

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

**RSA-4239-2016 (O&M)
DATE OF DECISION: 09.07.2019**

JASWINDER KAUR AND ANR.

...APPELLANTS..

VERSUS

SATPAL SINGH AND ORS.

...RESPONDENTS..

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sandeep Arora, Advocate,
for the appellants.

None for the respondents.

RAMENDRA JAIN, J. (ORAL)

Plaintiffs-appellants have filed instant Regular Second Appeal along with application for condonation of inordinate delay of 968 days in refiling it, after remaining unsuccessful through out before both the courts below, as their suit for separate possession and appeal thereof were dismissed vide judgment and decree dated 23.03.2011 and dated 16.07.2013 respectively.

It has been pleaded in the application for condonation of inordinate delay of 968 days that after dismissal of their appeal on 16.07.2013 by the appellate court, the appellants filed appeal, but, the Registry of this Court on 15.11.2013 raised certain objections. The clerk of counsel for the appellants took the file for removal of those

objections, but without informing his counsel kept the file with him. It was only on 08.06.2016, after around 958 days, the appellants, when contacted their counsel, came to know about non-filing of their appeal, which was refiled after removing the objections. Therefore, the above delay occurred in filing the appeal was not intentional or deliberate

Heard.

The above plea taken by learned counsel for the appellants is taken in routine since last 5/6 decades. Learned counsel for the appellants has not annexed any proof to show as to whether he took some action against his clerk for committing such a gross lapse and misconduct. Even, he does not disclose his name and other relevant particular, nor filed affidavit of his clerk admitting his alleged guilt. It has not further been explained in the application as to on which date the file was taken back by his clerk from the Registry to remove objections. Therefore, the contents of instant application are termed as concocted and completely false in the absence of above supporting evidence. Much water has already flown. It is well-settled proposition of law that each day's delay has to be explained in a mathematical manner.

Such an inordinate delay of 968 days in refiling the appeal has disintitiled the appellants for any relief. Hence, the application for condonation of delay is dismissed.

The case is dealt with on merit also.

Briefly, appellants filed a suit for separate possession by

partition of a "gair mumkin abadi" land measuring 3 kanals 3 marlas situated in the area of village Nagra, Tehsil and District Jalandhar, fully detailed in head note of the trial court's judgment. It was pleaded that the entire joint holding was 92 kanals and 10 marlas, out of which, the appellants were owner to the extent of 3 kanals 3 marlas. Many co-sharers had already constructed houses in their respective share. There remains constant unhappiness and dispute between the appellants and other co-sharers/respondents in the enjoyment of their share by the appellants, depriving them of their legal right. Therefore, it was direly needed that their share may be separated from other co-sharers.

The trial court, after holding trial, dismissed the suit vide judgment and decree dated 23.03.2011.

Being aggrieved, the appellants approached the first appellate court, but remained unsuccessful, as their appeal was too dismissed vide judgment and decree dated 16.07.2013.

Learned counsel contends that both the courts below have failed to appreciate that appellants-plaintiffs could not/did not enjoy their share in the joint holding due to its non-partition by leaps and bounds. Both the courts below have illegally non-suited the appellants on the ground that they did not disclose previous litigation amongst them and other co-sharers qua the share of Bachan Kaur mother of Harbhajan Singh in the estate of her son and about certain alienation of their share by them. There was no such necessity to plead and prove the

above facts, inasmuchas, as per jamabandi for the year 1997-98 (Ex.P-

1 to P-5), the appellants were shown owners of 3 kanals and 3 marlas land, out of joint holding of 92 kanals 10 marlas.

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:-

1. Appellant-plaintiff No.1-Jaswinder Kaur in her cross-examination unambiguously admitted that after the death of her husband, they were entitled to 21 kanals of land, out of which, they had already sold 14 kanals to different purchasers by carving out plots, leaving roads and streets etc. for egress and ingress to sellers. The suit property was no longer an agricultural land, as it has turned into a colony named as New Vivek Nand Park. Therefore, the suit land has lost its character of joint holding.

2. The above admission of appellant-plaintiff No.1 negated the claim of appellants that they were still owners of possession of 3 kanals 3 marlas of land. To seek partition of land after selling of 14 kanals of land, it is very much necessary for the appellants to prove their specific share in exclusion to other co-sharers, which in the instant case, the appellants could not prove by leading any cogent and convincing evidence.

3. Both the courts below have recorded concurrent findings against the appellants after appreciation of evidence led by both the sides.

4. No question of law much less substantial has been

raised in this regular second appeal. Therefore, the same is not maintainable.

After going through the judgments and concurrent finding of both the courts below, this Court finds no scope of interference in the same. Hence, the instant appeal is dismissed.

09.07.2019

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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No