

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

RSA-1896-2019 (O&M)

Date of decision: 16.05.2019

Kartar Singh

...Appellant

Versus

Joginder Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. A.K. Walia, Advocate,
for the appellant.

JAISHREE THAKUR, J.

CM-5152-C-2019

This is an application that has been filed under Section 151
CPC for condoning the delay of 102 days in refiling the present appeal.

For the reasons mentioned in the application, the same is
allowed.

Delay of 102 days in refiling the appeal stands condoned.

CM-5153-C-2019

This is an application that has been filed under Section 5 of the
Limitation Act seeking condonation of delay of 08 days in filing the appeal.

For the reasons mentioned in the application, the same is
allowed.

Delay of 08 days in filing the appeal stands condoned.

RSA-1896-2019

The appellant-defendant seeks to challenge the judgment and decree dated 13.02.2017 passed by Addl. Civil Judge (Sr. Divn.), Batala whereby suit of the plaintiffs was decreed and the subsequent judgment and decree dated 02.07.2018 passed by the Addl. District Judge, Gurdaspur dismissing the appeal filed.

A few brief facts that need to be noted are that respondent-plaintiffs filed a suit seeking declaration to the effect that the plaintiffs are joint owners / co-sharers in joint possession of land measuring 11 Kanals-08 Marlas and had sought declaration that some unregistered exchange deed dated 01.12.1987 allegedly executed by Smt. Gejo @ Gurmej Kaur in favour of defendant-appellant is false, forged, fabricated, illegal, null and void and the entries of the mutations on the basis of the same are liable to be declared to be illegal, null and void and had also sought consequential relief of permanent injunction restraining the defendants from alienating the suit land by way of sale, mortgage, exchange, lease or in any manner whatsoever without due process of law.

On notice, the appellant-plaintiff put in an appearance. However, despite having been given several opportunities to file written statement, the same was not filed due to which the defence was struck off by an order dated 09.07.2015. Thereafter, the plaintiff-respondent No.1 Randhir Singh stepped into the witness box as PW-1 and also examined Randhir Singh as PW-2 and Gurmeet Singh, Patwari as PW-3 and closed evidence on behalf of the plaintiff.

The Addl. Civil Judge (Sr. Divn.), Batala on perusal of the evidence including copy of the Jamabandi for the year 1983-84 reflecting the name of Smt. Gejo as owner, held that Smt. Gejo had given her land measuring 11Kanals-08 Marlas to her brother namely Kartar Singh the appellant herein to manage, who with a mala fide intention and for the purpose of cheating Smt.Gejo, forged an exchange deed in connivance with the revenue officials and succeeded to get mutation sanctioned qua the said exchange. It was further held that the exchange deed dated 01.12.1987 relied upon by the appellant to get mutation sanctioned, was an unregistered document. The suit of the plaintiff was decreed holding them to be joint co-owners in joint possession of land measuring 11Kanals-08Marlas as per the Jamabandi for the year 2008-2009 in the khasras mentioned while also holding the exchange deed dated 01.12.1987 to be an invalid and void document.

Learned Appellate Court also took note of the fact that the defendant did not file any written statement despite several opportunities having been allowed. It was noticed, the appellant did not even bother to cross-examine the plaintiff's witnesses. The lower Appellate Court affirmed the findings of Addl. Civil Judge (Sr. Divn.), Batala. In appeal, counsel for the appellant lays great stress that there was an exchange deed between the appellant and Smt. Gejo which has not been taken into consideration. It is also argued that the Courts below have failed to appreciate the settled law that a co-sharer cannot seek relief of permanent injunction against other co-sharers and, therefore, the judgment and decree ought to be set aside.

The arguments as raised by learned counsel for the appellant

are not sustainable in view of the fact that there is no evidence qua the appellant being joint owner in possession. The exchange deed too cannot be relied upon since it is not a registered document. The appellant chose not to defend the suit as neither was a written statement filed nor were any of the witness cross-examined. Meaning thereby, there is a deemed admission on the part of the appellant to all contentions as raised in the pleadings by the plaintiff-respondents. No substantial question of law arises for adjudication.

Dismissed.

16.05.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.