

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1597 of 2018 (O&M)
Date of decision : May 11, 2018

Sajjan Singh

..... Appellant

Versus

Kali Ram

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S. K. Hooda, Advocate
for the appellant.

AMIT RAWAL, J (oral).

The appellant-defendant is in Regular Second Appeal against the concurrent finding of fact whereby the suit of the respondent-plaintiff for possession of the encroached area measuring 7' x 4' i.e. East 7', West 7', North 4' and South 4' upon the plot comprised in Khewat No. 1393/1338, khatoni No.1559, Khasra No.579/2/9 situated within the area of village Jagsi, Tehsil Gohana, District Sonapat as per report of the Local Commissioner, has been decreed.

Learned counsel appearing on behalf of the appellant submits that the case set up by the respondent-plaintiff was that the appellant-defendant had forcibly encroached the aforementioned area whereas in the written statement a categorical defence had been taken that the defendant had purchased the land on 22.12.1992 and the construction on the said land was raised in the year 1993. The demarcation report could not be relied upon by the court below as it was not as per the High Court Rules. The courts below could have taken into consideration the fact that the possession of the plot in favour of the appellant-defendant had been since

long which was in the knowledge of the respondent-plaintiff and the suit was barred by law of limitation. Thus, the courts below had erroneously granted the relief and urges this Court that there is illegality and perversity in the judgments and decrees and the same are liable to be set aside.

The appeal is accompanied by an application seeking condonation of delay of 106 days and it has been submitted that the delay in filing the appeal has occurred on the ground that the counsel in the trial court did not inform that the appeal has to be filed within 90 days, therefore the delay of 106 days occurred.

I have heard learned counsel for the appellants and appraised the paper book and of the view that there is no force in the arguments of learned counsel for the appellant on both the counts i.e. limitation and as well as on merits. The application seeking condonation of delay is bereft of the reasons required to be justified for seeking condonation of delay. The appellant cannot take benefit of ignorance of law. Plea of lack of knowledge lacks bona fide. The principle regarding condonation of delay has been pondered upon by the Hon'ble the Supreme Court in Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others 2013 (12) SCC 649. On merits I am of the view that both the Courts below have rendered a finding of fact and law on the basis of demarcation report Ex. P-3 dated 19.3.2009 and the suit was filed in the year 2013 for seeking possession of the land. Unauthorized occupation of the land under Article 65 of the Limitation Act is required to be challenged within 12 years and not three years as submitted by the counsel. The demarcation report has not been denied by the

defendant. The defendant has failed to bring on record the cogent evidence with regard to his possession over the suit property which is found to be encroached as per the aforementioned report. Nothing prevented the defendant to take assistance of another revenue official for demarcation of the area reflected in the sale deed and the land purchased by him viz-a-viz the suit property.

In view of the aforementioned, the concurrent finding of fact arrived at by both the Courts below do not call for interference. The argument of learned counsel for the appellant has not been able to cut ice to bring the finding of the Courts below within the realm of illegality and perversity. No ground for interference is made out. The second appeal stands dismissed on both the counts i.e. on merits as well as limitation.

(AMIT RAWAL)
JUDGE

May 11, 2018
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No