

265

2023:PHHC:055909

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

CM-3046-3047-C-2022

CM-3048-C-2022

CM-3049-C-2022

in/and RSA-952-2022 (O&M)

Date of decision: 11.04.2023

PAAL KAUR (SINCE DECEASED) THROUGH HER LR ...Appellant(s)

VS

BHAJAN KAUR AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Abhimanyu Kalsy, Advocate,
For the appellants.

ARUN MONGA, J. (ORAL)

CM-3046-C-2022

Application is allowed, as prayed for, subject to all just exceptions.

CM-3047-C-2022

For the reasons stated in application, same is allowed and delay of 10 day in re-filing the appeal stands condoned, subject to all just exceptions.

CM-3048-C-2022

For the reasons stated in application, same is allowed and delay of 1 day in filing the appeal stands condoned, subject to all just exceptions.

CM-3049-C-2022

This is an application seeking impleadment of legal representative(s) of deceased appellant-Paal Kaur.

For the reasons stated in application, same is allowed. Persons, as mentioned in para 3 of the application, are ordered to be impleaded as legal representatives of deceased appellant.

Registry to take steps accordingly.

Main case

For convenience, parties herein are described as per recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, original defendant Paal Kaur (since deceased and now represented through LRs) was in second appeal before this Court assailing learned trial Court judgment and decree dated 07.04.2012, as upheld by learned First Appellate Court vide its judgment and decree dated 17.09.2019, partly *ex parte* decreeing the suit of respondents No.1 to 5 herein/plaintiffs for possession and permanent injunction.

3. Facts as noticed by Courts below, are as under:

“Briefly stated, it is contended that plaintiff Bhajan Kaur along with son Buta Singh were owners in possession of plot measuring 626 sq. yds. As shown red in the site plan and fully described in the head note of the plaint. The plaintiffs being owners in possession of plot as detailed above, agreed to sell the plot measuring 400 sqyds to the defendant at the rate of Rs.30/-per sq. yds and has to pay the sale consideration of plot nos. 21 and 22 as detailed above measuring 400 sqyds in installments and the possession of plot measuring 400 sq. yds was delivered to the defendants at the time of agreement but the defendant has taken the possession of area of 226 sq. yds more than the area purchased by the defendant i.e. 400 sq. yds. The defendant has not paid the installments to the plaintiffs as agreed in spite of repeated demands by their attorney Gurdev Singh. Consequently, the plaintiffs have cancelled the agreement of the defendant. The defendant took the possession of plot measuring 626 sq. yds. in spite (sic instead) of plot measuring 400 sq. yds. Now the defendant is in illegal possession of plot measuring 626 sq. yds. and has not paid the amount to the plaintiffs. Plaintiff has also requested to the defendants to hand over the vacant possession of the plot in dispute but the defendant has not handed over the vacant

possession of the plot in dispute rather she claims her right over the suit property as owner. The title of the suit property is with the plaintiffs and the plaintiffs are entitled to recover the possession of the plot in dispute which is in possession of the defendants without any right, title or interest. Two days before filing the suit the defendant made threats to the plaintiff to alienate the suit property by delivering the possession of the suit property.”

4 Upon notice, defendant appeared and filed written statement taking preliminary objections regarding maintainability, locus standi, cause of action, concealment of material facts etc.

4.1. On merits, it was submitted that plaintiffs are neither owners nor in possession of the suit property. The property was purchased from Saudagar Singh in the presence of Gurdev Singh (presently attorney of plaintiffs) and Des Raj, partner of M/s Dhamotia and Company partly and remaining was purchased from Gurdev Singh. It is admitted that plot measuring 626 sq. yds. was purchased from plaintiff and Saudagar Singh. The possession of 626 sq. yds was delivered to defendant. Rest of the averments of plaint were denied.

5. Based on the rival pleadings, following issues were framed:

- 1. Whether plaintiffs are entitled to possession as prayed for? OPP*
- 2. Whether plaintiffs are entitled to permanent injunction, as prayed for? OPP*
- 3. Whether suit is not maintainable in the present form? OPD*
- 4. Whether plaintiffs have no locus standi to file the instant suit? OPD*
- 5. Whether plaintiffs have no cause of action to file the suit? OPD*
- 6. Whether plaintiffs have not come to the Court with clean hands? OPD*
- 7. Whether plaintiffs are guilty of concealment of relevant and material facts from this Court? OPD*
- 8. Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issue No.1 was decided in favour of plaintiffs and against defendant and issue no.2 was partly decided in favour of plaintiffs and partly in favour of defendant. Issues No.3 to 7 were decided against defendant and in favour of plaintiffs. Consequently, suit of plaintiffs was partly decreed *ex parte* and defendant was directed to handover the possession of the suit property, fully described in the head note of the plaint, to plaintiffs immediately and further restrained defendant from delivering the possession of the suit property to anybody else except plaintiffs.

8. Aggrieved, defendant-appellant preferred first appeal which was dismissed on the point of limitation by learned First Appellate Court vide impugned judgment and decree dated 17.09.2019, resulting in instant Regular Second Appeal before this Court.

