

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

RSA No. 389 of 2016 (O&M)

Date of decision : August 06, 2018

Pardeep Kumar (through his LR Smt. Kamla Devi)Appellant

Versus

Gorandawaia (through his LRs) and anotherRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.K. Rattan, Advocate for the appellant.

LISA GILL, J.

C.M. No. 1157-C-2016

Prayer in the application is for condonation of delay of 454 days in re-filing of the appeal.

It is submitted that delay in re-filing of the appeal is not intentional or due to any negligence on the part of the applicant. Thus, he should not suffer for no fault on his part.

For the reasons mentioned in the application as well as the arguments addressed, it would be just and expedient to decide the appeal on merit rather than dismiss the same on technical considerations of delay. Accordingly, delay of 454 days in re-filing of the appeal is condoned.

Application is disposed of.

C.M. No. 1158-C-2016

Filing of typed copies of judgments and decrees dated dated 21.02.2011 as well as dated 16.04.2014 is exempted.

Application is disposed of.

RSA No. 389 of 2016 (O&M)

Appellant-plaintiff is aggrieved of judgment and decree dated

dated 21.02.2011 passed by the learned Additional Civil Judge (Senior Division), SAS Nagar, Mohali whereby the suit filed by the appellant was dismissed. He is also aggrieved of judgment and decree dated 16.04.2014 passed by the learned Additional District Judge, SAS Nagar, Mohali vide which the plaintiff – appellant's appeal has also been dismissed.

Brief facts necessary for adjudication of the case are that the appellant – plaintiff filed a suit while seeking permission to sue as an indigent person for declaration to the effect that sale deeds dated 31.01.1979 and 07.03.1979 executed by Des Raj father of the plaintiff in favour of defendant No. 1 – Gorandawaia and defendant no. 2 Maya Devi respectively (since deceased and represented by their legal representatives) were illegal, null, void and ineffective qua the present appellant. It was pleaded that the property in question was Joint Hindu family ancestral, coparcenary property, the appellant's father having inherited it from his father Walaiti Ram. It was further pleaded that the sale deeds in question were executed without any legal necessity. Des Raj had three sons and two daughters. The appellant – plaintiff was minor at the time of alienation. The suit, it was averred was, thus, within limitation.

The suit was resisted by the defendants. Separate written statements were filed by both the defendants. It was denied that the suit property was coparcenary, Joint Hindu ancestral property. It was stated to be self acquired property of Des Raj. It was stated that Des Raj after executing the sale deeds purchased a plot at Kurali with the money thereof. In any case, the sale deeds, it was pleaded, were executed for the betterment of the family. It is further stated that a similar suit had earlier been filed and the same was dismissed in default. Separate replications were filed to the

written statements.

Following issues were framed on the basis of the pleadings of the parties by the learned trial Court:-

1. Whether the plaintiff is entitled to declaration as prayed for?
OPP
2. Whether the sale deeds dated 31.01.1979 and 07.03.1979 are illegal, null and void? OPP
3. Whether the plaintiff is entitled to possession as prayed for?
OPP
4. Whether the suit of the plaintiff is within time? OPP
5. Whether the suit is bad for want of non-joinder of necessary parties?OPD
6. Relief.

Learned counsel for the appellant vehemently argues that both the learned courts below have erred in holding that the property in question was not ancestral property. It was initially owned by Walaiti Ram thereafter inherited by Des Raj. Therefore, the suit properties could not have been alienated without any legal necessity. There was no such legal necessity which existed at the time of the execution of the sale deed. It is further contended that the plot at Kurali was purchased prior to the sale deeds in question. Therefore, the question of legal necessity does not arise. It is, thus, prayed that both the impugned judgments and decree be set aside and this appeal be allowed, consequently the suit filed by the appellant be decreed throughout.

Heard, learned counsel for the appellant and have perused the file.

In order to prove that the property in the hands of Des Raj was ancestral property, appellant deposed as PW2. PW1 Sadhu Ram stated that the property in dispute was initially owned by Walaiti Ram and thereafter

devolved on Des Raj. PW4 Surjan Singh deposed to the same effect. It is to be noticed that it is merely oral evidence which has been led by the appellant to prove the nature of the property in dispute. Learned trial Court has observed that PW3 Harchand Singh has admitted that Walaiti Ram had three sons and two daughters, therefore, it is not evident as to how Des Raj became the owner of the entire property to the exclusion of his siblings. The defendants have proved the execution of sale deed (ExDW1/1) by the brother of the plaintiff's father vide which he sold his share to Des Raj.

One of the arguments raised by learned counsel for the appellant is that the property is within Lal Lakeer of the village, therefore, there could not be any documentary evidence to prove the ancestral nature of the property. This argument is clearly devoid of merit in the factual matrix of the case. There is not an iota of evidence to prove the ancestral nature of the property in question. The oral evidence led by the appellant is of no avail to him. Both the learned courts below have rightly held that the property in question cannot be held to be ancestral, Joint Hindu family property in any manner. Though the question of sale of the property in dispute for legal necessity, pales into insignificance in view of the finding that the property in question was not ancestral, coparcenary property, it is noticed that even if it was so, sale deeds dated 31.01.1979 and 07.03.1979 are not liable to be set aside. Execution of the said sale deeds in question is admitted. It is mentioned in the sale deed (Ex. DW5/2) that the expression 'Khola' is used while referring to the house in question. It evidently shows that the house was in a dilapidated condition. A house at Kurali was purchased by the appellant's father. PW2 has admitted that they have a house at Kurali. In his cross examination, PW2 stated that he did not know

whether the house in question was purchased in the year 1979 or 1980 though the said plot was stated to have been purchased by his mother. PW2 admitted that she was a housewife. The house in question was constructed by his father. It is rightly held by the learned trial Court as well as learned Additional District Judge, SAS Nagar, Mohali that selling of the properties at village Kumbra in any case was an act of good management. Des Raj, an educated person and a teacher shifted from village Kumbra to Kurali, constructed his house at Kurali. The houses at Kumbra were in a dilapidated condition and none was living there. It is reiterated that ancestral nature of the property has not been proved on record. It is further noticed that Des Raj had died before the filing of the suit by the present appellant. Sale deeds were executed on 31.01.1979 and 07.03.1979. Present suit was filed in May 2003, after the death of Des Raj. Des Raj during his life time never challenged the execution of the said sale deeds.

Concurrent findings of fact have been returned by both the learned courts below on a proper appreciation of the evidence on record which call for no interference by this Court in second appeal.

In my considered opinion, no question of law much less a substantial question of law is involved in this appeal for the consideration of this Court.

No other point has been raised or argument addressed by learned counsel for the appellant.

Learned counsel for the appellant is unable to point out any illegality and infirmity in 21.02.2011 passed by the learned Additional Civil Judge (Senior Division), SAS Nagar, Mohali as well as judgment and decree dated 16.04.2014 passed by the learned Additional District Judge, SAS

Nagar, Mohali which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

August 06, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No