

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

SAO-78-2019(O&M)

Date of decision:-27.9.2021

Lakhwinder Singh

...Appellant

Versus

Kirpal Singh and others

...Respondents

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

Present: Mr.A.S. Narang, Advocate
for appellant.

H.S. MADAAN, J.

Case taken up through video conferencing.

CM-9331-CII-2021

For the reasons mentioned in the application, the same is allowed and the main appeal i.e. SAO-78-2019(O&M) is preponed for today.

SAO-78-2019(O&M)

Briefly stated, the facts of the case as can be gathered from the perusal of the record are that plaintiff Lakhwinder Singh, resident of Saint Farid Public School, SAS Nagar (Mohali) had filed a suit on 18.8.2009 against S/Sh.Satpal Singh, Kirpal Singh and Sukhdev Singh

sons of late Sh.Makhan Singh as well as Smt.Amarjit Kaur wife of Paramjit Singh, seeking a declaration that he is owner in possession of industrial shed/plot No.802, Phase-2, Industrial Area, Ram Darbar, Chandigarh, further craving for grant of permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff over the suit property and from receiving the rent from the tenants.

Notice of the suit was issued to the defendants. Defendants No.1, 3 and 4 had appeared and filed written statement contesting the suit, whereas suit qua defendant No.2 was dismissed under Order 9 Rule 2 CPC vide order dated 27.9.2012. Issues on merits were framed. The plaintiff led evidence. Since there was no representation on behalf of defendants No.1, 3 and 4, they were proceeded against ex-parte. The trial Court of Civil Judge(Jr.Divn.), Chandigarh vide judgment and decree dated 26.5.2014 passed an ex-parte decree for declaration and restrained the defendants from interfering in peaceful possession of the plaintiff over the property in question and from receiving the rent from the tenants. Subsequently, the defendants No.1, 3 and 4 had appeared in the trial Court on 10.2.2015 moving an application for setting aside of ex-parte judgment and decree dated 26.5.2014. However, the trial Court dismissed the said application vide order dated 5.4.2016. Feeling aggrieved such defendants had challenged that order before this Court by way of filing Civil Revision No.4037 of 2016, which was dismissed vide order dated 6.12.2017, copy of which being Annexure A-1. However, defendant No.2 had preferred an appeal before District Judge, Chandigarh contending that since suit against him stood already dismissed under Order 9 Rule 2 CPC,

therefore the trial Court could not decree the suit against him as well. He prayed that the suit qua him be dismissed. That appeal was accepted by learned Additional District Judge, Chandigarh and judgment and decree passed by the trial Court were set aside vide judgment and decree dated 16.11.2018 remanding the case back to the trial Court for giving fresh findings after affording opportunities to all the defendants to cross-examine the witnesses of the plaintiff and permitting them to lead fresh evidence. The plaintiff felt aggrieved by such decision of learned Additional District Judge, Chandigarh and filed an application for correction of the judgment. That application was dismissed vide order dated 30.9.2019, copy Annexure A3. As such the plaintiff has brought the instant appeal before this Court.

The appeal has not been filed within time but belatedly by 282 days. An application for condonation of such delay in filing the appeal has been moved on behalf of the appellant/plaintiff.

I have heard learned counsel for the appellant besides going through the record.

The first hurdle in the way of plaintiff is that of limitation. It is to be seen as to whether the appellant/plaintiff has been able to cross that hurdle or not. The Limitation Act, 1963 (hereinafter referred to as the Act) prescribes limitation for filing suit, appeals and applications. The purpose of enactment of that law was that an aggrieved person should approach the Court of competent jurisdiction within a fixed time limit, otherwise the damoclean sword of litigation shall hang over the heads of the opposite party. That was done to have peace and tranquility in the

society that if an aggrieved person does not approach the Court for redressal of his grievances within a fixed time limit then, he would be barred from getting the remedy after lapse of a particular period. The purpose behind enactment of that was to ensure that an aggrieved person should knock at the door of the Court without unreasonable delay.

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.

Coming back to this appeal, the appellant/plaintiff has not been able to render any plausible or convincing reason for delay in filing of the appeal. As is said ignorance of law is no excuse. When the learned Additional District Judge, Chandigarh allowed the appeal filed by defendant No.2 with which the plaintiff felt aggrieved then he was required to approach this Court within the period of limitation prescribed instead of moving application for review getting that adjudicated and then coming to this Court.

Section 9 of the Act clearly provides that where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it. The appellant/plaintiff cannot claim that the period of limitation, which had started running after decision by learned

Additional District Judge, Chandigarh would come to halt on his moving an application for review of the judgment and decree by learned Additional District Judge and would start again when such application was disposed of. That can certainly be not done. If the appellant/plaintiff opted to get the period of limitation elapsed, he did so at his own risk. Of Course Section 5 of the Act empowers the Court to condone the delay in certain cases but it is so done if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal within such period of limitation. Here no such explanation is coming forth. The appellant/plaintiff spending time in moving application for review and it was ultimately dismissed one fine morning coming to this Court and filing the application for condonation of delay, the conduct of the appellant/plaintiff is such which shows his casual and cursory attitude to the matter and it does not constitute sufficient ground for condonation of delay. The delay is not to be condoned in a mechanical manner, rather considering all the facts and circumstances of the case. In the case in hand, no sufficient reason is found to be there for condonation of delay in filing the appeal. The appeal is clearly time barred and is liable to be dismissed on that score alone.

