

RSA-186-2019 (O&M)

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

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**RSA-186-2019 (O&M)
Decided on : 05.12.2023**

Kashmir Singh

... Appellant(s)

Versus

Piyare Lal

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Johan Kumar, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

CM-433-C-2019

This is an application filed under Section 151 CPC for seeking condonation of delay of 360 days in re-filing the present appeal.

For the reasons set out in the application, the same is allowed. Consequently, the delay of 360 days in re-filing the accompanying appeal is condoned.

CM application stands disposed of.

CM-435-C-2019

Prayer in this civil miscellaneous application is for condoning the delay of 02 days in filing the present appeal.

In view of the averments made in the application, which is duly supported by an affidavit, delay of 02 days in filing the appeal is hereby condoned.

CM application stands disposed of.

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1. Present Regular Second Appeal (RSA) has been filed against

the concurrent finding of dismissal of suit, filed by the plaintiff (appellant herein).

2. Plaintiff filed a suit for declaration by pleading that he is in actual physical continuous cultivating possession of agricultural land bearing Khewat No.87, Khatoni No.191, Rect. No.10, Killa No.21(3-7), 22(8-0), Rect. No.14, Killa No.2(7-4), 3(7-4), (8-0), 9/1(3-9), 13(9-7), 14/1(2-9), total measuring 49 Kanal 00 Marla, situated within the revenue estate of village Jhuppa, Tehsil & Distt. Palwal. Plaintiff also pleaded that he is in possession for the last more than 80 years i.e. from the time of his father – Surjan Singh, as a *Gair Maurusi* tenant. Plaintiff being successful successor of his father, who was never ejected from the suit property, is thus, owner in possession of the land by virtue of Sections 5 & 8 of the Punjab Tenancy Act, 1887, and Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952. Thus, suit has been filed because the revenue entries reflect name of the defendants, and same requires to be corrected in favour of the plaintiff.

3. In the written statement, it is pleaded by the defendant that the suit land has already been sold out to Arjun Singh about five years back, who is owner in possession of the suit property. Surjan Singh (father of the plaintiff) has no right in suit land/property.

4. The learned trial Court after taking note of the pleadings and the evidence available on record, dismissed the suit primarily on the ground that Piyare Lal (defendant) had filed a suit *qua* suit property in the present appeal, alleging that he is owner of the suit land and defendant therein i.e. Surjan Singh was in illegal possession of the same. Said suit was decreed in favour of the Piyare Lal (defendant herein). However, it was held in the

judgment dated 09.03.2009, that said Surjan Singh was a licensee, who was cultivating the land for its improvement.

Findings recorded by learned trial Court in paragraphs No.11 & 12, are reproduced as under:-

“11. A perusal of Ex. P-1, jamabandi of year 1999-2000 shows that Surjan Singh was recorded as gair maurusi tenant of suit property. To the same effect are the jamabandies of year 1994-95 (Ex. P-2), 1989- 90 (Ex. P-3), 1984-85 (Ex. P-4), 1974-75 (Ex. P-5), 2004-05 (Ex. P-6).

12. On the other hand, Ex. D-2 is the statement dated 31.01.2008 which shows that Pyare Lal had filed a suit qua suit property alleging that he is the owner of suit property and defendant was in illegal possession of the same. The suit was decreed and Pyare Lal was declared to be owner of suit property. Defendant was held to be in illegal possession of suit property and he was directed to hand over possession of suit property to Pyare Lal. Then an appeal was filed by Surjan Singh against Pyare Lal which was dismissed vide order dated 09.03.2009. Pyare Lal was held entitled to recover possession of suit property. Ex. D-6 shows that vide rapat no. 252 dated 23.01.2010 possession of suit property was delivered to Sumer Singh, GPA holder of Pyare Lal. These documents are sufficiently proving that the issue qua ownership and possession of suit property has already been decided by the courts of law. It was held in the judgment dated 09.03.2009 that Surjan Singh was a licensee who was cultivating the land for improvement. It was claimed that he was not a tenant in possession of suit land on payment of rent. It was also found that earlier also the predecessors of Pyare Lal had filed petition for ejectment of Surjan Singh and vide order dated 12.05.1977 an order of ejectment was passed against him.”

5. Said findings have been reiterated by the learned First Appellate

Court also in its judgment in paragraphs No.8 & 9, which are as under:-

“8. *Having heard learned counsel for the plaintiff and examined the material with due care and circumspection and I reached to the findings. A bare perusal of the file shows that the instant suit has been filed on the basis of Jamabandi for the year 1999-2000 which is Ex.P1 in which Surjan Singh son of Fota Singh has been shown, as Gair Morusi, in the column of rent has been mentioned as Bila Lagan Bawajah Notod. Similary, the same entries have been repeated in the jamabandi for the year 1994-95 Ex.P2, 1989-90 Ex.P3, 1984-85 Ex.P4, 1973-74 Ex.P5 and similar entry have been repeated in the jamabandi for the year 2004-05 Ex.P6.*

9. *It is the case of the defendants that Pyare lal earlier filed a suit for declaration to declare him as owner in possession against Surjan Singh father of the plaintiff which had been decreed, vide judgment and decree, dated 31.1.2008 Ex.D2 & Ex.D3, in which defendant in this case was declared as owner of the suit land and held the Surjan Singh as in illegal possession and the defendant in that case Surjan Singh was directed to hand over the possession of the land in dispute to Pyare lal plaintiff in that case within 14 days from the date of the order. Thereafter, appeal was filed by Surjan Singh and the same had also been dismissed, vide judgment and decree dated 9.3.2009 Ex.D4 and Ex.D5 and then, vide Rapat Rojnamcha no.252 Ex. D6, the possession was delivered to Pyare Lal through his general power of attorney Ex.D1 Sumer Singh and accordingly, vide Rapat Rohnamacha no.300 Ex.D7, the Girdawari had been corrected in favour of the defendant Pyare lal. The land had been sold by Pyare Lal defendant.”*

6. After hearing learned counsel the appellant (plaintiff) at length and perusing the findings recorded by the learned Courts below in the impugned judgments & decree, I do not find any substantial reason to

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deviate from the view point taken by the Courts below.

Even no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

For the reasons recorded herein-above, the instant appeal *sans* merits, and thus, **dismissed**. The judgment(s) & decree passed by both the Courts below are hereby affirmed.

(SANJAY VASHISTH)
JUDGE

December 05, 2023

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*