

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

RA-RS-16-C-2014(O&M)

Date of decision:-19.12.2019

Raj Singh and another

...Appellants

Versus

Kartar Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.M.S. Uppal, Advocate
for the applicants/appellants.

Mr.Prabhdeep Singh, Advocate for
Mr.Jatinder Pal Singh, Advocate for
non-applicants/respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Raj Singh and Desa Singh sons of Jagga Singh, resident of village Mattar Hithar, Tehsil and District Ferozepur had brought a suit against defendants i.e. Kartar Singh, Makhan Singh, Dayal Singh, Khushal Singh and Jit Singh sons of Labh Singh, residents of that very village seeking a declaration that they are owners in possession of land measuring 4 kanals on the basis of sale deed executed by Labh

Singh, father of the defendants in their favour on 28.11.1991 and mutation has also been sanctioned in their favour and reflected in the jamabandi for the year 1991-92; the defendants in connivance with their father – Labh Singh had executed a sale deed regarding that very piece of land in their favour on 9.2.1996; mutation has been sanctioned on the basis of that sale deed. According to the plaintiffs, the sale deed dated 9.2.1996 by Labh Singh in favour of his sons, the defendants, is illegal, null and void and liable to be set aside. However, when the defendants refused to concede their claim, the plaintiffs had filed the suit in question.

On getting notice, defendants had appeared and filed written statement contesting the suit raising various legal objections defending the sale deed dated 9.2.1996 executed by Labh Singh in their favour as legal and valid contending that the plaintiffs are not in possession of the suit land and they have no concern therewith; the defendants are in actual possession of the suit land. The defendants prayed for dismissal of the suit.

The plaintiffs had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether plaintiff are entitled to seek declaration as prayed for?

OPP.

2. Whether the sale deed dated 9.2.1996 is null and void and illegal and is result of fraud committed by Labh Singh deceased in connivance with the defendants, if so, its effect?

OPP.

3. Whether the plaintiffs are entitled to relief of permanent injunction as prayed for? OPP.

4. Whether this suit is not maintainable? OPD.

5. Relief.

In order to prove their case, the plaintiff No.1 Raj Singh got his statement recorded as PW1 and the plaintiffs had further examined Sh.Balbir Singh as PW2.

On the other hand, one of the defendants had got his statement recorded as DW1 and the defendants further examined Sh.Mohinder Singh as DW2.

After hearing learned counsel for the parties, the Court of Civil Judge (Jr.Divn.), Ferozepur decided issues No.1 to 3 against the plaintiffs and in favour of the defendants observing that the plaintiffs have not produced any jamabandi subsequent to the jamabandi for the year 1991-92 or khasra girdawari to show that possession had been delivered to them in pursuance of sale deed dated 28.11.1991 and merely on the basis of mutation entry in the remarks column of jamabandi, it could not be said that ownership stood transferred to

name of plaintiffs and there is no evidence that the sale deed dated 28.11.1991 was actually acted upon; that the revenue record is in favour of defendants and there is no evidence to show that sale deed dated 9.2.1996 by Labh Singh in favour of the defendants had been procured fraudulently. Issue No.4 was decided against the defendants. Resultantly, suit of the plaintiffs was dismissed. This was so done vide judgment and decree dated 4.4.2009.

Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Ferozepur which was assigned to Additional District Judge, Ferozepur, who vide judgment and decree dated 28.7.2010 dismissed the same, in the process affirming the judgment and decree passed by the trial Court.

Feeling aggrieved by the judgments and decrees passed by the Courts below, the plaintiffs have knocked at the door of this Court by way of filing regular second appeal. The appeal had been dismissed in default. However, on an application having been filed, the same was restored. The appellants moved an application that they wanted to withdraw the suit itself. A Co-ordinate Bench of this Court in light of the request made by learned counsel for the appellants that parties had entered into compromise and he did not want the decree to remain on record, therefore wanted to withdraw the suit itself, recorded such statement of counsel for the applicants/appellants, set

aside the judgments passed by both the Courts below and suit filed by the applicants/appellants was dismissed as withdrawn without any liberty to file fresh one vide order dated 10.2.2011.