9. In its judgment, the learned Trial Court, *inter alia*, observed as below:

“9. Defendant in the present case had firstly appeared and filed written statement and contested the stay application but thereafter when the case was adjourned for evidence of the plaintiffs, defendant did not come present in the Court and was proceeded against ex-parte. However, in the written statement defendant has taken stand that she has purchased whole of the suit land i.e. 626 sq. yds from the plaintiff & Saudagar Singh and is in possession of the same but in order to prove her ownership over the land measuring 626 sq. yds i.e. suit property, defendant has not brought on record any document even at the time of filing the written statement. The plaintiffs are alleging that vide agreement only, it was agreed to sell 400 sq. yds out of total suit property to the defendant for consideration of Rs.30/- per square yard that too in installments. Although, the plaintiffs have not placed on record any document vide which the parties have entered into an agreement but on the other hand defendant also did not produce any document of ownership of suit land i.e. 626 sq. yds. Rather in para no.2 of the written statement, the defendant has mentioned that she is in possession of whole of the suit land but corresponding jamabandi Ex. P3 placed on record by the plaintiffs duly proves that plaintiffs are till date recorded as

owners of the suit property. If the defendant has become the owner as per her version, the defendant was required to produce and prove on record the document of title of suit property but defendant chooses not to appear. The whole evidence of the plaintiffs has remained unrebutted and unchallenged. Through unrebutted and unchallenged evidence, plaintiffs have duly proved that they are still recorded as owners of the suit property but admittedly they are not in possession.

10. *So far as the question of issuing injunction against the defendant restraining her from alienating the suit property and further delivering of possession is concerned, the copy of the jamabandiEx.P3 placed on record by the plaintiffs clearly proves that name of the defendant do not find mention anywhere in jamabandi. Hence, defendant is not recorded owner of the suit property. It is admitted principle of law that an owner can only sell the property. Certainly, when defendant is not recorded as owner, she cannot make any alienation of suit property and accordingly no injunction can be given to the plaintiffs restraining the defendant from alienating the suit property.*

11. *In view of my above discussion, issue no.1 is decided in favour of the plaintiffs and against the defendant and issue no.2 is partly decided in favour of the plaintiffs and partly in favour of the defendant and partly against the plaintiffs and partly against the defendant.”*

10. Learned First Appellate Court non-suited appellant herein on the ground of limitation and refused to condone the colossal delay of six years. Relevant part thereof is reproduced herein for ready reference:

“5. The perusal of file reveals that against the judgment and decree date 07.04.2012 passed by the Court of Sh. Amit Malhan, the then learned Civil Judge (Jr. Divn.), Ludhiana, vide which the suit of the respondents/plaintiffs had been ex parte decreed, the present appeal has been preferred by the appellant on 13.09.2018. The reason given by the applicant is that the earlier counsel had told her not to appear in the Court and that she will be called as and when required and under the said mistaken belief, she did not appear and the suit was ex parte decreed and that later on application under Order 9 Rule 13 CPC was filed but that too was dismissed due to the fault of the earlier counsel and after engaging new counsel, application for restoration of application under Order 9 Rule 13 CPC was filed and thus due to the fault of previous counsel, he could not file the appeal within stipulated time. There is a delay of six years in filing the appeal. The only reason assigned by the applicant is that her earlier counsel had asked her not to come in the Court on each and every date of hearing and that she will be called as and when required but

the same appears to be concocted one as she had engaged previous counsel in the main suit and was thus within the knowledge of pendency of the suit and it was her duty to pursue the same. Thus the reason assigned by the applicant for not filing the appeal within stipulated period does not appear to be plausible. Hon'ble Supreme court of India has held in "P.K.Ramchandran Vs. State of Kerala, 1997 (4) RCR (Civil) 242" that law of limitation has to be applied with all its rigour when the statute so prescribes, the Courts have no power to extend the period of limitation on equitable grounds. In "H.Dohil Constructions Co. (P) Ltd. vs. Nahar Exports Ltd and another, 2014 (4) RCR (civil) 653" , the Hon'ble Supreme Court of India has held that in the absence of bonafide reasons, the application for condonation of delay should be strictly construed assumes significance. If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

6. Thus as a result of the above said discussion and the law discussed above, this Court is of the considered view that applicant has failed to prove on record any sufficient reason for not filing the appeal within the stipulated period. Consequently, the application under Section 5 of the Limitation Act for condonation of delay in filing the appeal, stands dismissed."

11. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record, inasmuch as learned trial Court lost sight of the fact that suit property was the only property of appellant/defendant, which was purchased with the hard-earned money of husband of appellant, namely, Piara Singh. Further, learned trial Court erred in law as the entire sale consideration stood paid and where entire sale consideration is paid, possession cannot be taken back. Furthermore, learned First Appellate Court fell in grave error in not condoning the delay in filing the first appeal, especially when delay had been properly explained and appellant was never negligent in appearing and defending her case. Appellant was a senior citizen and illiterate lady, suffering from various age-related ailments. It

was the fault of her previous counsel, who instructed her not to come to Court.

12. To my mind, the reasons mentioned for condonation of delay (reproduced above) do not fall within the expression ‘sufficient cause’. Rather it is an inordinate and unexplained delay of six years in the filing the first appeal. I do not have any hesitation in holding that the delay of 6 years in filing the first appeal is not *bona fide* but deliberate one and can be termed as a dilatory tactics. This is a case where the delay is due to gross negligence and deliberate inaction lacking *bona fides* on the part of the appellant. That being so, the first appeal was indeed suffering from inordinate delay of 6 years, which was not satisfactorily explained and facts on record did not constitute ‘sufficient cause’ held by learned First Appellate Court to condone the delay in filing the appeal and to consider the same on merits. No fault can be found with the approach of learned First Appellate Court, with which I am in agreement.

13. To my mind, the learned First Appellate Court’s judgment under challenge has been rendered after due and correct appreciation of record facts and circumstances of the case. There seems no perversity or illegality therein. No interference is thus called for in this second appeal.

14. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

15. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

- 16. Pending application/s, if any, shall also stand disposed of.
- 17. No order as to costs.

(ARUN MONGA)
JUDGE

11.04.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No