

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

RSA No.2495 of 2017 (O&M)

Date of decision:19.3.2019

Bachan Kaur and another

... Appellants

Vs.

Baljit Singh and another

... Respondents

CR No.3514 of 2017

Bachan Kaur and another

... Petitioners

Vs.

Baljit Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.K.Bawa, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.6127-C of 2017 in RSA No.2495 of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 15 days in re-filing the appeal is condoned.

C.M. stands allowed.

C.M.No.10901-CII of 2017 in CR No.3514 of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 78 days in re-filing the revision petition

is condoned.

C.M. stands allowed.

Main cases

This order of mine shall dispose of two cases, one RSA bearing No.2495 of 2017 and one revision petition bearing No.3514 of 2017.

During the course of arguments, Mr. S.K.Bawa, Advocate repeatedly attempted to point out that the trial Court admitted the fact that defendants in the previous round of litigation in a statement (Ex.PW4/4) made in a suit (at page 52 of the paper book) alleging the admission qua existence of water course can be looked into evidence as per the provisions of Section 21 of Indian Evidence Act, 1872 pertained to khasra no.24//16 whereas in the present suit injunction was sought for not to demolish the water channel/khal on khasra no.23//27.

When this Court raised a specific query as to how the aforementioned khasra number is related to subject matter of khasra numbers. It was submitted that water channel begins from khasra no.23//27 and attempt was made to point out from the site plan which concededly has not been proved in accordance with law yet an assertion was made that it commenced from khasra number 23//27.

This Court on many occasions requested learned counsel to point out with regard to the admission qua khasra number 23//27 subject matter of the suit property from pleading in the plaint, nothing was pointed out.

It is a matter of record that parties had been litigating since 28 years and also filed an application under Order 39 Rule 2-A of Code of Civil Procedure alleging the violation of the status quo order which was dismissed and the order was assailed in accompanying CR No.3514 of 2017. In the absence of any documentary evidence, dismissal of the suit was inevitable.

In my view, both the Courts below have rightly non-suited the plaintiffs on this ground alone. For the reasons aforementioned, there is no illegality and perversity in the impugned judgments and decrees as well as in the impugned order.

Resultantly, the regular second appeal as well as revision petition are dismissed.

(AMIT RAWAL)
JUDGE

March 19, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No