

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

RSA No.973 of 2018 (O&M)

Date of decision : 21.02.2018

Vidya Devi and another

...Appellants

Versus

Govind Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Tyagi, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM No.2414-C of 2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 234 days in refiling the appeal is condoned.

Application is allowed.

Main Case

The plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Sukhdevi, mother of the plaintiffs-appellants had executed a sale deed on 28.06.1979 alongwith her two brothers. Maternal uncle of the plaintiffs had also executed a separate sale deed on 12.06.1970. Both these sale deeds were challenged by the plaintiffs by filing a suit on 12.11.2011.

The defendants remained ex parte and the learned trial Court after granting

opportunity to the plaintiffs to lead evidence, dismissed the suit.

Learned trial Court has noticed that apart from other things, the suit filed by the plaintiffs was barred by time as the suit was instituted after a period of 41 years from the date of first sale deed i.e. on 12.06.1970 and after a period of 30 years from the date of second sale deed dated 28.06.1979. The finding of the learned trial Court was affirmed by the First Appellate Court after re-appreciating the evidence available on the file.

Learned counsel for the appellants has submitted that since no issue on the limitation was framed, therefore, the dismissal of the suit on the ground of limitation is not proper. He submits that unless the issue was framed, the plaintiffs did not get the opportunity to lead evidence.

This Court has considered the arguments of the learned counsel, however, do not find any substance therein.

The defendants were ex parte as noticed earlier. The suit was decided without the assistance of the defendants. The plaintiffs were granted opportunity to lead evidence. After appreciation of the evidence, the Court found that the suit was barred by time. The plaintiffs filed an appeal. Before the First Appellate Court, the plaintiffs were in knowledge of the fact that their suit has been dismissed being barred by limitation. However, no effort was made before the First Appellate Court to explain the delay.

Still further, as per Section 3 of the Transfer of Property Act, 1882, a registered document is in the knowledge, from the date it is registered. In the present case, the sale deeds were registered on 12.06.1970 and 28.06.1979. Still further, both the Courts below have examined the case on merits and have found that the plaintiffs have failed to prove the case

setup by them.

Learned counsel for the appellants could not point out any substantive mis-reading or non-reading of the evidence before the Courts below.

Hence, Regular Second Appeal is dismissed.

21.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No