

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

**RSA No.5536 of 2014 (O&M)
Date of decision:01.02.2018**

Dharampal

... Appellant

Vs.

Lali and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Abhishek Yadav, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit claiming declaration by challenging release deed bearing vasika no.7497 dated 01.03.2005 and mutation no.1411 with regard to suit property sanctioned in favour of the defendants and consequential relief of permanent injunction restraining the defendants, had been dismissed by both the Courts below.

The appeal has been accompanied by an application bearing No.13142-C of 2014 seeking condonation of delay of 305 days in re-filing the appeal. The application is supported by an affidavit. For the reasons stated in the application, delay of 305 days in re-filing the appeal, is condoned.

There is also delay of 225 days in filing the appeal. The explanation for not filing the appeal in time is that due to financial problem, appellant could not engage the counsel for filing the appeal, therefore, the delay aforementioned occurred.

In my view, such explanation is not justified to grant the condonation of delay as each and every day has to be explained yet by implying the principle of natural justice, such casual approach in approaching this Court is not acceptable.

On merits, the appellant-plaintiff failed to place on record any material, i.e., excerpt and jamabandi to show the nature and character of the property at the hands of defendant No.5- Om Dutt (father of appellant), was ancestral, therefore, the release deed executed in favour of Babu Lal and Sanjay could not have been done except for legal necessity. The evidence brought on record could not establish the nature and character of the property.

There is another aspect of the matter. The release deed, Ex.D1 also do not convey whether the property was self-acquired or otherwise. It is well settled law that where the nature and character of the property is not proved being ancestral or not, it cannot be separated and deemed to be non-ancestral property.

For the reasons aforementioned, I do not find any illegality and perversity in the findings rendered by both the Courts below, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed on limitation as well as on merits.

(AMIT RAWAL)
JUDGE

February 01, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No