

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

RSA No.2108 of 2016 (O&M)

Date of Decision.18.05.2018

Gurbachan Singh

.....Appellant

Vs

Sukhwant Singh

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ramesh Chand Sharma, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

C.M. No.5586-C of 2016

For the reasons stated in the application, delay of 56 days
in re-filing the appeal is condoned.

Application is allowed.

RSA No.2108 of 2016

The present appeal is preferred against the concurrent finding of fact whereby the suit for permanent injunction restraining the defendant from interfering into peaceful possession of the plaintiff over the land measuring 1 ½ marlas allegedly taken by the plaintiff from Gurudwara Sahib through its committee in exchange after giving land shown in the site plan attached as yellow at point ABCD and further restraining the defendants from interfering for installing/affixing the gate, has been dismissed by the trial Court and affirmed by the lower Appellate Court.

The present appeal is accompanied by the application for condonation of delay of 127 days in filing the appeal. The reason assigned in the application is that the paper book was lost and despite sincere effort could not locate the same and by the time, it was located, delay of 127 days in filing had occurred.

Mr. Sharma, learned counsel appearing on behalf of the appellant submitted that the suit aforementioned was filed in view of the land being exchanged with the Gurdwara Sahib. The Courts had non-suited the appellant on the premise that the appellant had not been able to prove the exchange deed but the exchange deed Ex.P2 and the judgment Ex.P3 have been proved on record, thus, there is gross illegality and perversity.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sharma, for, the witness produced by the plaintiff was PW2, Khushbash Singh whereas as per the pleaded case and his version, there were 15-20 persons at the time of exchange of land. Even PW3, Chanchal Singh, who tendered his evidence in examination-in-chief could not come forward for cross-examination, in essence, the appellant-plaintiff was to discharge the onus to prove exchange deed. In the absence of the same, the Court had no occasion but to reject the prayer as sought.

In view of the aforementioned, the argument of Mr. Sharma has not been able to cut ice to enable this Court to form a different opinion than the one already arrived at, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed on merits as well as on limitation.

(AMIT RAWAL)
JUDGE

May 18, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No