

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

**RSA No.5791 of 2016 (O&M)
Date of Decision.10.04.2019**

Chanan alias Chanan Singh and another

...Appellants

Vs

Amrik Singh and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.S. Goraya, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.15188-C of 2016

For the reasons stated in the application, delay of 122 days in re-filing of the appeal is condoned.

Application is allowed.

C.M. No.15191-C of 2016

In view of the decision taken in the main appeal, the application is dismissed.

RSA No.5791 of 2016 (O&M)

The present appeal is directed against the concurrent finding of fact whereby suit of the appellants-plaintiffs for declaration by challenging mutation qua share of Sohan Singh in favour of Ajran Singh has been dismissed by the trial Court and affirmed in appeal.

Plaintiffs alleged that Wazira Singh had four sons namely Mehanga Singh, Sohan singh, Pakhar and Arjan Singh and one daughter Santi. Sohan Singh was owner of the property in dispute. He died issueless and unmarried. On his demise, property

was mutated in favour of Arjan Singh. Plaintiffs are none else but sons of Mehanga Singh. Mehanga Singh being collateral was alive and therefore, mutation of exclusive ownership in favour of Arjan Singh was not sustainable.

Defendants opposed the suit and alleged that all the siblings except Arjan Singh died and therefore, as per Schedule II of Section 8 of the Hindu Succession Act, property was liable to be inherited by the surviving brother being collateral.

Plaintiffs suffered oral statement that Mehanga Singh was alive but did not lead any evidence to prove the same.

Learned counsel for the appellants submitted that in totality of the oral submissions coupled with the cross-examination of the defendants admitting the fact that Mehanga Singh was alive at the time of mutation, the suit was liable to be decreed.

I am afraid the aforementioned argument is not sustainable for the simple reason that onus heavily lies upon the plaintiffs to prove that Mehanga Singh was alive. In the absence of discharging of onus, one line in the cross-examination cannot be a ground for decretal of the suit. Plaintiffs miserably failed to discharge onus as per Section 101 of the Indian Evidence Act.

The appeal is also accompanied by an application seeking condonation of delay of 352 days in filing of the appeal on the premise that counsel for the appellants-plaintiffs before the lower court did not inform about the fate of the case. It is common practice amongst litigants to indulge into blame game upon the counsel without realizing the fact that they have to be diligent in pursuing the

case as it is being filed at their instance,

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed both on the ground of delay as well as on merit.

(AMIT RAWAL)
JUDGE

April 10, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No