

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4540 of 2016 (O&M)

Date of Decision: November 16, 2018

Gurbhag Singh

...Appellant

Versus

Harnam Singh (since deceased) through L.R. & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Bhag Singh, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.11782-C of 2016

For the reasons mentioned in the application, which is supported by an affidavit, delay of 22 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.4540 of 2016

Appellant-plaintiff is aggrieved of the concurrent findings of fact and law, whereby his plaint has been rejected under Order 7 Rule 11 CPC.

Concededly, the appellant-plaintiff has already filed a writ petition in this court which is stated to be pending. In such circumstance, the suit for declaration claiming owner in possession of the property in dispute in view of the order dated 22.08.1982 passed by this court in CWP No.2408 of 1976 and the order dated 22.08.1985 of the Assistant Collector Ist Grade, Ambala was not held to be maintainable. This is what the import

of the order of this court.

The trial Court rejected the plaint vide order dated 23.09.1998. It has been apprised to this court that the aforementioned order has been assailed in civil revision and vide order dated 10.07.2013, the same was dismissed being not maintainable with a liberty to file appeal, therefore, the appeal was filed in 2013 which has been decided, thus, the present Regular Second Appeal.

I am afraid, the aforementioned argument is not sustainable as it has been established on record that the controversy in this case has already been adjudicated. Appellant-plaintiff coined a story that at the time of earlier round of litigation, he was minor, but no such averment in the plaint has been made as to how and when he attained the majority as the limitation to assail the act done by the guardian is three years from the date of attainment of the majority.

For the reasons stated above, I do not find any illegality or perversity in the concurrent findings of fact and law and the same cannot be said to be without jurisdiction. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

November 16, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No