

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

Sr.No.102

**RSA No.5696 of 2015 (O&M)
Date of decision: 09.11.2017**

Bikkar Singh

....Appellant

versus

Harbans Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Barjesh K. Sharma, Advocate
for the appellant.

* * * *

DEEPAK SIBAL, J. (Oral)

There is a delay of 186 days in filing of the instant appeal. Such delay is sought to be condoned on the ground that the judgment and decree under appeal was passed by the appellate court on 20.12.2014 and a certified copy of the same was prepared on 24.12.2014. Thereafter, the appellant misplaced the brief somewhere in the house and could locate the same only on 15.09.2015. The grounds on which the delay is sought to be condoned is found to be utterly vague. Even otherwise, for the carelessness on the part of the appellant for having misplaced the brief it is only he who should suffer. Irrespective of the delay in filing of the appeal, learned counsel for the appellant was also heard on merits.

The appellant who was the plaintiff before the trial court filed a

suit for permanent injunction in which his pleaded case was that he was owner in possession of a double storey house. He intended to raise a boundary wall on the adjoining land of which he also claimed to be the owner in possession. When such construction work was interfered with by the respondents he filed the instant suit.

Upon being put to notice, the respondents submitted that the plot/land in dispute was neither owned nor possessed by the appellant and that the same was a passage which was being used by the villagers and the respondents for their ingress and egress. In this regard, an agreement dated 16.12.1971 was also referred to by the respondents wherein it had been agreed by the Gram Panchayat that all the villagers would be permitted to use the land in question as a passage.

The trial court dismissed the appellant's suit and his appeal against such dismissal before the appellate court met the same fate as his suit, giving him a cause to knock the doors of this Court through the present second appeal.

After hearing learned counsel for the appellant, I am of the opinion that the concurrent findings recorded by both the trial court as also the appellate court do not warrant any interference.

The trial court returned specific findings that the appellant could not prove his possession and ownership over the plot in dispute over which he intended to construct a boundary wall. It was further held that in the plot in question pipelines for water supply had been laid and in case, the appellant was owner in possession of the said plot, he would have never permitted the laying down of such pipes. Further, one of the appellant's own

witnesses namely Jarnail Singh, who had appeared before the trial court as PW-2 was found to have admitted the fact that before filing of the present suit, inhabitants of the village were using the plot in question as a passage and that a wall had been constructed by the appellant over the disputed land only after the filing of the present suit.

The appellate court went a step further. After having approved the above findings returned by the trial court, the appellate court was further of the view that the intention of the appellant through the instant suit was only to encroach upon the common passage which was in existence in front of his house.

Nothing could be pointed out by learned counsel for the appellant which would persuade me to interfere with the afore findings of fact recorded concurrently by both the trial court as well as the appellate court.

The only argument raised by learned counsel for the appellant was with regard to placing of reliance on a judgment and decree dated 14.09.2009 passed by the trial court in a civil suit for permanent injunction filed by the appellant against the Gram Panchayat qua the disputed land which had been decreed. Such reliance is found to be misplaced as the judgment and decree dated 14.09.2009 would not bind the respondents as they were not parties to that suit. Even otherwise, a perusal of the judgment and decree dated 14.09.2009 shows that it was an ex parte decree in which all relevant facts and evidence were not before the Court at the time of passing of the decree.

In view of the above, the above concurrent findings arrived at

by both the trial court and the appellate court warrant no interference and no question of law, much less a substantial question of law is found to arise in the present appeal. Resultantly, the appeal is dismissed both on the grounds of delay as also on merits.

(DEEPAK SIBAL)
JUDGE

November 09, 2017
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>