

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

105

**RSA No. 2241 of 2022 (O & M)
Date of decision : 28.10.2022**

Harvinder Singh

.....Appellant

Vs.

Baljinder Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Peeush Gagneja, Advocate, for the appellant

TRIBHUVAN DAHIYA, J. (Oral)

CM No. 7749-C-2022:

This is an application for condonation of 355 days delay in filing the present appeal.

For the reasons stated in the application, the same is allowed. Delay of 355 days in filing the present appeal is condoned.

RSA No. 2241 of 2022:

1. This is plaintiff's second appeal against the concurrent findings of both the Courts below.
2. The facts in brief are, the appellant/plaintiff (hereinafter referred to as 'the plaintiff') filed a suit for declaration and permanent injunction pleading that defendant no.1, father of plaintiff and respondents/defendants no.2 and 3 (hereinafter referred to as 'the defendants'), was owner in possession of the suit land. Defendant no.1, vide agreement dated 26.7.2004, gave the suit land to the plaintiff on which the latter constructed a house. Since then, he is owner in

possession of the house constructed there upon.

3. The suit was contested by the defendants by pleading that, vide agreement dated 26.7.2004, defendant no.1 gave his 1/4th share to the plaintiff, and prior to execution of the agreement, defendant no.1 had already raised construction on land measuring 650 feet. A transfer deed was executed by defendant no.1 in favour of defendants no.2 and 3 with regard to his remaining share.

4. Both the Courts below have found that the plaintiff in his cross-examination stated that his father/defendant no.1 was having land measuring 21 *kanal* only. He also testified that he was having 5 *kanal* 4 *marla* of land, and no share was given to his sister Paramjit Kaur. His cross-examination further revealed that out of the total land measuring 21 *kanal* held by defendant no.1, plaintiff had already taken his share of 5 *kanal* 4 *marla*. His previous suit filed against the defendants was dismissed in default vide order dated 18.1.2012 (Ex.D-1) and was never restored. Further, it has also been held by the Courts below that the agreement dated 26.7.2004 (Annexure Ex.P-9) is not admissible in evidence being an un-registered document. Therefore, no claim can be raised by the plaintiff on that basis, nor any property can be said to have been transferred based on it. It has also been held that no description or *khasra* number of the property, which defendant no.1 agreed to transfer in favour of the plaintiff, has even been mentioned in the said agreement dated 26.7.2004. Therefore, such an agreement cannot be enforced and no declaration can be sought on that basis. Still further, it could not be established that entire property of defendant No.1 was ancestral in nature and he was not competent to execute transfer deed in favour of defendants no.2 and 3.

5. Learned counsel for the plaintiff could not point out any error of law in the aforesaid findings of the Courts below. Therefore, there is no ground to interfere with the impugned judgments and decree.

6. Dismissed.

7. Pending applications, if any, are disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

28.10.2022

Ashwani

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No