

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

-.-

RSA 994 of 2016 (O&M)

Date of decision: 12.03.2018

Sohan Lal and another

..... Appellants

Versus

Balbir Singh and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Zorawar Singh Chauhan, Advocate
for the appellants

-.-

Rekha Mittal, J.

CM 2729 C of 2016

Prayer in this application is for condonation of delay of 28 days
in re-filing the appeal.

In view of averments made in the application supported by an
affidavit and arguments advanced, the application is allowed and delay of
28 days in re-filing the appeal stands condoned.

CM 2730-C of 2016

Prayer in this application is for condonation of delay of 7 days
in filing the appeal.

In view of averments made in the application supported by an
affidavit of one of the appellants and arguments advanced, the application is
allowed and delay of 7 days in filing the appeal stands condoned.

Main case

The present appeal directs challenge against concurrent

findings recorded by the Courts whereby suit of the appellants/plaintiffs for grant of permanent injunction, restraining the respondents/defendants from creating any obstacle in passage marked by letters 'ABCD' shown in the site plan, allegedly leading to land of the appellants from road to khatta No. 19/1 and 19/1/2 has been dismissed by the trial Court and findings of the trial Court came to be affirmed by the District Judge, Shaheed Bhagat Singh Nagar vide judgment and decree dated 02.09.2015.

Counsel for the appellants would urge that in appeal preferred by the plaintiffs/appellants, application for adducing additional evidence under Order 41 Rule 27 of the Code of Civil Procedure (in short, 'CPC') was filed seeking permission to produce certified copies of jamabandi for the year 2003-2004, khasra girdawari, copies of sale deeds dated 26.07.1962 and 20.11.1964 but the same was wrongly dismissed by the Court in appeal in view of its observations recorded in para 14 of the judgment. It is argued with vehemence that had the Court in appeal allowed the appellants to produce on record sale deeds dated 26.07.1962 and 20.11.1964, the same would have proved case of the appellants/plaintiffs with regard to existence of passage in question and it being within right of the appellants to use the same. To bring home his contention, he has pointed out sale deed dated 26.07.1962 (Annexure A1) executed by Puran Singh in favour of Bishan Dass etc, vendors of the appellants in sale deed dated 20.11.1964. It is further argued that in sale deed (Annexure A1), it is mentioned that purchasers will be responsible to give passage measuring 02 karams wide near Karam Singh. The length of the aforesaid passage would be 20 karams long. Therefore, this agreement has been written. According to Counsel, the

words 'purchasers' in the aforesaid extract is the result of typographical error when otherwise it refers to the 'sellers'. He would further state that a similar recital has been made in sale deed dated 20.11.1964 executed in favour of the appellants/plaintiffs and the same goes a long way to prove claim of the appellants that a passage existed at the spot which is being used by the appellants/plaintiffs, therefore, they being entitled to get injunction against any obstacle being created by the defendants in the passage in question.

Though the Court in appeal has not permitted the appellants to adduce additional evidence by producing sale deeds in question but counsel has failed to advance any arguments much less meaningful that application filed by the appellants under Order 41 Rule 27 CPC falls within the purview and ambit of Clauses (a) and (aa) of the said provision. This apart, even if first sale deed dated 26.07.1962 is taken into consideration, it appears that Puran Singh - seller made some promise to provide passage measuring 2 karams wide and 20 karams long. There is nothing on record suggestive of the fact that Puran Singh provided any passage to Bishan Dass etc. in execution of his promise made vide sale deed dated 26.07.1962. Once Puran Singh did not provide any passage to Bishan Dass etc. where was the occasion for Bishan Dass etc. to pass any title or right of use of any passage in favour of their vendees (appellants herein). The Courts have consistently held that the appellants/plaintiffs failed to adduce satisfactory much less cogent evidence to establish their plea with regard to existence of any passage at the spot which lead to khasra No. 19/1 and 19/1/2, stated to be owned by the appellants/plaintiffs. Counsel has fairly conceded that no such passage is shown to be existing in the revenue records. In this view of

the matter, judgments passed by the Courts do not suffer from an error much less perversity nor raise substantial question of law that requires decision after notice to the contesting party.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

12.03.2018
mohan bimbura

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