However, if the case of appellant/plaintiff is examined on merits, then too the appeal cannot proceed further. It is always desirable to decide a *lis* on merits, rather than shutting the doors of contest on the opposite party. If the version of the opposite party is not allowed to be brought to light and considered, then the Courts may not be able to do justice to the parties. A perusal of the judgment passed by the trial Court

goes to show that suit against defendant No.2 had been dismissed under Order 9 Rule 2 CPC but even then when final judgment was pronounced it was decreed against all the defendants including defendant No.2 against whom the suit stood already dismissed. That shows the non-application of mind on the part of the trial Court.

Another thing to be noticed is that in the judgment by the trial Court the version of defendants No.1, 3 and 4 has been given, issues on merits were framed but while coming to the conclusion, only the evidence brought on record by the plaintiff has been discussed and pleas raised by the defendants in their pleadings have not been considered at all. Learned Additional District Judge, Chandigarh vide judgment had remanded the case back to the trial Court. The operative part of the judgment runs as follows:

10. Admittedly, the suit qua appellant-defendant no.2 was dismissed vide order 12.6.2012 under Order 9 Rule 2 CPC. When the service of the said defendant no.2 was not effected and the said order was not challenged by the plaintiff, the suit cannot be decreed qua the said defendant no.2 and thus, the findings of the trial court qua this aspect is erroneous. Further, perusal of Will Ex.P1 reveals that the executant had specifically stated therein that that all her brothers namely Satpal Singh, Kirpal Singh, Sukhdev Singh and Lakhwinder Singh Sandhu shall become absolute owner of property in question and her three brothers namely Satpal Singh, Kirpal Singh and Sukhdev Singh shall become absolute owners of the said plot after paying Rs.6 lacs to Lakhwinder Singh who had

been helping her and she had taken the said amount from him. The plaintiff has failed to prove on record that amount of Rs.6 lacs has not been paid by the appellant and defendants no.1 and 3 by leading convincing and cogent evidence nor he filed any recovery suit to this effect and thus, it cannot be gathered that such amount of Rs.6 lacs was paid by the appellant and defendants no.1 and 3 to the plaintiff or not. Thus, the findings of the trial court in decreeing the suit of the plaintiff are erroneous and it is held that a vague decree has been passed as it has failed to detail the relief granted.

11. In the light of the entire above discussion, the appeal in hand is allowed and judgment and decree passed by the learned trial Court is hereby set aside. The case is remanded back to the trial Court for rendering findings afresh after affording opportunity to the defendants to cross examine the witnesses of the plaintiff and to lead their evidence and then to pass fresh judgment in accordance with law. The parties through their counsel are directed to appear before the learned trial Court on 4.12.2018. Record of the trial court be returned along with copy of this judgment. File of this court be consigned.

No illegality or infirmity in the said judgment comes out to be there. Though the plaintiff had moved an application for review, it was dismissed vide a detailed order dated 30.9.2019, copy Annexure A1. The concluding part of the order is being reproduced as under:

I have gone through the record of the Appellate Court

which reveals that the suit of Lakhwinder Singh qua respondent No.2 Satpal Singh was dismissed under Order 9 Rule 2 CPC wherein it is further observed that Narinder Kaur sister of the plaintiff executed a registered Will dated 22.03.2006 whereby she bequeathed the property in question in favour of plaintiff and defendants No.1 to 3 all brothers with condition that they would become absolute owners after they make payment of Rs.6 lacs to the plaintiff- Lakhwinder Singh but defendants produced an unregistered Will before the Estate Officer for transferring the property alleging to be executed by Narinder Kaur whereby property was alleged to be bequeathed in favour of Satpal, Sukhdev Singh and Amarjit Kaur-performa respondents leaving the plaintiff and Kirpal Singh. Ultimate the said Will was challenged before the Civil Court. As plaintiff has failed to prove on record that amount of Rs.6 lacs has not been paid by the appellant and defendants No.1 and 3, thus the finding of the learned trial Court decreeing the suit of the plaintiff was set aside holding the decree to be erroneous and vague in nature and remanded the case back to the learned trial Court for rendering finding fresh after affording opportunities to the defendants to cross examine the witnesses of the plaintiff and to lead their evidence.

So the contention of learned counsel for the applicant that the word defendants in last paragraph of the judgment has been wrongly recorded in the judgment dated 16.11.2018 is without force. The other ground taken in the application seeking

correction does not fall within the scope of review. Thus the application stand dismissed. File be consigned to the records, after due compliance.

Therefore, on merits also, the appeal does not stand any where.

Finding no merit in the appeal, the same stands dismissed.

27.9.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No