

RSA No. 4353 of 2012 (O&M)+connected case

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

Date of Decision : 20.2.2018

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RSA No. 4353 of 2012 (O&M)

Pritam Singh and others

...Appellants

vs.

Charan Singh (Charan Singh) deceased through Lrs and others

....Respondents

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RSA No. 5146 of 2012 (O&M)

Sardool Singh (deceased) thorough his Lrs and others

....Appellants

vs.

Sukhdev Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. S.S.Rangi, Advocate
for the appellants.

Mr. C.M. Munjal, Advocate
for respondents N. 1 and 2.

AJAY TEWARI, J.(Oral)

CM-12135-C-2012 in RSA No. 4353 of 2012

This is an application for condonation of 17 days delay in
filing the appeal.

For the reasons recorded in the application, the same is
allowed and delay of 17 days in filing the appeal is condoned.

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CM-12136-C-2012 in RSA No. 4353 of 2012

This is an application for condonation of 58 days delay in refiling the appeal.

For the reasons recorded in the application, the same is allowed and delay of 58 days in refiling the appeal is condoned.

**CM-7804-C-2015 in RSA No. 4353 of 2012 and
CM-7807-C-2015 in RSA No. 5146 of 2012**

These are two applications for bringing on record the legal representatives of the deceased of Tej Kaur-appellant No.4.

For the reasons recorded in the applications, the same are allowed and the persons mentioned in paragraph No. 3 of the applications are impleaded as legal representatives of Tej Kaur-appellant No.4, subject to all just exceptions. Amended Memo of parties is taken on record.

CM-14352-C-2012 in RSA No. 5146 of 2012

This is an application for condonation of 7 days delay in filing the appeal.

For the reasons recorded in the application, the same is allowed and delay of 7 days in filing the appeal is condoned.

CM-14353-C-2012 in RSA No. 5146 of 2012

This is an application for condonation of 127 days delay in refiling the appeal.

For the reasons recorded in the application, the same is allowed and delay of 127 days in refiling the appeal is condoned.

CM-14747-C-2014 in RSA No. 5146 of 2012

This is an application for bringing on record the legal representatives of the deceased of Sardool Singh-appellant No.1 and Charan Singh @ Chanan Singh-respondent No.-2.

For the reasons recorded in the application, the same is allowed and the persons mentioned in paragraph Nos.3 and 4 of the application are impleaded as legal representatives of Sardool Singh-appellant No.1 and Charan Singh @ Chanan Singh-respondent No.-2. subject to all just exceptions. Amended Memo of Parties is taken on record.

Main Cases

This order shall dispose of the aforesaid appeals as common facts are involve therein and facts are taken from both the appeals.

These appeals have been filed against the order of the lower Appellate Court modifying the order of the trial Court and thereby partly allowing the separate appeals filed by the respondent No.1 (Charan Singh and Sukhdev Singh) in each case.

The case of the appellants was that their father Kala Singh was mortgagee of 25 Kanals and 6 Marlas belonging to Jagat Singh and he had become owner thereof because it was never redeemed by the mortgagor and, after his death they were entitled to succeed to that land equally. Subsequently, two of their brothers that is Mahender Singh and Ajaib Singh filed a suit in which they claimed that alongwith the present appellants they had become owner of those 25 Kanals and 6 Marlas land. In that suit the appellants were party and were proceeded against ex parte. Further the other respondents (mortgagor) too did not appear

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and consequently that suit was decreed ex parte. It is the case of the appellant that at the stage of passing the decree an error apparent the face of the record occurred because the decree was passed in favour of the only Mahender Singh and Ajaib Singh rather than in favour of the all five brothers as had been pleaded in the plaint. Thereafter, the appellants filed an application under Order 9 Rule 13 for setting aside the ex parte proceedings and ex parte decree. But that application was dismissed. Importantly, an appeal was filed but that appeal was also dismissed and thereafter that decree (rightly or wrongly) was allowed to become final. By the instant suit the appellant have sought to reopen that decree. The trial Court found that in equity the case of the appellants was correct and consequently decreed the suit. The lower Appellate Court however held that once the decree was allowed to become final it could not be challenged by a fresh civil suit and that is how these three brothers are before this Court. Learned counsel is not a position to show how the second suit can be filed to reopen a decree where the appellants were party and where the application for setting aside the ex parte decree was dismissed and that was allowed to become final. Consequently, no fault can be found with the judgment and decree of the Lower Appellate Court.

Both the appeals stand dismissed.

Since the main cases have been decided, the pending C.M, if any, also stand disposed of.

20.2.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No