

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

**RSA No.4247 of 2016 (O&M)
Date of Order: 30.08.2017**

Rakesh Kumar

..Appellant

Versus

Darshan Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.P.S.Ghuman, Advocate,
for the appellant.

ANIL KSHETARPAL, J (Oral)

C.M.No.10967-C of 2016

Prayer in this application is for condonation of delay of 153 days in re-filing the appeal.

For the reasons mentioned in the application, which is supported by an affidavit, the delay of 153 days in re-filing the appeal is condoned.

Application is allowed.

RSA No.4247 of 2016

Defendant is in regular second appeal against concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for permanent injunction with respect to a common space left by the parties at the time of partition of the property. The parties had partitioned the property through writing dated 24.10.1967, which was signed by the parties. Even a map was prepared by the parties to depict the clear status of each individual. In the present case, the dispute is

with regard to a common space left in between for use of everybody.

Defendant contested the suit and admitted the writing dated 24.10.1967. He further claimed that he being co-owner is entitled to use the space under the stair case and also entitled to install a door/gate in that space.

Learned trial Court after appreciating the evidence available on the file, partly decreed the suit and restrained the defendant from encroaching upon the space under the stair case at point 'D' shown in site plan Ex.D1, which is part of the common space. Learned Court further granted the relief of mandatory injunction directing the defendant to remove the door/gate installed by him in the space under the stair case.

Defendant filed the first appeal. Learned first appellate Court after re-appreciating the evidence available on the file, upheld the judgment of the trial Court and dismissed the appeal filed by the defendant.

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

Learned counsel for the appellant has argued that it is not in dispute that the space was left for common purposes. He being a co-share is entitled to use in the manner he likes. He has further submitted that against parties who were co-owner, the suit for injunction was not maintainable.

I have considered the submission of learned counsel for the appellant. However, I am unable to agree.

It is not in dispute between the parties that the entire property was joint and the property was divided vide writing dated 24.10.1967. Pursuant to the aforesaid writing, parties settled in their respective portions. Some space, which is known as 'deodi' was kept by the parties as a common

space for use of everyone. Plaintiff is only trying to preserve the common space as such, whereas defendant has tried to encroach upon the common space by utilising the space under the stairs and has installed gate/door. In these circumstances, there is no force in the submission of learned counsel for the appellant that once he is co-owner, he is entitled to use the space the manner he likes. The parties are bound by the writing dated 24.10.1967. Once the parties had agreed to keep the space for common use of everyone, the defendant-appellant is not correct in asserting that since it is a common space, therefore, he is entitled to encroach upon the same.

Learned counsel for the appellant has further submitted that no suit for injunction was maintainable as the parties are co-sharers.

I have considered the submission of learned counsel for the appellant.

In the present case, in fact the parties had partitioned the property. Only a small space in between was kept for common use of the parties. The plaintiff is only trying to protect the space so that it is used in accordance with the writing dated 24.10.1967. In these circumstances, it is not possible to hold that the suit for injunction filed by the plaintiff was not maintainable.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

August 30, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No