

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 5705 of 2016(O&M)

Date of Decision: 18.09.2017

Baba Shihan Singh Gill Jhalli and another

...Appellants

Vs.

Kulbir Singh and another

...Respondents

**CORAM:-HON'BLE MR.JUSTICE RAJIV NARAIN RAINA**

Present: Ms. Gulnoor Ghuman, Assist. Advocate General, Punjab.

**RAJIV NARAIN RAINA, J. (Oral)**

This appeal has been filed after 195 days beyond limitation prescribed. In the application presented under Section 5 of the Limitation Act supported by an affidavit, the following explanation has been furnished:-

*“2. That the copy of the judgement was not received in the office of Director Public Instructions (Colleges) Punjab. The copy of the judgement was downloaded from the Punjab and Haryana High Court website. There after the matter was examined at various levels in the Government.*

*3. That after examining the Judgment dated 14.01.2016 and the record pertaining to the case, it was decided to challenge the judgement by filing RSA. Accordingly sanctioned was sought and granted vide letter dated 01.09.2016 by the Special Secretary to Government of Punjab, Department of Higher Education (Edu.1) Branch, Punjab, Chandigarh. Afterward the matter was marked to Law Officer of the DPI(Colleges) to draft RSA, who on 09.09.2016 submitted the prepared draft of RSA. Thereafter the appeal is*

*being instituted. This has resulted in delay of days in filing the Letter Patent Appeal as some time was spent in gathering the requisite records and information as also preparation of appeal”*

This is hardly satisfactory and acceptable explanation for the delay and sufficient cause which prevented the appellant/State of Punjab from filing the appeal in time. The criterion in Section 5 of the Limitation Act is to show sufficient cause for the delay for which dates and events have to be articulated in the affidavit on how the file moved in the Government Department and what was the cause of the delay beyond control.

Though, I would dismiss the application for insufficiently explained delay except caused by the proverbial office rigmarole but in this case refrain from doing so and instead I have heard learned counsel for the State on the merits of the appeal and find that both the Courts below have returned fair and proper analysis of facts in evidence and the findings returned that the plaintiffs had proved by legal evidence that they were owners of the suit property measuring 66 kanals 12 marlas on the basis of jamabandi Ex P.4 for the year 2004-2005 which records that the plaintiff is a co-sharer alongwith Gurnam Singh. Similarly, entries have been made in jamabandi Ex P.5 for the year 2009-2010 which confirms the status of the plaintiffs' title better than the rest of the world. Even the demarcation report and the application for the same made by the plaintiffs have been proved on record as Ex P.1 and Ex P.2 and no encroachment has been shown over the property claimed to be in possession of the plaintiffs and thus the permanent injunction issued restraining the appellant Government College authorities or the State which owns and runs the institution to encroach upon the suit property of the plaintiffs is justified. The State has failed to establish its

ownership over the suit land. In any case the jamabandi and the demarcation report have been and drawn made by the officials of the State of Punjab and if the State distrusts them then it is not the case that adverse action has been taken by the Education Department or the State of Punjab on the conduct of their officialdom in helping out the plaintiffs for extraneous considerations. If the Government has no faith on its officers that would not be the ground to interfere in second appeal when no substantial question of law arises within the meaning of Section 100 of the CPC or Section 41 of the Punjab Courts Act, 1918. Even erroneous findings of fact are not to be interfered with in second appeal unless they gave rise to a substantial question of law and mere inconsequential errors are not enough to ignite the jurisdiction of the High Court.

On the other hand, I find no error of fact or law or any legal infirmity in the judgment and decree in appeal and would uphold the findings recorded by the learned Additional District Judge, Ludhiana in its judgment dated January 14, 2016 affirming the judgment of the learned Additional Civil Judge (Sr. Divn.), Payal dated September 02, 2015.

Accordingly, no order is required to be passed in the application under Order 41 Rule 27 CPC for additional evidence as the documents relied upon in the application are too weak and would not alter the status of this case even if taken on record merely because there are standing trees on the part of the disputed land as that would not establish the ownership of the appellants. If the school had planted trees and proved it as a fact by evidence the appellants they can always claim the price or right to removal of them by bringing an independent action on the principle that he who sows would have a right to reap. However, the respondents-appellants during the trial

did not file a counter-claim or make objection on the point urged in appeal by the State Counsel at the motion hearing which is a shot in the dark. Nevertheless, no opinion can be expressed on this point as, in any case, the existence of the trees on the plaintiffs land has no evidence to support the plea or has any bearing on the rights of the plaintiffs-respondents derived from their established title in two courts. Besides, the issue was not put in issue or claimed by the appellants.

The appeal is meritless and is hereby dismissed.

(RAJIV NARAIN RAINA)  
JUDGE

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| <i>Whether speaking/reasoned</i> | <i>Yes</i> |
| <i>Whether reportable</i>        | <i>No</i>  |