Subsequently, appellant/plaintiff Desa Singh moved an application for review of order dated 10.2.2011 contending that he had not given any instructions to Sh.Kamal Narula, Advocate for making such statement before this Court and he had made the statement on instructions from appellant/plaintiff No.1 – Raj Singh only, who is a real brother of the present applicant, resultantly the suit was dismissed as withdrawn without liberty to file any fresh suit; however, differences have arisen between applicant Desa Singh and his brother Raj Singh and the applicant has shifted his residence from village Mattar Hithar, Tehsil and District Ferozepur to village Bhundri, Tehsil Jagraon, District Ludhiana; he continued knowing about status of the appeal by asking appellant Raj Singh; since the earlier counsel Sh.Kamal Narula, Advocate was engaged by appellant Raj Singh only, the applicant could not come to know about the status of the appeal and on 4.3.2014 when applicant went to his native village, then he came to know that some sort of compromise had been effected between Raj Singh and respondents under which respondents had agreed to give about 2 kanals of land to Raj Singh and that compromise was entered into without consulting/informing the applicant; that the applicant is effected by

the judgment passed by this Court, therefore it be reviewed/recalled and appeal be listed for hearing on merits.

This application was filed belatedly and a separate application under Section 5 of the Limitation Act for condonation of delay of 1095 days in filing of the application has been moved taking almost those very pleas, which have been taken in the review application and have been discussed above.

Notice of such applications was given to respondents, who put in appearance through counsel and are vehemently opposing the applications.

I have heard learned counsel for the parties besides going through the record and I find that the applicant has been unable to cross the hurdle of limitation.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

Section 5 of that very act provides that any appeal or any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

The reasoning given in the application under Section 5 of the Limitation Act is highly improbable and unconvincing. A litigant

is supposed to pursue his case properly remaining in touch with his lawyer and knowing about the stage of the proceedings. In this case on one hand, applicant Desa Singh is saying that he had developed differences with his brother Raj Singh, therefore, he had shifted his residence to village Bhundri, Tehsil Jagraon, District Ludhiana, on the other hand, he is saying that he had been getting information regarding the stage of proceedings from Raj Singh. The two things cannot go together. The alleged differences with Raj Singh would have rather made the applicant more cautious and as a man of ordinary prudence, he was expected to contact the lawyer and know about the stage of proceedings, rather than keeping quiet sitting at home and asking from his brother Raj Singh with whom, he is allegedly having strained relations regarding the stage of proceedings. No sufficient cause is there to condone the delay in filing the application. If the delay was for a few days and say for a few months, then desirability to condone the same could have been considered but not when the delay is for years together. The delay is of about three years, which goes to show lethargic and casual attitude of the applicant. The counsel representing the appellants had categorically stated that the matter had been compromised between the parties and he wanted to withdraw the suit itself. If Sh.Kamal Narula, Advocate representing the appellants had made a wrong statement without instructions from his clients, then the applicant

would in ordinary course have submitted a complaint to Bar Council of Punjab & Haryana High Court, Chandigarh against him levelling allegations of professional misconduct but nothing of that sort has been done. Sh.Kamal Narula, Advocate on behalf of both the appellants had made the statement. It seems that now the appellants want to wriggle out of that statement and in connivance with each other have concocted this story. Such type of tactics cannot be allowed to succeed. It is not believable that counsel representing the appellants would have filed an application or made statement without getting clear instructions from his clients and if he did so, his clients would keep quiet for a long time not taking any action against him. Furthermore, both the Courts have returned concurrent findings against the appellants/plaintiffs. There is absolutely no reason to review or recall the impugned order. The application for review/recall of the order is hopelessly time barred. There is no reason to condone the delay.

Therefore, the application under Section 5 of the Limitation Act for condonation of delay of 1095 days stands dismissed and application for review/recall of the order is dismissed being time barred as well as on merits.

19.12.2019

Brij

(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**