

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

**RSA-5852-2018 (O&M)
Date of Decision:16.10.2018**

Saddiq & others

... Appellants

Versus

Harnoon & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Satish Chaudhary, Advocate for the appellants.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Defendants are in second appeal before this Court.

2. Plaintiffs (respondents herein) filed a suit seeking a decree of permanent injunction against the defendants with regard to their peaceful possession over the suit property measuring 1 kanal 18 marlas situated within the revenue estate of Village Hirwari Bawantheri, Tehsil Ferozepur Jhirka, District Mewat. Suit was decreed by the trial Court on 29.08.2016. Appeal preferred by the defendants/appellants has been dismissed by the learned District Judge, Mewat on 21.11.2016 thereby affirming the judgment and decree of the trial Court.

3. Counsel representing the appellants would contend that it is a case of misreading and mis-appreciation of evidence by the Courts below. Further urged that the Courts below have not taken into account the electricity bills, Ex.D1 and D2 and which would otherwise show that the electricity meter had been installed on a residential '*katcha chhappar*' constructed by the defendant/appellants over the suit land and thereby reflecting their possession. Further submitted that the suit land had been

purchased by the defendant/appellants from father of the plaintiffs/respondents, namely, Sumer Khan through an oral transaction relating back to the year 2000 and even possession of the suit land was delivered at such point of time in the presence of the respectables of the village and under such circumstances, the relief of permanent injunction ought not to have been granted in favour of the plaintiff/respondents.

4. Having heard counsel for the appellants at length, this Court is of the considered view that there is no merit in the appeal and the same deserves to be dismissed.

5. Plaintiffs (respondents herein) had led evidence in the shape of jamabandi Ex.P1, which reflected that their father, namely, Sumer Khan was owner in possession of the suit property. Consequent upon his death, mutation of inheritance, Ex.P2 was entered and sanctioned in favour of the plaintiffs/respondents. Respondents herein thereby had duly proved by leading conclusive evidence as regards being owners in possession of the suit land based on revenue record. To the contrary, the defendant/appellants did not adduce any evidence to reflect their possession over the suit property. Ownership was claimed on the basis of an oral transaction relating back to the year 2000. To prove such alleged oral sale, appellants examined DW2 Liyakat and who in his deposition conceded that his age is 30 years. In other words, DW2 was merely 14 years of age in the year 2000 and as such, was a minor. No other evidence has been forthcoming in support of the oral sale transaction that the appellants had stated to have taken place in the year 2000. Insofar as tendering electricity bills, Ex.D1 and D2, defendant No.3, namely, Jamil having stepped into the witness box himself stated that the

alleged meter bearing No.2221 has been installed in his house situated in the village and which is at a distance of 2 kms away from the suit property.

6. This Court does not find any infirmity or perversity in the judgments passed by the Courts below and whereby the relief of permanent injunction has been granted in favour of the plaintiffs/respondents.

7. The instant appeal is accompanied by an application i.e. CM-16153-C-2018 filed under Section 5 of the Limitation Act seeking condonation of delay of 585 days in filing the appeal. The only ground taken in the application seeking condonation is that the file of the case had been misplaced in the office of the Advocate representing the applicant/appellants in the lower Court.

8. The stand taken in the application seeking condonation does not inspire any confidence. The applicant/appellants have chosen not to even disclose the name of the Advocate in whose office the file has been misplaced. Strangely, application is not supported by an affidavit of any Advocate but of Saddiq i.e. the applicant/appellant No.1 himself. No cogent and credible ground has been raised in the application to justify the condonation of an inordinate delay of 585 days that has occurred in filing the accompanying appeal. Prayer for condonation of delay, accordingly, is declined.

9. In view of the discussion above, the instant appeal is dismissed on merits as also on the ground of delay.

16.10.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |