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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4370-2010 (O&M)
Date of decision 1.2.2018

Om Parkash and others Petitioners
Versus
Kirpal Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. J.S. Cooner, Advocate for the appellants.
Mr. Kanwal Goyal, Advocate for respondent No. 1.
Mr. Diwan S.Adlakha, Advocate for respondent No. 3.
M/s Arihant Jain, and Arun Jindal, Advocate
for respondent No. 6.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 28.5.2010 passed by the learned Additional District Judge, Amritsar, vide which appeal filed by the petitioners who were not party before the learned trial Court, against the judgment and decree dated 28.1.2003 passed by learned Civil Judge (Senior Division), Ambala, along with an application seeking condonation of delay was dismissed.

I have heard learned counsel for the parties and perused the case file.

The brief facts of the case are that plaintiffs- Smt. Sarla Devi along with others filed a suit for declaration against their brothers namely Mohinder Singh and Kirpal Singh sons of Gurdial Singh and Paramjit Singh son of Mohinder Singh (defendants No. 1 to 3 in the civil suit) regarding their share in the land left behind by their father Gurdial Singh. It was claimed that defendants No. 2 and 3 have killed their father Gurdial Singh. Therefore, they cannot succeed to the estate of deceased- Gurdial Singh and that Gurdial Singh has never executed the Will. The civil suit was instituted on 23.2.1995 and the same was decreed in favour of the plaintiffs on 28.1.2003 by learned Civil Judge (Senior Division), Ambala.

It comes out that petitioners namely Om Parkash and Mam Chand-now represented by his LRs had purchased the suit land on 5.10.1995 and 10.10.1995 from defendant No. 1-Paramjit Singh through different sale deeds. The said sale deeds were executed during the pendency of the suit. It also comes out that Mohinder Singh and Kirpal Singh filed a separate *civil suit-639-1995, Kirpal Singh and another vs. Paramjit Singh and ors* on 23.12.1995, claiming succession to the estate of Gurdial Singh on the ground that they have been acquitted of the charges of murder of their father Gurdial Singh by the learned trial Court. Present petitioner-Om Parkash and Mam Raj were also parties in the said suit. Defendant No. 1 had revealed that he has already sold the property. He had also filed an application under Section 10 of the Code of Civil Procedure, 1908 for staying the proceedings in the said suit, on the ground of pendency of the civil suit filed by Smt. Sarla Devi and others. The said application was dismissed.

It also comes out that the petitioners No. 1 and 2 have filed separate civil suit on 11.10.2005, challenging the judgment and decree dated 28.1.2003. The said suit was dismissed as withdrawn. Thereafter, on 27.5.2010, i.e. five years after the decision of the said suit and about 14 years of filing of the written statement, in the second suit, filed by Kirpal Singh and Mohinder Singh, present petition was filed claiming that they had purchased the disputed property from Paramjit Singh through two different sale deeds dated 5.10.1995 and 10.10.1995. Along with the appeal an application under Section 5 of the Limitation Act was filed which was also dismissed.

The facts stated above clearly shows that *firstly* the rule of *lis pendence* will apply and the judgment and decree dated 28.1.2003 is binding upon the present petitioners as they had purchased the land during the pendency of the petition. *Secondly*, in the order dated 26.5.2004, when the second suit was filed by Kirpal Singh and Mohinder Singh, they came to know about the pendency of the suit filed by *Sarla Devi and others*. They did not take any step to become party in the said suit. However, in the year 2005, they have filed a civil suit challenging the judgement and decree dated 28.1.2003 but did not file any appeal against the said judgment and decree on the ground that they are also adversely effected by the same. Now after so many years they cannot wake up and file the appeal and seek condonation of delay. The learned trial Court has rightly held that there is no ground to condone the delay.

Dismissed.

1.2.2018
preeti

(KULDIP SINGH)
JUDGE