

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

RSA No. 935 of 2018 (O&M)
Date of decision: 1.2.2019

Ram Singh and others

...Appellants

Versus

Udmi Ram and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. S.K. Sharma, Advocate,
for the appellants.

JAISHREE THAKUR, J.

CM No. 2287 CI of 2018

This is an application that has been filed for making the deficiency in court fee good.

For the reasons stated in the application, which is supported by an affidavit, the same is allowed and delay in making the court fee good is condoned.

CM stands disposed of.

CM No. 2288 CI of 2018

This is an application that has been filed for condonation of delay in re-filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the same is allowed and delay in re-filing the appeal is condoned.

CM stands disposed of.

Main case

The instant Regular Second Appeal has been filed by the appellants against the judgment and decree dated 26.11.2009 passed by the Additional District Judge, Narnaul, vide which the judgment and decree dated 23.1.2007 passed by the trial court in the civil suit filed by the plaintiffs/respondents herein was affirmed.

In brief, the facts are that the plaintiffs/respondents herein (hereinafter referred to as '**the plaintiffs**') filed a suit seeking declaration to the effect that plaintiffs as mentioned in Annexure A are owners in possession as co-sharers in the suit land described in the head note. It is the case of the plaintiffs/respondents that the jamabandi pertaining to the year 1993-1994 with regard to the suit land has been wrongly and illegally prepared in collusion with the officials of the revenue department in the absence of the plaintiffs and thereby wrong Farad Badar No.2 dated 29.10.1991 came to be sanctioned by the Assistant Collector 2nd Grade. Now taking advantage of the same, the defendants/appellants herein filed an application for partition of the suit land.

The appellants/defendants contested the suit alleging that the the plaintiffs are not owners in possession of the land. In fact, the suit land belongs to *Thok Toda* and the *Kewat Dar* and the appellants/defendants are in possession of the same for the last 100 years. It was also submitted that the officials of the revenue department on their own got corrected the mistake which had occurred in the revenue department by way of Farad Badar No.2 and it is only thereafter that the defendants moved an application for partition.

Replication was filed reiterating the stand taken in the plaint and after completion of the pleadings, the trial court framed as many as 8 issues. The plaintiffs did not lead any oral evidence but tendered documentary evidence by way of Ex. P1 to Ex. P43. On the other hand, the defendants did not lead any evidence in support of their claim despite the opportunities having been granted.

The trial court after scrutinizing the evidence brought on record by the plaintiffs, decreed the suit and the appeal filed by the appellants was dismissed by the first appellate court, giving rise to the present Regular Second Appeal.

Both the courts below held that in fact the plaintiffs as well the defendants were co-sharers in possession of the land in dispute. A dispute had earlier arisen between the parties and the plaintiffs, therefore, had instituted a Civil Suit No. 222 of 15.9.1964 titled as Man Singh Versus Chandgi etc. and the plaintiffs were declared to be owners in possession of the land in dispute vide judgment dated 29.9.1965 (Ex. P-6). The said decree attained finality as the appeal filed upto the High Court against the said judgment dated 29.9.1965 had been dismissed and the revenue officials vide Farad Badar No. 2 dated 29.10.1991 changed the entries without issuance of notice to the plaintiffs. While relying upon **Inder Sain and others Versus Paras Ram 1993 PLJ 586 (P&H)** and other authorities, it was held that prior notice to the adversely affected parties before making any change in the revenue record was mandatory and the plaintiffs have proved the fact that they are owners in possession as co-sharers in the suit land and consequently decreed the suit.

As already noticed, the appellants/defendants did not lead any evidence to establish their claim despite many opportunities having been granted in this regard. In the absence of any documentary evidence, learned counsel for the appellants has not been able to point out any perversity in the findings of fact recorded by the courts below. The finding of facts recorded by the courts below are well reasoned and I see no reason to interfere with the impugned judgments. Furthermore, no question of law, much less substantial question of law arises for consideration in the present appeal.

Dismissed.

1.2.2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No