

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

RSA No.4203 of 2016 (O&M)

Date of Decision: August 24, 2017

Paramjit Singh

..... Appellant

Versus

Ashok Kumar Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Rajeev Dev Sharma, Advocate
for the appellant.

DEEPAK SIBAL J. (ORAL)

CM No.10816-C of 2016

Through this application filed under Section 5 of the Limitation Act, 1963, condonation of the delay of 22 days in filing the present 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 22 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.4203 of 2016

The respondent, who was the plaintiff before the trial Court had filed a suit seeking therein possession of land bearing Khewat No.3, Khatauni No.4, Khasra Nos.1R/16, 17, 23, 24, 25, 2R/20/2, 21/1, 3R/1, 4R/3, 4, 5, 8/2, 9 total measuring 77 kanals 13 marlas situated at village Lahri Sarmo, HB No.168, Tehsil and District Pathankot (for short 'the suit property').

The case set up by the respondent before the trial Court was that as per the Revenue record, the respondent was recorded as the exclusive owner of the suit property which was earlier owned and possessed by his mother Seeta Devi, on whose death, he inherited the same. Seeta Devi being a widow and the respondent being a Captain in the Army and thus posted elsewhere from where the suit property was situated, the suit property was being cultivated with the help of Harbans Singh, who was Seeta Devi's real brother. The appellant-Paramjit Singh, who was the son of Harbans Singh and defendant before the trial Court started asserting his possession over the suit property as a tenant which led to filing of the suit by the respondent for the afore-referred reliefs.

The appellant appeared before the trial Court and submitted that he was cultivating the suit property as a tenant for which he was paying rent to the respondent and therefore, he could only be evicted from the suit property by following the due process of law and certainly not through the filing of a suit for possession as in the present case.

The trial Court finding merit in the respondent's claim, decreed his suit. The appellant's appeal against the judgment and decree passed by the trial Court having been dismissed gave him a cause to knock the doors of this Court through the present second appeal.

Learned counsel for the appellant assails the concurrent findings arrived at by both the trial Court as also the Appellate Court by submitting that the appellant was cultivating the suit property as a tenant and was not merely looking after the same due to the close relation between the parties and therefore could not be dispossessed from the suit property through the present suit filed for seeking possession. Learned

counsel further relied upon the *Jamabandis* for the year 2010-11 which were based on an order passed by the Revenue Authorities depicting the appellant to be in possession of the suit property on payment of rent. Exhibits D-1 and D-4 were also relied upon to submit that the same showed the expenditure incurred by the appellant to make the suit property yield higher agricultural produce.

No merit is found in the above submissions made by learned counsel for the appellant.

Learned counsel for the appellant does not dispute the respondent's ownership over the suit property as reflected in the *Jamabandis* for the year 2005-06 as also 2010-11. In view of such admission, the only question which requires determination is whether the status of the appellant over the suit property as claimed by him is that of a tenant.

A perusal of the *Jamabandi* for the year 2005-06 shows the respondent to be the owner of the suit property and the appellant to be in possession of the same. The column in the *Jamabandi* with regard to payment of any rent by the appellant is found blank. It is true that in the *Jamabandi* for the year 2010-11, which was recorded in the year 2011, there is an entry based on an order passed by the Revenue Authorities showing the appellant to be tenant over the suit property. However, no reliance on such entry can be placed as no copy of the order passed by the Revenue Authorities which admittedly formed the basis of the entry in the *Jamabandi* was produced by the appellant. The entry having been made in the year 2011 i.e. after the filing of the suit in June 2010, further casts a serious doubt over its genuineness especially when the basis of such entry

has not been produced by the appellant and he admitted in his cross-examination that he had got the entry made in the *Jamabandi* through Revenue Officials in the year 2011 only to meet legal shortcomings and that no consent of the owner of the suit property was obtained at the time of such proceedings. Thus, it is clear that the afore-referred entry was got entered by the appellant only to strengthen his defence of the present suit especially when it is the admitted case that the respondent's mother Seeta Devi died in the year 1996 and between the year of her death till the filing of the suit in the year 2010, no revenue record or any other document was produced by the appellant to show therein his father or himself having been recorded to be in possession of the suit property as a tenant. Exhibits D-1 to D-4 which are relied upon by learned counsel for the appellant also nowhere depict that the appellant was cultivating the suit property as a tenant. These documents only show the incurring of expenditure by the appellant. Such documents are not considered relevant for determining the status of the appellant over the suit property as a tenant.

Thus, the status of the appellant over the suit property was not that of a tenant but of a care taker. Seeta Devi, who was the owner in possession of the suit property being a widow and her son-the respondent, a member of the Indian Armed Forces are facts which are admitted. The suit property thus could not physically be taken care of by either Seeta Devi or her son. It is in these circumstances that Harbans Singh, who was the real brother of Seeta Devi took care of the suit property. After the death of Harbans Singh, his son Paramjit Singh-the appellant continued to look after the property but after the respondent retired from the army and sought possession of the suit property, the appellant sought to cling on to

the possession of the suit property by projecting himself as a tenant over the same.

In view of the above, the concurrent findings on fact recorded by both the trial Court as also the appellate Court warrant no interference. Also that no question of law, much less any substantial question of law is found to arise in the present appeal.

Dismissed.

August 24, 2017

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**(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No