Court and family members of late Jatinder Pal Singh, nephew of respondent No.1 were stated to be in illegal occupation of the suit property, who had further illegally handed over the possession of the suit property to the appellant, who was defendant No.4 before the trial Court. The aforesaid Jatinder Pal Singh was further stated to have earlier filed a suit for declaring himself to be the owner of the suit

property which had been dismissed by the Trial Court on 30.10.2010. The appeal filed against the same had also been dismissed in the year 2012 before which he had expired on 08.08.2011. It was thus the claim of respondent No.1 that the defendants to the suit were in illegal possession of the suit property and he was rightfully entitled to claim possession thereof. Arrears of mesne profits along with future mesne profits were also claimed from respondents No.2 to 4 for use and occupation of the suit property.

Respondents No.2 to 4, though served, did not put in appearance before the Trial Court and consequently were proceeded against *ex parte*. However, the appellant appeared and defended the suit. He claimed that the suit was not maintainable being barred by Order 2 Rule 2 of the Code of Civil Procedure, 1908 (for short 'the Code') and that he was occupying the suit property on the basis of a lease deed executed between himself and respondents No.2 to 4, for which he had also paid consideration to respondents No.2 to 4.

The Trial Court decreed respondent No.1's suit and the appeal filed by the appellant against such judgment and decree was dismissed by the Appellate Court giving him a cause to approach this Court through the present second appeal.

The solitary argument raised by learned counsel for the appellant is that the possession of the appellant over the suit property was legally sustainable as the same was on the strength of a valid lease deed duly executed between respondents No.2 to 4 on one hand and the appellant on the other and as no fraud had been committed by him, he did not deserve to be evicted from the suit property.

The above submission of learned counsel for the appellant does not deserve a favourable consideration.

In an earlier suit, Jatinder Pal Singh, who was the predecessor-in-interest of respondents No.2 to 4, had claimed himself to be the owner in possession of the suit property. His claim was denied by respondent No.1 by setting up the afore-referred Will dated 30.04.1995 by his father late Inder Singh. The Trial Court after considering the evidence led by the parties and after holding the aforesaid Will to be genuine, dismissed the suit filed by Jatinder Pal Singh, declaring respondent No.1 to be the owner of the suit property. An appeal against the same was also dismissed by the Appellate Court as no further appeal was preferred, the above findings attained finality.

In view of the above and coupled with the fact that in the present suit, respondents No.2 to 4 had not even bothered to appear before the trial Court to even rebut the claim set up by respondent No.1, there is no reason not to hold respondent No.1 to be the owner of the suit property. That being so, as also in the absence of any authority shown in their favour, respondents No.2 to 4 could not have validly executed the lease deed on which the appellant has based his entire claim.

The lease deed on which the appellant places reliance is dated 30.07.2014 and since the same has been executed after the institution of the present suit on 28.01.2013, it cannot be ruled out that the lease deed was executed by respondents No.2 to 4 for *mala fide* reasons only with the object to create complications of third party rights and to deny the rights of respondent No.1 as earlier, the civil suit as also the appeal of Jatinder Pal Singh, the predecessor-in-interest of respondents No.2 to 4, through

which he sought himself to be declared the owner of the suit property had been dismissed. Even otherwise the lease deed being relied upon by the appellant, having been executed during the pendency of the present suit would be hit by the principles of *Lis Pendens*.

In view of the above, no reason is found to interfere with the concurrent finding of fact recorded by both the Trial Court as also the Appellate Court. No substantial question of law is also found to arise in the present appeal.

Dismissed.

No costs.

August 03, 2017

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**(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No