

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

Sr. No.106

RSA No.2414 of 2017 (O&M)

Date of decision: 20.09.2017

Harjinder Singh

....Appellant

versus

Satwinder Singh and others

....Respondents

CORAM HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Rakesh Gupta, Advocate
for the appellant.

* * *

DEEPAK SIBAL, J. (Oral)

C.M. No.10085-C of 2017

Through the present application filed under Section 151 CPC, correct copy of the order dated 07.04.2015 passed by the Civil Judge (Senior Division), Phillaur, is sought to be placed on the record.

Allowed as prayed for.

CM stands disposed of.

CM No.5852-C of 2017

Through the present application filed under Section 5 of Limitation Act, 1963 read with Section 151 CPC, condonation of delay of 134 days in filing of the appeal is sought for.

Learned counsel for the applicant-appellant submits that delay of 134 days in filing of the appeal occurred in the process of compilation of the record to enable the counsel to file the present appeal. It is further submitted that delay in filing the appeal is bona fide; not intentional and if

the same is not condoned, the appellant shall suffer irreparable loss which cannot be compensated in any manner.

After hearing learned counsel for the applicant-appellant, the delay of 134 days in filing of the appeal is condoned.

CM stands disposed of.

Main Case

Respondents No.1 to 5, who were the plaintiffs before the trial court had filed a suit seeking therein partition of the suit property, as described in the plaint, by metes and bounds and for possession of the property to be allotted to respondents No.1 to 5 after partition.

The case set up by respondents No.1 to 5 before the trial court was that the predecessor in interest of the parties was owner of the suit property and on his demise, dispute arose with regard to possession of the suit property as per the shares inherited by the parties leading to the filing of the suit by respondents No.1 to 5 for the afore-referred reliefs.

Through order dated 20.08.2011, the trial court passed the preliminary decree for separate possession by way of partition in favour of respondents No.1 to 5 to the extent of 1/3rd share of the suit property. Thereafter, while considering the application for passing of the final decree, on 26.04.2014, a local commissioner was appointed, who visited the spot on 24.05.2014 and submitted his report which was filed before the trial court on 22.08.2014. In his report, the local commissioner proposed the division of the suit property into three equal portions ABCD, EFGH and IJKL. During the proceedings before the trial Court, learned counsel for respondents No.1 to 5 prayed that portion marked ABCD be given to his clients and as no counter proposal was given by the appellant nor any

objection was filed by him to the report of the local commissioner, the final decree was passed by partitioning the suit property by metes and bounds as per the option exercised by learned counsel for respondents No.1 to 5.

Being aggrieved by the above final decree, the appellant challenged the same through an appeal filed before the appellate court on the dismissal of which he has knocked the doors of this Court through the present second appeal.

Learned counsel for the appellant submits that the impugned final decree passed by the trial court as also the judgment and decree of the appellate court are liable to be set aside for the simple reason that they are both based on the option exercised by learned counsel appearing on behalf of respondents No.1 to 5 and no option in that regard was given to the appellant. It is further submitted that the local commissioner's report had wrongly depicted the area of the suit property and therefore, the impugned decrees which have been passed on the basis thereof need to be set aside.

No merit is found in the above submissions made by learned counsel for the appellant.

It is not disputed that the suit property had devolved on the parties in equal shares on the demise of their common predecessor in interest-Lachhman Singh.

It is further not disputed that the report of the local commissioner dated 24.05.2014 was filed before the trial court on 22.08.2014 after which the matter was adjourned at least 14 times before passing of the final decree and on all these dates, though learned counsel for the appellant appeared before the trial court, no objections were submitted by him to the local commissioner's report.

Interim orders passed by the trial Court dated 31.03.2015 and 06.04.2015 which are the last but two orders passed before passing of the final decree being relevant are reproduced below:-

“31.03.2015

Present:- Sh. Munish Sharma, Advocate, counsel for the applicant.

Sh. Rajesh Kumar, Advocate, counsel for respondent No.1.

Respondents No.2, 4, 5 and 6 ex parte.

Today, learned counsel for the applicant has suffered a statement that local commissioner has submitted the proposed Annexure C and D and prayed that decree holder may be given Mark ABCD shown in Annexure C and final decree may be passed. On joint request case is adjourned to 06/04/2015 for consideration on the report of local commissioner.

06.04.2015

Present:- Sh. Munish Sharma, Advocate, counsel for the applicant.

Sh. Rajesh Kumar, Advocate, counsel for respondent No.1.

Respondents No.2, 4, 5 and 6 ex parte.

On request of learned counsel for the parties case is adjourned to 07/04/2015 for arguments.”

A perusal of the afore-quoted order dated 31.03.2015 shows that in the presence of learned counsel for the appellant, counsel for respondents No.1 to 5, had opted for being given to his clients portion of the suit property marked ABCD in the report of the local commissioner. Thereafter, on joint request, the matter was adjourned to 06.04.2015 on which date, on request of learned counsel for the parties, the matter was adjourned to 07.04.2015 which was the date when the final decree was

passed. Thus, the option to be given portion marked ABCD in the local commissioner's report was exercised by learned counsel for respondents No.1 to 5 on 31.03.2015 in the presence of the counsel for the appellant, who neither objected to the same nor filed any counter proposal. Rather, on joint request made by learned counsel for the parties, the matter was adjourned and finally decided after the same had been adjourned twice. It now does not lie in the mouth of the appellant to urge that no option was given to him.

In the light of the above as also for the reason that on behalf of the appellant no objections to the local commissioner's report had been preferred, concurrent findings of facts recorded by both the trial court as also the appellate court considering and rejecting the above two submissions made by learned counsel for the appellant, warrant no interference. The present second appeal also does not raise any question of law, much less a substantial question of law.

Dismissed.

(DEEPAK SIBAL)
JUDGE

September 20, 2017

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No