

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-4995-C-2021 in/and
RSA-1144-2021 (O&M)
Date of decision: 18.05.2023

Karnaljit Singh

...Appellant

VS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Amaninder Singh Sekhon, Advocate,
For the appellant.

Ms. Anju Sharma Kaushik, DAG, Punjab.

ARUN MONGA, J. (ORAL)

CM-4995-C-2021

This is an application seeking condonation of delay of 928 days in filing the appeal.

Learned counsel for the applicant submits that appellant is old aged person and is suffering from diabetes. He is also having heart malfunction regarding which stunt was inserted and due to severe diabetes, finger of right foot was also amputated. Therefore, appellant could not engage a counsel and file appeal. He further submits that delay caused in filing the appeal is *bona fide* and not intentional.

Heard.

The colossal delay of 928 days is inordinate and not satisfactorily explained. The explanation is insufficient. No ground worthy of interference is made out.

Dismissed. Even on merits, appellant has no case at all.

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, plaintiff is in second appeal before this Court assailing learned trial Court judgment and decree dated 01.12.2016, as upheld by learned First Appellate Court vide its judgment and decree dated 26.05.2017, *ex parte* dismissing the suit filed by appellant herein under Section 39 of the Specific Relief Act for allotment and allocation of land to plaintiff/his father/ancestors etc..

3. Briefly stated, facts as noticed by Courts below are as under:-

“1) The factual background of the plaintiff's suit is that the total land owned and possessed by the ancestors of the poor plaintiff as made by the defendants was much more than 933 kls, 5 marlas situated in the are of Chak SP-36/Teh. Pak-Patan District Mintgumri. Despite their level best efforts, none of the ancestors or the father of the plaintiff was put into the actual possession of such lands left by them in the Pakistan and the land situated in the India meant for, the migrants. When the plaintiff's ancestors, parents and others failed to get the justice and could not be put in the possession of any piece of land despite the express assurances that they have already been allotted the land out of the pool of the land left by the muslims meant for poor Indian/Hindustanies which /who had been forced to leave the soil now falling in the share of the Pakistan but in fact, none other said land has been given to the plaintiff his father or the ancestors and thus the allurements and assurances of the defendants have proved nothing but false utterances. The plaintiff exerted, exhausted rather failed was left with no other alternative but to avail the services of the counsel. He had been making the representations at his own level seeking the justice, but failed. The plaintiff has been repeatedly requesting the defendants to do what is needful and required dehorning the technical provisions of law, but after alluring and assuring him for the days, months and then years, the defendants have turned a deaf ear to the requests of the plaintiff.”

4. Upon notice, defendants appeared but they failed to file their written statement despite availing ample effective opportunities and ultimately their defence was struck off by Court order.

5. Thereafter case was fixed for evidence of the plaintiff. In evidence plaintiff examined himself as PW-1 and closed his evidence.

6. Case was not fixed for evidence of the defendants as defence of defendants was already struck off. Accordingly, case was fixed for arguments.

7. After hearing learned counsel for parties, suit of plaintiff was dismissed *ex parte* by learned trial Court vide impugned judgment and decree dated 01.12.2016.

8. Feeling aggrieved, plaintiff went in appeal, which was also dismissed by learned First Appellate Court, resulting in instant Regular Second Appeal by plaintiff before this Court.

9. Learned counsel for appellant submits that learned trial Court non-suited appellant on the ground that the person who prepared Punjabi version/translation of Jamabandi Ex. P2 has died and does not bear signatures of the person who prepared the same. He further submits that if translation of jamabandi is wrong then translator is to be called into witness box or learned Court could appoint any person to get the true translation. He further argues that learned trial Court dismissed the suit on the ground that no person from Pakistan has been called in order to prove Jamabandi Ex. P-1. Jamabandi is *per se* admissible under Section 35 read with Section 78 of Indian Evidence Act, 1872, is the contention.

9.1. Learned counsel for appellant would further argue that Jamabandi is certified by the officials of Land Records Department, Punjab, Jalandhar and duly signed by officials of the department.

10. Para 8 of learned Trial Court judgment is as under:-

“8. I have heard the learned counsel for the parties and have gone through the documents placed on file. It is pertinent to mention here that the plaintiff himself during his cross-examination deposed that he cannot read Urdu Script. He does not know who is in possession of the whole land. He further deposed that there was letter received from the government for taking claim of their land but at present he is having no such letter. He never went Pakistan nor he saw the land in question. He also admitted that neither his father nor grand-father claimed for the land. He further admitted that he does not know where the land was allotted in the Punjab. He sent the letter to the Government but he is not having the same with him. He further admitted that they did not call the jamabandi from Pakistan. Ex. P2 is not attested by any official nor it is a original copy rather it is Photostat copy. Moreover, the person who prepared the Punjabi version of jamabandi Ex.P2 has been died and Ex.P2 the Punjabi version of Jamabandi does not bear the signatures of the person who prepared the same. The defendants did not file any written statement nor lead any evidence as their defence was struck off by the Court, but the plaintiff has to prove its own case and stand on his own legs, but the plaintiff failed to prove its case by leading cogent and convincing evidence in his favour.”

10.1 In its judgment, learned First Appellate Court, *inter alia*, observed as below:

“10.The Learned counsel for the appellant/plaintiff has argued that the appellant/plaintiff has filed the suit for allotment of land to the plaintiff/appellant, in view of their land left by their ancestral Pakistan. It is not proved by the appellant/plaintiff, which land was left in Pakistan. The Learned counsel for the appellant/plaintiff could not point out any infirmity to assail the impugned judgment. The appellant/plaintiff could not prove how he is entitled to the grant of land, in view of any land left by them in Pakistan. Therefore, there is no error in the impugned judgment and decree and no ground is made out to interfere with the same. Thus, the present appeal is hereby dismissed.”

11. Having perused the impugned judgments, my considered opinion is that the submissions made before learned Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same.

11.1. No new arguments have been raised other than reiteration of the stand taken before learned Courts below.

12. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the ex-parte evidence adduced by the plaintiff-appellant.

13. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

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. Instant regular second appeal is dismissed both on the ground of delay as well as on merits.

17. Pending application/s, if any, shall also stand disposed of.

18. No order as to costs.

(ARUN MONGA)
JUDGE

18.05.2023
Vandana

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