

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

Sr. No.106

RSA No.4144 of 2017 (O&M)

Date of decision: 01.09.2017

The State of Haryana and another

....Appellants

versus

Jaiwanti

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. P.K. Jangra, Addl.A.G., Haryana.

* * *

DEEPAK SIBAL, J. (Oral)

C.M. No.10739-C of 2017

Through this application filed under Section 5 of the Limitation Act, 1963, condonation of delay of 80 days in filing of the appeal, is prayed for.

After going through the contents of the application and hearing learned counsel for the applicant/appellant, the application is allowed and the delay of 80 days in filing of the appeal is condoned.

RSA No.4144 of 2017 (O&M)

The respondent, who was the plaintiff before the Trial Court had filed a suit seeking therein possession of land measuring 3 kanal 8 marlas i.e. 1 kanal 16 marla comprised in khewat No.308, Khatauni No.329 min, khasra No.47//3 min and 1 kanal 12 marla comprised in khewat No.308, khatauni No.329 min, khasra No.47//4 min, Hadbast No.46 situated in the revenue estate of village Safilpur, Tehsil Bilaspur, District Yamuna

Nagar (for short the 'suit property').

The case set up by the respondent before the Trial Court was that she was owner of the suit property on which the appellant-State by way of an encroachment, had constructed a road. In October 2009, the respondent came to know about the illegal construction of the road by the appellants and immediately she got her land demarcated by moving an application before the Tehsildar, Bilaspur. The demarcation which was done in pursuance to the above application clearly depicted encroachment upon the suit property by the appellants as before constructing the road neither the suit property had been acquired by the State nor any compensation for the same has been disbursed to her. It was stated that despite repeated requests made as also serving of a legal notice when the appellants failed to respond favourably the present suit was filed for the afore-referred reliefs.

The appellants appeared before the Trial Court and submitted that the road in question was constructed in the year 1992 with the consent of the respondent and other villagers under a scheme called the Shivalik Scheme and therefore, on the grounds of estoppel and delay the suit filed by the respondent was liable to be dismissed.

The Trial Court, finding merit in the case of the respondent, decreed her suit. Such judgment and decree passed by the Trial Court was taken up in the appeal by the appellants on the dismissal of which the appellants have knocked the doors of this Court through the present second appeal.

Learned State counsel appearing on behalf of the appellants submits that the road in question had been constructed for the benefit of the public at large and that too with the consent of the respondent and other co-

villagers way back in the year 1992. Thus, on the ground of delay and estoppel as also in larger public interest, the impugned judgments and decrees were liable to be set aside.

The above submissions do not merit acceptance.

The respondent's ownership over the suit property is not disputed by the learned State counsel. PW-6-Ram Nath, who had demarcated the suit property proved his demarcation report Ex.P-5 which was tendered in evidence alongwith site plan Ex.P-6 and as per which encroachment by the appellants on the suit property was clearly depicted. In his cross-examination, nothing could be extracted which would even dent the case of the respondent.

The stand taken by the appellants that the road in question was constructed with the consent of the respondent as also other co-villagers finds no evidence on the record. The appellants are the State and had there been any consent by the respondent and other co-villagers permitting the appellants to construct the road in question there would certainly have been same documentation in that regard. At least some office notings would have been there. Neither any document through which the respondent is alleged to have given her consent to the construction of the road in question nor any office noting in that regard was produced by the appellants. It was the case of the appellants that the road was constructed under a Scheme known as the Shivalik Scheme. However, the Sub-Divisional Engineer, who appeared on behalf of the appellants as DW-1, specifically deposed that he was unable to produce any record pertaining to the above Scheme. He also denied the existence of any record with the appellants which would show that any compensation was paid to the respondent for constructing a road

upon her land.

The construction of a road in the year 1992 was also not proved by the appellants. Had the road been constructed it would have, in all probabilities, been preceded by floating of a tender or at least there would be some record with the State showing its construction in the year 1992. None of such record was produced by the State. Even otherwise, learned State counsel very fairly admits that there is no period of limitation prescribed for institution of a suit on the basis of title.

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

September 01, 2017

Jyoti 1

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