

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

RSA-2405-2022(O&M)

Date of decision:-13.12.2022

Bhagwant Singh

...Appellant

Versus

Nagar Council, Sri Muktsar Sahib and others

...Respondents

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

Present: Mr.Raghav Goyal, Advocate
for the appellant.

H.S. MADAAN, J.

1. In nutshell, facts of the case are that plaintiff Bhagwant Singh had filed a suit for grant of permanent injunction against defendants i.e. Nagar Council, Sri Muktsar Sahib, Pritam Kaur wife of Gurnam Singh and Jagtar Singh son of Jangir Singh, seeking a decree restraining the defendants from illegally and forcibly entering name of Smt.Pritam Kaur – defendant No.2 in the record/assessment register regarding the house bearing old property No.5258 and 5261 with present property No.B-0200330 as per record/assessment register of Nagar Council, Sri Muktsar Sahib – defendant No.1; such house being located in Suja Patti near Chota Talab, Sri Muktsar

Sahib.

2. As per the version of the plaintiff, he along with his brother Jagtar Singh – defendant No.3 had purchased the suit property from Jhanda Singh son of Ujjagar Singh R/o Sri Muktsar Sahib vide sale deed No.3494 dated 4.3.1991 and both of them become owners in possession of the house in dispute; subsequently some differences arose between the brothers and Jagtar Singh defendant No.3 had sold his share in the suit property in favour of the defendant no.2 Pritam Kaur without getting the house partitioned; Smt.Pritam Kaur wants to get her name entered in the assessment register/record of Nagar Counsel, Sri Muktsar Sahib to grab the suit property; the defendants have no right to do so. Feeling aggrieved by such act of defendants, the plaintiff brought the suit in question in the Civil Court at Muktsar Sahib.

3. On getting notice, the defendants appeared and filed written statements contesting the suit.

4. No replication was filed by the plaintiff to the written statements.

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

1) Whether plaintiff is entitled for permanent injunction as prayed for? OPP

2) Whether the suit is not maintainable in the present form?

OPD

3) Whether the plaintiff has concealed the material facts from the court

4) Whether plaintiff has no right, cause of action and locus standi to file the present suit? OPD

5) Relief ? OPD

6. The parties were afforded adequate opportunities to lead their evidence.

7. After hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 27.2.2017 decreed the suit of the plaintiff in the process restraining the defendants from entering name of defendant No.2 in the record/assessment register regarding the house in question illegally and forcibly.

8. Feeling aggrieved by the said judgment and decree, the the defendant No.2 Pritam Kaur had filed an appeal in the Court of District Judge, Sri Muktsar Sahib, who vide judgment and decree dated 28.11.2017 accepted the appeal, set aside the judgment and decree passed by the trial Court and consequently, dismissed the suit of the plaintiff with costs.

9. Now it was turn of the plaintiff to feel aggrieved and he has filed the present regular second appeal before this Court. Since the appeal has not been filed within period of limitation, an application under Section 5 of the Limitation Act for condonation of

delay of 960 days has been moved contending that the appellant had firstly got filed regular second appeal through some other counsel; some objections were raised by the registry; the appellant was sick and unable to re-file the appeal after attaching necessary documents thereby it got barred by limitation; however, the delay in filing the appeal was not intentional or wilful, therefore the same be condoned.

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

11. 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.

12. In this case no plausible or convincing explanation could be offered by the applicant/appellant for gross delay of 960 days i.e. more than 2 ½ years. The explanation offered is quite vague that appellant had become sick and could not file the documents with the appeal. No details are giving as to when he had fallen sick; when did he recover; from which doctor or institute he was taking treatment; why he could not send the documents to his counsel through some

other person etc. No medical document in support of these assertions has been placed on record. Thus in absence of any cogent and convincing reason, such huge delay in filing of the appeal cannot be condoned and the appeal is liable to be dismissed being time barred.

13. Even otherwise, on merits also, the appellant does not have any case. The judgment passed by the trial Court shows non-application of judicious mind and rather points out towards inability of the trial Judge to marshal the facts and interpret the law properly. The judgment and decree passed by the trial Court are not sustainable. Learned District Judge, Sri Muktsar Sahib was fully justified in accepting the appeal and dismissing the suit. The reasoning given by learned District Judge, Sri Muktsar Sahib is quite apt and appropriate. When as per the own case of plaintiff, Smt.Pritam Kaur – defendant No.2 had purchased 1/2 share in the house belonging to defendant No.3 – Jagtar Singh, brother of the plaintiff, she acquired ownership rights in the house to the extent of 50% and she is justified in asking Nagar Council to enter her name in the ownership/assessment register to that extent and rather officials of Nagar Council, Sri Muktsar Sahib are duty bound to enter her name. The plaintiff is nobody to dictate terms and say that name of Smt.Pritam Kaur be not entered in the municipal record. If the plaintiff has got any problem in residing in the house where defendant No.2 Smt.Pritam Kaur is putting up, he can get his share

partitioned if so advised in accordance with law. As rightly observed by learned District Judge, Sri Muktsar Sahib while disposing of the appeal that Civil Court has no right to interfere in the working of municipal council, the plaintiff has not been able to make out a case for grant of permanent injunction in his favour.

14. There is absolutely no merit in the appeal, as such on account of being time barred and devoid of merit, the same stands dismissed.

13.12.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No