

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

RSA No.3608 of 2016 (O&M)

Date of decision:08.05.2018

Joginder Singh

... Appellant

Vs.

Gurdev Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vivek Goyal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.9428-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 31 days in re-filing the appeal is condoned.

C.M. stands disposed of.

RSA No.3608 of 2016 (O&M)

Appellant-defendant No.2 is in Regular Second Appeal against the judgment and decree dated 17.8.2015 rendered by the Lower Appellate Court, whereby, suit of respondent No.1-plaintiff, which was dismissed by the trial Court, has been partly decreed.

The plaintiff instituted the suit for separate possession with consequential relief of permanent injunction on the premise that his father, Babu Singh, during his life time executed a registered Will dated

10.04.1998 in favour of plaintiff and defendants No.1 to 3. On his demise, the property was required to be partitioned and had been recorded in the revenue record in the same manner. The plaintiff wanted to have separate possession and claimed partition.

The appellant-defendants set up a private partition of the suit property and also raised a plea of partial partition on the ground that the property situated at village Speda (Ambala) was not included. The trial Court dismissed the suit on the ground that it was hit by doctrine akin to partial partition. The Lower Appellate Court reversed the findings on the premise that the property situated at Speda was not in the ownership of Babu Singh.

Learned counsel appearing on behalf of appellant-defendant No.2 submits that present appeal could not be filed within a period of limitation and delay of 101 days had occurred, for, appellant was never informed by the counsel to assail the order of Additional District Judge and ultimately, he contacted counsel in the High Court in month of February, 2016, thus, the appeal was filed. The application is also supported by an affidavit of applicant/appellant. On merits, he submits that judgment and decree of the Lower Appellate Court is not sustainable in the eyes of law as documentary evidence proved on record that property at Speda was also owned by Babu Singh, therefore, the suit was liable to be dismissed.

I have heard the learned counsel for appellant-defendant No.2 and appraised the judgments and decrees of both the Courts below.

I am afraid that the aforementioned plea is not sustainable, for, no documentary evidence had been placed on record to establish that property situated in village Speda also belonged to Babu Singh. Concededly, on demise of mother, suit for partition by way of natural succession is pending adjudication which itself is a clincher to prove that property situated at Speda was not in the ownership of Babu Singh, thus, the trial Court abdicated in dismissing the suit. The finding of facts and law arrived by the Lower Appellate Court while exercising the powers under Section 96 CPC, in my view, is perfectly legal and justified as there is no illegality and perversity. No explanation of 101 days delay in filing the appeal has been given. The reasoning given in the application is most vague and atrocious and cannot claim the ignorance of law.

The appeal is dismissed on merits as well as on limitation.

(AMIT RAWAL)
JUDGE

May 08, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No