

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

RSA No. 4860 of 2019 (O&M)

Date of decision : November 18, 2019

Surajbhan through LRs

.....Appellant

Versus

Bhalle Ram and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Brijender Kaushik, Advocate
for the appellant.

LISA GILL, J.

This appeal is filed by the legal representatives of Surajbhan, who was one of the four plaintiffs before the learned trial Court, being aggrieved of judgment and decree dated 21.12.2010 passed by the learned Additional Civil Judge (Sr. Division), Bhiwani and judgment and decree dated 29.10.2013 passed by the learned Additional District Judge, Bhiwani.

Brief facts necessary for the adjudication of the case are that a suit for permanent injunction was filed by Surajbhan alongwith his three brothers namely Om Parkash, Jagdish and Jai Parkash. It is claimed that Kunj Lal Gir was the owner of land measuring 451 kanals 6 marlas as described in the plaint which was given to the father of the plaintiffs for cultivation alongwith a passage measuring 2 karam comprised in Murabba No. 102/19-22 and 107//2-9-12-19. The plaintiffs, it is pleaded, were cultivating the land as Gair Marusi and were using the passage in question

for their egress and ingress. The defendants were trying to create interference and block the passage in question. When despite request they did not refrain, the suit was filed.

Defendants resisted the suit. Various preliminary objections were raised in the written statement. Averments on merits were denied to the effect that any passage as claimed was ever given to the plaintiffs. It is stated that the suit was filed as a counter blast to an application filed by the defendants under Section 9 of the Punjab Security of Land Tenures Act. Dismissal of the suit was prayed for.

Replication was not filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiffs are entitled for a decree of permanent injunction on the grounds as alleged in the plaint?OPP.
2. Whether the plaintiffs have no locus standi or cause of action to file the present suit? OPD.
3. Whether the suit is not maintainable in the present form?OPD
4. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record, facts and circumstances concluded that the plaintiffs have failed to prove the existence of a 02 karam passage towards the eastern side of the suit property. Suit was, accordingly, dismissed.

Appeal was preferred by Surajbhan alone. None of the other plaintiffs challenged judgment and decree dated 21.12.2010 passed by the learned Additional Civil Judge (Senior Division), Bhiwani. Learned Additional District Judge, Bhiwani dismissed the appeal filed by Surajbhan

vide judgment dated 29.10.2013. Aggrieved therefrom, present appeal has been filed.

It is to be noted that the present appeal has been filed on 07.01.2019 after a delay of 1806 days in filing and 190 days in re-filing by the said legal representatives of Surajbhan.

It is submitted by learned counsel for the appellants that Surajbhan fell terminally ill during the pendency of the appeal, which was ultimately dismissed on 29.10.2013. Due to illness of Surajbhan, the appeal could not be pursued and neither could the second appeal be filed before this Court within limitation. It is further submitted that Surajbhan himself was pursuing the matter and his legal representatives were not aware about the pendency of the matter before the learned Additional District Judge. Learned Additional District Judge, Bhiwani dismissed the appeal on 29.10.2013 and Surajbhan died on 23.07.2017, therefore, the persons as described in para 2 of the application be impleaded as legal representatives of Surajbhan. Moreover, it is only when the respondents started interfering in the possession of the appellants that they came to know about the dismissal of the appeal filed by Surajbhan. Furthermore, both the learned courts below have grossly erred on facts and in law in dismissing the suit filed by the present appellant alongwith the other plaintiffs inasmuch as there is clear and cogent evidence on record to show the existence of passage as claimed by the plaintiffs. With the dismissal of the plaintiffs' suit, egress and ingress of the appellants to the property, which was given to the plaintiffs for the purpose of cultivation by Kunj Lal Gir, is adversely effected. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 21.12.2010 passed by the learned Additional Civil Judge

(Sr. Division), Bhiwani and judgment and decree dated 29.10.2013 passed by the learned Additional District Judge, Bhiwani be set aside.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

Learned counsel for the appellant does not dispute that 78 kanals 18 marlas of land was given to Manak – father of the appellant and other plaintiffs by Kunj Lal Gir, for the purpose of cultivation. The plaintiffs claimed to be in cultivating possession of the disputed property as Gair Marusi tenants. It is claimed that the passage measuring 02 karam was left for them by Kunj Lal Gir for their egress and ingress. However, learned counsel for the appellant is unable to deny that as per the evidence on record, existence of the claimed passage of 02 karam is not proved on record. As per Aks Sajra (Ex. D1), the passage has been shown on the southern side of land in possession of the plaintiffs and except this passage, there is no other passage reflected therein.

The plaintiffs on the other hand are claiming existence of a 02 karam passage towards the eastern side of the suit land. Learned counsel for the appellant even at this stage is unable to point out any evidence on record, to indicate the existence of such a 02 karam passage towards the eastern side of the suit property. Admittedly, there is only a bald statement of PW1 and PW2 to this effect. Keeping in view the facts and circumstances of the case, both the learned courts below have rightly dismissed the suit filed by the plaintiffs.

At this stage, it is relevant to note that it is only Surajbhan, who had appealed against decision dated 21.12.2010. The other brothers of the appellant chose to accept the verdict passed by the learned trial Court.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law, is involved for consideration in this appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 21.12.2010 passed by the learned Additional Civil Judge (Sr. Division), Bhiwani and judgment and decree dated 29.10.2013 passed by the learned Additional District Judge, Bhiwani which calls for any interference by this Court in second appeal.

Learned counsel has fairly accepted the initiation of proceedings under Section 9 of the Punjab Security of Land Tenures Act by the respondents against the present appellant and plaintiffs. He is, however, unable to inform whether the legal representatives of Surajbhan were brought on record in the said proceedings or not and as to what is the stage of the said proceedings. There is clearly no cogent and reasonable explanation for the condonation of delay of 1806 days in filing of the present appeal. Appeal preferred by Surajbhan was dismissed by learned Additional District Judge, Bhiwani on 29.10.2013. Though it is stated that Surajbhan was terminally ill, there is no document on record to indicate the same. Be that as it may, even otherwise, it is not believable that in the given factual matrix, the appellants would not have come to know about the passing of the impugned judgments and decrees. The application for condonation of delay is bereft of any material particulars and does not set forth any reasonable explanation for the colossal delay in filing of this

appeal. Application under Order 22 Rule 3 read with 151 CPC moved alongwith this appeal for bringing on record the legal representatives namely Shakuntala (wife), Dharminder and Sombir (sons) of the appellant, who is claimed to have died on 23.07.2017 has been allowed subject to just exceptions and for the purpose of this appeal vide a separate order of even date.

Keeping in view the facts and circumstances of the case as discussed above, I do not find any ground whatsoever for setting aside the impugned judgment and decree dated 21.12.2010 passed by the learned Additional Civil Judge (Sr. Division), Bhiwani and judgment and decree dated 29.10.2013 passed by the learned Additional District Judge, Bhiwani and neither is there any reasonable explanation or sufficient cause for the condonation of delay in filing of this appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed on merits as well as being barred by limitation.

November 18, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No