

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

R.S.A.No.3748 of 2016 (O&M)

Date of Decision: May 14, 2018

Naresh Kumar

...Appellant

Versus

Baljit Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

**Present: Mr.Shalender Mohan, Advocate,
for the appellant.**

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the dismissal of the suit for possession by challenging the sale deeds dated 14.2.2002 and 4.7.2002 and mutations dated 22.3.2002 and 4.8.2002 executed by defendant No.2 Mange Ram as the property at his hands was ancestral and, therefore, the plaintiff had a right by birth.

Mr.Shalender Mohan, learned counsel appearing on behalf of the appellant-plaintiff submitted that the suit aforementioned was filed as defendant No.2-Mange Ram, the father of the plaintiff, could not execute the aforementioned sale deeds in favour of the third party, for, the property was ancestral. In support of the aforementioned pleadings, jamabandi for the year 1997-98 Ex.P1 and documents Ex.P6, Ex.P7 and Ex.P8, in rebuttal, were placed on record to contend that Mange Ram had a right in the property as inherited the same from his father. The Courts below did not advert to the same, therefore, there is gross illegality and perversity.

The appeal is accompanied by an application seeking condonation of delay of 104 days in filing the appeal and the explanation given in the application is that the plaintiff had fallen ill and, therefore, the delay had occurred.

I have heard the learned counsel for the appellant, appraised the paper book and of the view that the suit, *prima-facie*, was not maintainable as Mange Ram was alive at that time. The documents Ex.P6, Ex.P7 and Ex.P8 show that the property at the hands of grand-father, i.e.,. Hari Kishan had been transferred to Mange Ram and the plaintiff, being third generation, therefore, property at the hands of Mange Ram could not be said to be ancestral, for, the plaintiff is third generation. The aforementioned view of mine is derived from Mulla Hindu Law, 21st Edition, Para No.221.

The suit, during the life time of the father, cannot be said to be maintainable. Be that as it may, even no medical record has been placed on record to support the explanation given in the application seeking condonation of delay. I am of the view that the findings arrived at do not fall within the realm of perversity or illegality. The appeal being devoid of merit is dismissed on merits and as well as on limitation.

May 14, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No