

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

RSA No.948 of 2017 (O&M)
Date of decision : 01.08.2017

Phoolwati (deceased) through her LRs and another

...Appellants

Versus

Ram Kishan (Deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Tanmoy Gupta, Advocate for the appellants.

ANIL KSHETARPAL, J.

CM No.2115-C of 2017

Allowed, as prayed for.

CM No.2116-C of 2017

This is an application for condonation of delay of 36 days in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 36 days in filing the appeal is condoned.

Application stands allowed.

CM No.2117-C of 2017

This is an application for condonation of delay of 91 days in refiling the appeal.

For the reasons stated in the application, which is duly

supported by an affidavit, delay of 91 days in refiling the appeal is condoned.

Application stands allowed.

Main Case

The plaintiffs are in present Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiffs had filed a suit for declaration and permanent injunction praying that the order passed by the Collector on 20.10.1972 be declared illegal, null, void and not bindings on the plaintiffs.

The defendant appeared and contested the suit. The learned trial Court after appreciating the evidence available on the record found that the suit filed by the plaintiffs is liable to be dismissed because the order of the Assistant Collector, Ist Grade was passed in the presence of the parties and the order bears signatures of Babu Ram, predecessor-in-interest of the plaintiffs. The Court noticed that although it is the case of the plaintiffs that the aforesaid order dated 20.10.1972 was passed at the back of the plaintiffs, however, a perusal of the file shows otherwise. Babu Ram, predecessor-in-interest of the plaintiffs was present and had signed the order. The learned trial Court further found that the suit was hopelessly time barred as the order passed by the Collector in the year 1972 has been challenged by filing a suit on 27.05.2010.

The plaintiffs filed first appeal. The First Appellate Court after re-appreciating the evidence available on file reaffirmed the findings of the trial Court. The learned First Appellate Court has also noticed that under Section 25 of the Punjab Security of Land Tenures Act, 1953, the

jurisdiction of the Civil Court is barred. The appeal filed by the plaintiffs was ordered to be dismissed.

I have heard learned counsel for the appellants at length. In my opinion, the appeal filed by the appellants is liable to be dismissed for the following reasons:-

1. It is established on the file that the learned Collector had passed an order on 20.10.1972 in the presence of Lt. Sh. Babu Ram, predecessor-in-interest of the appellants. Therefore, the plea of the appellants that order was passed at the back of the appellants stands falsified.
2. The suit filed by the plaintiffs is clearly barred by time as the suit has been filed after a period of 28 years from the date of order of Collector. Once it has been found that the order was passed in the presence of the predecessor-in-interest of the appellants, the suit if any could only be filed within a period of limitation prescribed in the Limitation Act.
3. The jurisdiction of the Civil Court is barred under Section 25 of the Punjab Security of Land Tenures Act, 1953. Section 25 is reproduced as under:-

“25. Exclusion of courts and authorities:- Except in accordance with the provisions of this Act, the validity of any proceedings or order taken or made under this Act shall not be called in question in any Court or before any other authority.”

4. Learned counsel for the appellants has not been able to point out that how the suit was maintainable.

5. The competent authority under the Punjab Security of Land Tenures Act, 1953 had passed an order after hearing all the effected parties. Against the aforesaid order, no further appeal was filed although appeal was maintainable.

In these circumstances, appellants cannot be permitted to challenge the order passed by the Collector by way of separate civil suit particularly when no error in the procedure followed by the authority has been shown. The plaintiffs has further failed to show that the Collector had passed the order in violation of procedure prescribed in the Act and Rules.

For the reasons recorded above, I do not find any reasons to interfere with the concurrent findings of fact arrived at by the Courts below.

Accordingly, the present Regular Second Appeal is dismissed.

01.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No