

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

Sr. No.102

RSA No.3434 of 2015 (O&M)

Date of decision: 18.12.2017

Phooli Devi and others

....Appellants

versus

Poonam

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Ramandeep Kaur, Advocate for
Mr. Bhupender Singh, Advocate
for the appellants.

* * *

C.M. No.8308-C of 2015

Through this application filed under Section 151 CPC,
condonation of delay of 36 days in refiling of the appeal, is prayed for.

After going through the contents of the application and hearing
learned counsel for the applicants/appellants, the application is allowed and
the delay of 36 days in refiling of the appeal is condoned.

Main Case

The appellants, who were the original plaintiffs had filed a suit
for permanent injunction to restrain the respondent from alienating the suit
property. The case set up by the appellants before the trial court was that
Mukesh, who was the son of appellant No.1; father of appellants No.2 and 3

and the husband of the respondent was owner in possession of 1/8th share of land measuring 158 kanal 14 marlas comprised in khewat no.1338 and 7/784 share of 4 kanal 0 marla land comprised in khewat no.1421 situated at village Rakshera Tehsil Samalkha, District Panipat as also of 111/12880 share of land measuring 40 kanal 0 marla land comprised in khewat no.89 situated at village Pitampura Tehsil and District Sonapat (for short – the suit property). Mukesh died on 13.10.2009 and mutation on the basis of his inheritance, in favour of the parties to the suit, in equal shares, with regard to the land situated in village Rakshera was entered and sanctioned on 04.01.2010 and with regard to land in village Pitampura on 10.03.2010. It was alleged that the respondent was bent upon to alienate the share of the appellants from the suit property. Repeated pleas by the appellants to the respondent not to sell their share from the suit property having not acceded to, the appellants filed the afore-referred suit.

On being put to notice, the respondent admitted that on 01.06.2004, she was married to Mukesh and that he died on 13.10.2009; during the lifetime of Mukesh as also after his death, appellant No.1 had been treating the respondent with cruelty; disputes between appellant No.1 and respondent had been got settled with the intervention of the police on 06.05.2010 and then on 17.05.2010 in a matter filed by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005; after the death of Mukesh, appellant No.1 was not giving any maintenance to the respondent and that appellants No.2 and 3 were being looked after well by the respondent.

The trial court dismissed the appellants' suit and the appeal

preferred by the appellants before the appellate court met the same fate as their suit. It is in these circumstances that the appellants have approached this Court through the present second appeal.

The relationship between the parties is admitted. It is also not disputed that after the death of Mukesh, who was the son of appellant No.1; father of appellants No.2 and 3 and husband of the respondent, his entire land holding has been divided amongst the appellants and the respondent in equal shares. The present suit has been filed to restrain the respondent from alienating the suit property falling to the shares of the appellants No.2 and 3 on the ground that the respondent is bent upon selling the same against their interests. However, appellant No.1 while appearing as PW-1 admitted in her cross-examination that she was not giving any maintenance to the respondent or to appellants No.2 and 3, who after the death of Mukesh were being looked after by the respondent. She has further admitted that the respondent had never threatened to alienate the suit property. That being so, the appellants had no cause to file the present suit.

Even otherwise, appellants No.2 and 3 are minors. Therefore, Mukesh's property which has been inherited by them, till the time they attain majority can only be alienated by the respondent, who is their guardian, after seeking permission from the Competent Court. Thus, the rights of appellants No.2 and 3 are safe.

In view of the above, both the trial court as also the appellate court have concurrently arrived at findings favouring the respondent which are found to be plausible, thus not perverse, warranting no interference. The present appeal also does not raise any question of law, much less a

substantial question of law.

Dismissed.

(DEEPAK SIBAL)
JUDGE

December 18, 2017

Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No