

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

Date of decision: 20.5.2019

1.

RSA No. 1787 of 2018(O&M)

Krishan Kumar and others

.....Appellants

VERSUS

State of Haryana and others

.....Respondents

2.

RSA No. 3137 of 2018(O&M)

Krishan Kumar and others

.....Appellants

VERSUS

Amar Singh and others

.....Respondents

3.

RSA No. 3212 of 2018(O&M)

Krishan Kumar and others

.....Appellants

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Inderjit Sharma, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

CM No.4870-C of 2018

Prayer in this application is for condoning delay of 6 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Krishan Kumar, appellant No.1, the application is allowed. Delay of 6 days in re-filing the appeal stands condoned.

Disposed of accordingly.

RSA Nos.1787, 3137 and 3212 of 2018

This order will dispose of RSA Nos.1787, 3137 and 3212 of 2018 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No.1787 of 2018.

The plaintiffs/appellants filed suit for declaration that they being in cultivating possession as old tenants are entitle to allotment of land measuring 96 kanals detailed in para 1 (un-numbered) of the judgment of trial Court and entries in the revenue record showing defendants No.3 to 5 to be allottees of the suit land and allotment order dated 15.02.1984 passed by defendant No.2 are wrong, against law and facts, null and void and liable to be set aside with prayer that they are entitle to get their names entered and sanctioned in revenue record to be old tenants and to get the suit land allotted in their names with consequential relief of mandatory injunction directing the official defendants No.1 and 2 to allot the suit land to the plaintiffs in equal shares and also restraining defendants No.3 to 7 from interfering forcibly and illegally into possession of the plaintiffs over the suit land. The suit was partly decreed by the trial Court vide judgment

and decree dated 25.01.2014. Three appeals were filed against the decree passed by the trial Court namely one by the plaintiffs and two others by different sets of defendants. The Additional District Judge, Sirsa set aside the judgment and decree passed by the trial Court and suit filed by the plaintiffs/appellants was dismissed. A relevant extract from penultimate para of the judgment, reads as follows:-

“Keeping in view my aforesaid discussions and observations, I am of the considered view that the civil court has no jurisdiction to try and entertain the present suit. Therefore, the Learned lower court was not competent to pass a decree in favour of the plaintiffs rather it was the duty of the Learned lower court to return the plaint to the plaintiffs with the direction to present the same before the competent authority under the Haryana Ceiling on Land Holdings Act 1972. With these observations, the impugned judgment and decree passed by the Learned lower Court are set aside and the appeal filed by the plaintiffs (Krishan Kumar and others) is hereby dismissed. The appeal filed by the defendants No.1 and 2 (State of Haryana and another) and defendants No.3 and 5 (Amar Singh and another) are hereby allowed. Learned lower court is directed to return the plaint to the plaintiffs with the direction to present the same before the Competent Authority under the Haryana Ceiling on Land Holdings Act 1972.”

Counsel for the appellants has raised two-fold submissions. It is argued that if at this stage, the appellants are relegated to avail remedy

before the competent authority under the Haryana Ceiling On Land Holdings Act, 1972 (in short 'the Act'), the same may be rejected on technical consideration of same being barred by limitation and as such a serious prejudice shall be caused to the plaintiffs/appellants. He would pray that a direction may be issued to the authority concerned to consider the question of limitation sympathetically in view of the fact that plaintiffs had been pursuing their remedy under a bona fide belief before the Civil Court since the year 2003.

Another submission made by counsel is that the trial Court decided issue No.3 in respect of possession of suit land in favour of the plaintiffs/appellants and the respondents should not be allowed to take benefit of setting aside the judgment and decree passed by the trial Court at least to the extent of findings recorded qua possession of the suit land.

So far as the apprehension that proceedings before the competent authority may be rejected on the question of limitation, the appellants are always at liberty to raise a plea that they were pursuing their remedy before the civil Court with a bona fide belief that the civil Court has the jurisdiction to entertain and try the present suit. Any such plea raised by the appellants would be considered by the authority concerned sympathetically.

With regard to findings of the trial Court on issue No.3 qua possession of suit land, as the civil Court does not have the jurisdiction to entertain and try the present suit, any findings recorded by such a Court would be non-est in the eye of law, therefore, it would be for the appellants

to substantiate their plea of possession before the competent authority, in accordance with law.

With the aforesaid observations, the appeals stand disposed of.

MAY 20, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no