

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 3133-2013 (O&M)
Date of decision: 27.02.2018

Jagbir Singh

.....Petitioner

versus

Jaswinder Singh and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.B.D.Sharma, Advocate for the petitioner
Mr.Viney Saini, Advocate for
Mr.G.S.Nagra, Advocate for the respondent no.1

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Petitioner Jagbir Singh is aggrieved of the order dated 18.2.2013, passed by learned Additional District Judge, Amritsar, vide which, his application filed under Section 5 of the Limitation Act 1963 for condonation of delay in filing the appeal against the judgment and decree dated 6.2.2009, passed by learned Additional Civil Judge (Senior Division), Amritsar was dismissed.

Heard.

It comes out that learned Additional District Judge, Ajnala in a suit titled as Jaswinder Singh vs. Sardool Singh and Bir Singh sons of Geja Singh for specific performance, decreed the suit on 6.2.2009. It comes out that plaintiff had sought the relief regarding two khasra numbers 51//19/1(3-04) and 19/1/2(4-0) on the basis of the agreement of sale dated 21.6.2004.

It was mentioned in the judgment that according to the plaintiff, defendants

have sold some part of the land to somebody and plaintiff is claiming relief regarding unsold part and ready to pay the proportionate sale consideration. Learned Additional Civil Judge (Senior Division) decreed the suit only regarding 3 kanals of land @ Rs.4 lakhs per acre by adjusting the earnest money already paid. Khasra numbers regarding said three kanals were not mentioned in the judgment and decree. Present petitioner Jagbir Singh was not party to the suit. He filed an application in the year 2010, wherein he claimed that he is also aggrieved by the judgment and filed an appeal against the said judgment and decree. Along with the appeal, he also filed an application under Section 5 of the Limitation Act 1963. He claimed that he purchased the part of the suit land bearing khasra no.51//19/1/2(4-0) vide sale deed dated 14.5.2007.

I am of the view that the appeal itself is misconceived. Out of two khasra numbers mentioned above, which in fact, comes to 7 kanals 4 marlas, it is mentioned in the judgment that the land is 8 kanals. The land of khasra no. 51//19/1 is 3 kanal 4 marlas., whereas in the agreement it is mentioned as 4 marlas. However, trial Court, while noticing the plea of the petitioner that some land has been purchased, decreed the suit only for 3 kanals without mentioning the khasra number.

At the first instance, purchase of the part of the suit land by the petitioner on 14.5.2007 is during pendency of the suit and will be hit by Rule of lis pendens and therefore, the petitioner has no right of appeal. Secondly, the suit was not specifically decreed regarding land bearing khasra no.51/19/1/2 (4-0) claimed by the petitioner. The remaining land comes to 3 kanals 4 marlas and sufficient to satisfy the decree. Therefore, since appeal is misconceived and does not lie, therefore, application under

Section 5 of the Limitation Act 1963 was rightly dismissed. However, the petitioner shall be always at liberty to file objection petition in case the plaintiff- decree holder file an execution application to execute the decree and it shall be open for the Executing Court to take into consideration the plea raised by the present petitioner.

In view of foregoing discussion, the present revision petition stands dismissed.

27.02.2018

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No