

RSA-3364 of 2019 (O&M)

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

RSA-3364 of 2019 (O&M)
Date of decision: 15.07.2019

Pirithi and others

.....Appellants

versus

Satyajeet Singh Majithia and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. R.K. Sharma, Advocate,
for the appellants.

RAMENDRA JAIN, J. (ORAL)

Through CM-9056-C of 2019 under Section 151 of the Code of Civil Procedure, prayer has been made for condonation of delay of 149 days in re-filing the appeal.

Heard.

The ground taken in the application that after filing the appeal, Registry raised certain objections and returned the same on 17.01.2019. But inadvertently, paperbook was tagged with the bundle of decided cases, which fact came to the knowledge of the counsel for the applicant-appellants on 28.06.2019. Therefore, immediately after removing objections, he re-filed the instant appeal without any delay. Hence, delay of 149 days is not intentional and deliberate.

Having given thoughtful consideration to the submissions made

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by learned counsel for the applicant, this Court finds the instant application completely devoid of any merit for the reasons to follow.

Alleged tagging of the appeal file with the decided cases by learned counsel for the applicant or mis-placement of brief are completely vague and false pleas, which are taken in routine since last four-five decades.

It is well-settled proposition of law that each day's delay has to be explained in a mathematical manner which has not been done by the applicant. Much water has already flown. Now the time has come to deprecate and reject such type of frivolous pleas taken in routine to abuse the process of law.

Since no cogent reason or plausible explanation has been furnished by the applicant-appellant for condonation of such a inordinate delay of 149 days in filing the appeal, therefore, the application is dismissed.

On merits also, appeal is liable to be dismissed.

Defendants have filed instant Regular Second Appeal against judgment and decree of the First Appellate Court dated 11.10.2018, affirming the judgment and decree of the trial Court dated 30.05.2015, whereby suit of the respondent No.1-plaintiff for declaration, possession and permanent injunction against the defendants was decreed in toto qua land measuring 4 kanals comprising khewat No.104, khatoni No.232 khasra No.649/1 situated at Village Bazidpur, Tehsil Thanesar, District Kurukshetra according to jamabandi for the year 2006-2007.

Briefly, land of “big landowners” having more than the

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permissible area was declared surplus by the State Government. Respondent No.1-plaintiff claiming himself to be successor of Shiv Dev Singh “big landowner”, whose land was declared surplus (in short the 'suit land'), raised objection to the same. Consequently, vide order dated 23.06.1979 revenue authorities i.e. Special Collector, Haryana, declared the suit land as his permissible area. One Parsa Ram, who was tenant in the suit land, approached the Prescribed Authority on 05.04.1966 to allot the surplus land of the predecessor-in-interest of respondent No.1-plaintiff having preferential rights being tenant over the same. Said proceedings continued for around 14 years and on 28.11.1980 Parsa Ram was allotted same land on which appellants are claiming their ownership. In the year 2012, respondent No.1-plaintiff filed a suit for declaration, possession and permanent injunction against the appellants-defendant qua suit land, pleading that around two years back appellants-defendant had illegally occupied the same without any authority or title. The suit was hotly contested by the appellants-defendant.

After holding trial, suit of respondent No.1-plaintiff was decreed by the trial Court vide judgment and decree dated 30.05.2015.

Being dissatisfied, appellants approached the First Appellate Court, but remained unsuccessful as their appeal too was dismissed vide judgment and decree dated 11.10.2018.

Learned counsel for the appellants *inter alia* contends that both the Courts below failed to appreciate that order dated 28.11.1980 declaring predecessor-in-interest of the appellants as owner in possession of the suit land was passed by Special Collector with the consent of respondent No.1-

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plaintiff, and after perusing the entire record. Respondent No.1-plaintiff laid challenge to the said order for the first time in the year 2012 i.e. after 32 years. Therefore, his suit was hopelessly time-barred in view of provisions of Section 45 of the Punjab Land Revenue Act. That apart, respondent No.1-plaintiff never appeared in the witness box. Therefore, his suit ought not to have been decreed by the trial Court.

Having given thoughtful consideration to the submissions made by learned counsel for the appellants, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

No question of law much less substantial has been raised in this appeal. Therefore, same is held not maintainable.

Appellants miserably failed to rebut the stand of respondent No.1-plaintiff that suit land was declared their permissible area by Special Collector vide order dated 23.06.1979. Therefore, order dated 28.11.1980 in favour of the appellants, even if respondent No.1-plaintiff had given alleged consent, is apparently a nullity inasmuch as alleged consent of respondent No.1-plaintiff can be termed as vague qua suit land and not qua remaining land under the tenancy of Parsa Ram for which he was declared owner having preferential right. The Prescribed Authority erred in not segregating the suit land from the other lands under possession of Parsa Ram while passing order dated 28.11.1980 on the basis of alleged consent of respondent No.1-plaintiff qua other land leaving the suit land.

It has been rightly held by both the Courts below that suit of respondent No.1-plaintiff was not time-barred inasmuch as he has specifically pleaded that about two years ago prior to filing of the suit,

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appellants had illegally occupied the suit land owned by him illegally.

I have gone through the impugned judgments of both the Courts below and find no ambiguity or illegality in the same.

Resultantly, this appeal being devoid of any merit, is dismissed.

July 15, 2019
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No