

236 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 7769 of 2017 (O&M)
Date of Decision:24.09.2019

AMARJIT KAUR

...Petitioner

Versus

ARJINDER SINGH AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Prateek Sodhi, Advocate
for the petitioner.

Mr. Anil Chawla, Advocate
for respondent No. 1.

Mr. Ashwani Prashar, Advocate
for respondent No.2.

None for respondent No.3.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 26.09.2017 passed by the Additional District Judge, Amritsar (for short-the Appellate Court) rejecting the petitioner's appeal filed by her against the dismissal of her suit on the ground of delay.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition, are that respondent No.1 filed a suit seeking therein a declaration to the effect that the petitioner, who was defendant No.1 in the suit, has no right, title or interest in the property

detailed and described in the head-note of the plaint (for short-the suit property). The alleged mutations bearing Nos.12502, 12503, 12504 and 12505 in favour of the petitioner were also challenged on the ground of fraud.

Inter alia the case set up by respondent No.1 was that the petitioner has encroached upon a street which was owned by respondent No.3-Society and was being maintained by respondent No.2-Municipal Corporation (for short-the Corporation). When it came to know of the illegal possession of the petitioner, respondent No.3-Society filed a suit for mandatory injunction against the petitioner which was decreed on 30.10.1996. It is further alleged that the petitioner intends to grab the suit property by forging sale deeds in her favour. These sale deeds had been forged by the petitioner to create hurdles in the execution of the aforesaid decree dated 30.10.1996. It was further the case of respondent No.1 that on the basis of the afore mentioned sale deeds the petitioner, in connivance with the revenue officials, got mutations done in her favour which were illegal.

On being put to notice, the petitioner, who was defendant No.1 in the suit, filed her written statement, through which she denied the case set up by respondent No.1. It was submitted that for the same relief respondent No.1 had already filed another suit titled as “ Arjinder Singh vs. Amarjit Kaur and others', which was pending and therefore, in terms of Section 10 CPC, the present suit was liable to be stayed. On merits, on the basis of sale deeds, the petitioner claimed to be the owner in possession of the suit property.

On 20.03.2017, after holding that respondent No.1 did not have *locus standi* to maintain the suit, the Trial Court dismissed the same. However, the respondent-Corporation was directed to look into the matter as to whether the petitioner had encroached upon the suit property and to submit its report within three months.

As per the directions issued by the Trial Court, the Corporation inspected the suit property and having reached a conclusion that the petitioner had encroached thereupon, issued notice to her as to why such encroachment should not be removed. The petitioner submitted a reply to the notice after consideration of which the Corporation removed the alleged encroachment on 22.06.2017. Thereafter, on 01.07.2017, the petitioner filed an appeal against the judgment and decree of the Trial Court dated 20.03.2017 which was dismissed on the ground of delay. Such order of the Appellate Court is under challenge in the present proceedings.

Learned counsel for the parties have been heard.

The delay of 101 days in filing of the appeal by the petitioner against the judgment and decree of the Trial Court dated 20.03.2017, as explained by the learned counsel for the petitioner, was due to the fact that the petitioner initially did not file her appeal as she was informed by the counsel appearing for her before the Trial Court that respondent No.1's suit had been dismissed and that she approached her counsel to file the appeal only after proceedings were initiated by the Corporation resulting in the removal of the alleged encroachment by her. Such explanation is plausible and is therefore accepted especially when all that the petitioner wants is a decision of her appeal on its merits.

In view of the above, the impugned order is set aside and the Appellate Court is directed to consider and decide the petitioner's appeal filed by her against the judgment and decree of the Trial Court dated 20.03.2017, on its merits.

The petition is allowed in the above terms.

September 24, 2019

Jyoti-1

Whether speaking/reasoned

Yes/No

(DEEPAK SIBAL)

JUDGE

Whether Reportable

Yes/No