

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

**CM-9336-C-2014 in/and
RSA No.4036 of 2014
Date of Decision: February 07, 2017**

Shyam Lal

..Appellant(s)

Versus

Smt. Sudershan and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. P.S. Sullar, Advocate
for the appellant.

ANITA CHAUDHRY, J.

This appeal has been filed after a delay of 4443 days. Before referring to the grounds taken to show sufficiency and reasons for delay, it is necessary to first sketch few basic facts.

The plaintiffs filed a suit for declaration claiming that they were co-sharers in the disputed land. The defendants had also purchased land vide sale deed dated 16.03.1992 and mutation was entered in the records. Defendant no.1 with the consent and connivance of defendants no.2 & 3 sold 1 Kanal to plaintiff no.1, 2 Kanal to plaintiff no.2 and 1 Kanal to plaintiff no.3, vide sale deed dated 09.10.1992. The plaintiffs claimed that they were sold specific Killa numbers though that fact was not incorporated in the sale deed. It was also their plea that a path 24 feet wide was left on the Eastern side. The plaintiffs requested the defendants but they failed to get it corrected.

Defendant no.1 pleaded that he had transferred some share through a sale deed but it was without consideration. It was pleaded that the plaintiffs had agreed to make the payment later but the payment was not made and the sale deed was fraudulent and without consideration.

Defendants no.2 & 3 pleaded that a specific portion out of joint land could not be sold by a co-sharer and the plaintiffs were not co-sharers.

The parties went to trial on the following issues:-

1. Whether the plaintiff is owner in possession of the suit land on the grounds as alleged ? OPP
2. Whether the suit is not maintainable? OPP
3. Whether the plaintiffs have no locus-standi to file the present suit? OPD
4. Whether the plaintiffs have no cause of action to file the present suit? OPD
5. Whether the plaintiffs are estopped to file the present suit by their own act and conduct? OPD
6. Relief.

The trial Court decided issue no.1 against the plaintiffs holding that it was a sale without consideration and the plaintiffs could not become the owners and the sale was without consideration. It was held that defendant no.1 was not in possession of any specific portion, therefore, he could not have handed over actual possession of any specific Killa number and could not have handed over possession of any specific Killa.

Dis-satisfied with the judgment, the plaintiffs filed an appeal and the finding recorded on issue no.1 were reversed. It noted that the defendant did not step into the witness box and mutation had been entered with respect to the sale and there was a recital with respect to the payment of consideration. The Court noted that the defendant had not filed any suit for recovery of the sale price nor had made any complaint and had not moved any authority to get the sale deed cancelled and they would not have remained quiet for so long. The finding recorded by the lower Court was reversed. The appeal was partly accepted and the plaintiffs were held to be co-sharers.

The counsel for the appellant contends that they did not know that any appeal had been filed by the plaintiffs and the first Appellate Court had wrongly marked the presence of a lawyer and who was never engaged and they did not come to know about the judgment. It was urged that they were under a bonafide mis-conception.

I have gone through the records of the appellate Court and it is clear that a counsel had appeared for the appellant before the 1st Appellate Court. There is an admission in para no.6 of the application filed here that the appellant had signed the power of attorney in favour of a lawyer. The appellant claims that he had shifted from Rohtak to Sonapat and therefore, power of attorney had been left with the counsel and he was under a bonafide mis-conception and though his counsel had appeared but he did not convey the decision and he came to know about the judgment dated on 31.10.2001 only in the year 2014 when the Society to whom the land was sold approached the Appellant for getting

the mutation sanctioned and therefore, a delay of 4443 days had occurred.

I find no merit in the plea taken by the appellant with respect to the delay. The appellant was being represented by a counsel before the appellate Court. The appellant has admitted in their application that they had signed a power of attorney. No complaint had been made against the counsel who had represented them before the appellate Court. The counsel who was representing the defendant before the lower Court represented them before the Appellate Court. It is necessary to refer to the averments that was made before the Co-ordinate Bench on 09.10.2014 in this appeal. It reads as under:-

“Learned counsel for the applicant while relying upon various zimni orders reproduced in the application contends that after dismissal of the suit by the learned trial court, the applicant had no knowledge about the pendency of the first appeal and the presence of Shri R.K. Sharma, Advocate has been wrongly marked as he was never engaged in the appeal.

Delay of 4443 days in filing the appeal is sought to be condoned on the ground that the applicant was not in the knowledge of pendency of appeal before the learned lower appellate court and when he came to know about passing of impugned judgment and decree dated 31.10.2001, promptly filed the appeal thereby causing delay in the aforesaid manner.

Let the records of the courts below be requisitioned in the aforesaid context for 25.01.2015.”

The submissions which were noted above are in contradiction to what is stated in the application. The applicant had admitted that he had filed the power of attorney when he had left Rohtak and started residing at Sonapat. When a party approaches the Court after a delay then it is for him to show his bonafide and the facts and circumstances and justification in approaching the Court after a delay. Adequate and enough reason has to be shown to succeed, which are missing in this case. The facts and circumstances presented by the appellant even otherwise are found to be false. There are no sufficient grounds to condone the in-ordinate delay of 14 years in filing the appeal. No evidence was led by the defendant before the lower Court. The defendant did not step into the witness box. Even otherwise the appellant has no case on merits. The application as well as the appeal is dismissed.

**(ANITA CHAUDHRY)
JUDGE**

February 07, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No