

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

RSA No.568 of 2018

Date of Decision.10.05.2018

Raj Pal (since deceased) through LR's and others ...Appellants

Vs

Roshni and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjeev Manrai, Senior Advocate with
Mr. Inderjit Singh, Advocate and
Mr. Abhimanyu Singh, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

C.M. No.1397-C of 2018

For the reasons stated in the application, delay of 221 days in refiling the appeal is condoned.

Application is allowed.

RSA No.568 of 2018

The present appeal is accompanied by an application seeking condonation of delay of 769 days in filing the appeal on the premise that the appellants are poor persons and they had no means to approach this Court and in this process, delay of 769 days occurred. The explanation given in the application is not plausible, for, the suit in both the Courts was contested with full zeal by them.

The appellants-defendants are in regular second appeal against the concurrent finding of fact whereby the suit of the respondents-plaintiffs titled as "Roshni and another Vs. Rajpal (deceased) through LR's and others" claiming declaration by laying challenge to the decree dated 08.05.1990 passed in civil suit bearing

No.264 of 1990 has been accepted and consequently, the revenue entries were also directed to be rectified. The appeal preferred before the lower Appellate Court also met with the same fate.

Mr. Sanjeev Manrai, Ld. Senior Counsel assisted by Mr. Inderjit Singh and Mr. Abhimanyu Singh appearing for the appellants submitted that Badle had two daughters and two sons. During his life time, the decree dated 8.5.1990 in civil suit bearing No.264 of 1990 came to be passed in favour of all the sons and grandsons in respect of land measuring 96 kanals 5 marlas. However, Roshni and Rati @ Rati Devi filed suit in the year 205 challenging the aforementioned decree by claiming 2/3 share. It was alleged that plaintiffs were minors and therefore, the decree could not be effected. There was categorical stand taken in the written statement that the plaintiffs were not minors as they had engaged the counsel Mr. Malik.

During the pendency of the suit, defendants had parted with a part of the land measuring 27 kanals 5 marlas vide sale deed dated 16.03.2007 to Rajwati. On the basis of evidence brought on record, it had been established that the plaintiffs were not minors, therefore, the Courts below ought not to have decreed the suit. At the best, the decree should have been passed to set aside the judgment but could not have accorded them 2/3rd share, for, Badle had two daughters and two sons. One son died in tender age, therefore, his share would have devolved upon the legal heirs. That course would have been adopted only by filing suit for partition.

I have heard learned senior counsel for the appellants and appraised the paper book. I am of the view that there is force and

merit in the submissions of Mr. Manrai *vis-a-vis* the fact that the respondents-plaintiffs' interest had not been protected correctly in law, for, in the suit bearing No.264 of 1990, resulting into passing of the decree dated 08.05.1990, they were minors and no permission of the Court for appointing guardian had been taken, therefore, the decree has rightly been held to be null and void. Therefore, in this regard, Mr. Manrai does not have any difficulty.

The only grouse, which has been raised in the present appeal is to the claim laid in the plaint, which reads as under:-

“A decree for declaration to the effect that the plaintiffs are owners and in possession of the suit land mentioned in para no.1 of the plaint and impugned judgment and decree dated 8.5.1990 passed in civil suit No.264 of 1990 titled Rajpal and others Vs. Roshni etc. from the court of Addl. Civil Judge, Sr. Div Palwal and mutation No.5242 dated 10.1.1991 are illegal, null and void, ineffective, inoperative, obtained through fraud and misrepresentation and way of cheating and personation and are not binding on the ownership and possessory rights of the plaintiffs and qua the suit land mentioned in para no.1 of the plaint be passed in favor of the plaintiffs and against the defendants with the costs of the suit. As a consequential relief a decree for permanent injunction thereby restraining the defendants from interfering in the ownership and possession of the plaintiffs, from dispossessing the

plaintiffs and from changing the nature of the suit land by way of rasing any construction thereon and from alienating in any manner whatsoever, the suit land mentioned in para No.1 of the plaint illegally and forcibly and on the basis of the impugned judgment and decree 8.5.1990 and mutation No.5242 dated 10.1.1991 be also passed in favor of the plaintiffs and against the defendants. In case the defendants succeed in dispossessing the plaintiffs from the suit land mentioned in para No.1 of the plaint illegally and forcibly during pendency of the suit then a decree for possession on the suit land and for mandatory injunction thereby directing the defendants to restore the suit land in its original conditions be also passed in favour of the plaintiffs and against the defendants. Or such other relief which the hon'ble court deems fit and proper be also given to the plaintiffs.

Para no.1 That the plaintiffs are owners and in possession of the agricultural land comprising of khewat No.26, khaatoni No.41, rect. No.96, killa No.25/2(2-3), rect. No.112, killa no.2(7-13), 3/2(0-13) 4 (8-0), 5(8-0), 6(8-0), 7(8-0), 8(2-18), 9/1(5-14) rect. no.113, killa no.1(8-0), 9(8-0), 10(8-0), 11(8-0), 12(8-0), 20/1(4-0) khasra No.198/3(0-12), 199/2(0-4), 959(0-2) total measuring 96 kanals 5 marlas to the extent of 2/3rd share which comes to 64 kanals and 3 marlas

situated within the revenue estate of village Gehlab, Tehsil Hathin.”

Plaint present on the 16.7.2005. This suit coming of this day for final disposal before Mrs. Sonika Goyal, Addl. Civil Judge (Sr. Divn) Hathin.

Sh. Harish Goel, Advocate counsel for the plaintiffs.

Sh. Rameshwar Sharma, Advocate for LR's of defendant No.1 and defendant No.2&3.

Defendant No.4 ex parte as per order dated 11.11.2008.

Sh. R.S. Rajput, Advocate counsel for defendant no.5.

The suit of plaintiffs succeeds and the same is hereby decreed with costs to the effect that the judgment and decree dated 8.5.1990 passed in civil suit No.264 of 1990 titled as “Rajpal etc. vs. Roshni etc.” & mutation No.5242 dated 10.1.1991 entered on the basis of said judgment and decree, are illegal, null and void obtained on the basis of impersonation. The revenue entries on the basis of impugned decree dated 8.5.1990, are liable to be rectified accordingly. The sale deed dated 16.3.2007 executed in favour of defendant No.5 is illegal, null and void and is not binding on rights of the plaintiffs.”

A bare perusal of the aforementioned decree reveals that the Court while decreeing the suit has set aside the judgment and decree dated 8.5.1990. The apprehension expressed by Mr. Manrai appears to have some force, for, under the garb of the aforementioned

decree, the respondents-plaintiffs may not get a mutation effected to the extent of 2/3rd share, for, the said share would be only determined in suit for partition in case either of the co-sharers lays a claim seeking separate possession by way of partition metes and bounds. It is the domain of the Revenue Court to determine the share but not in the suit as aforementioned.

With the aforementioned observation, the application for condonation of delay is dismissed and the second appeal is disposed of in the above terms.

(AMIT RAWAL)
JUDGE

May 10, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No