

RSA-1037-2020 (O&M)
DECIDED ON: 14.09.2023

.....APPELLANTS

VERSUS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Rakesh Kumar Sharma, Advocate
for the appellants.

VIKRAM AGGARWAL, J (ORAL)

CM-3381-C-2020

Prayer in the present application is for condonation of delay of 87 days in re-filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 87 days in re-filing the appeal is condoned.

CM-3382-C-2020

Prayer in the present application preferred under Section 5 of the Limitation Act is for condonation of delay of 537 days in filing the appeal. It has been averred in the application that when the applicants-appellants engaged a new counsel for filing a suit for permanent injunction, it came to their notice that the previous appeal had been dismissed vide judgment and decree dated 15.11.2017. Thereafter, a certified copy of the judgment was obtained and the counsel in the High Court was contacted. In the process, a delay of 537 days occurred in filing the appeal.

Learned counsel for the applicants-appellants has submitted that the delay in filing of the appeal occurred on account of information not having been given by their counsel about the dismissal of the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of applicant-appellant No.2-Pawan, and in view of the submissions made by learned counsel, the application is allowed and the delay of 537 days in filing the appeal is condoned.

RSA-1037-2020

1. This is plaintiff's second appeal filed against the judgment and decree dated 15.11.2017 passed by the Court of District Judge, Faridabad vide which the appeal filed by the appellants-plaintiffs challenging the judgment and decree dated 21.12.2015, passed by the Court of Civil Judge, (Junior Division), Faridabad was dismissed. By way of judgment and decree dated 21.12.2015, the Court of Civil Judge, (Junior Division), Faridabad had dismissed the suit for permanent injunction filed by the appellants-plaintiffs.

2. The appellants-plaintiffs filed a suit for permanent injunction restraining the respondents-defendants from interfering into the peaceful possession and working of the appellants-plaintiffs in plot measuring 354 Square Yards and other land (fully described in the plaint) situated within the revenue estate of Village Baroli, Tehsil and District Faridabad. The case set up by the appellants-plaintiffs was that the suit property had been inherited by them from their father Sh. Ramji Lal. It was joint between the parties and by mutual consent, the land was got partitioned between the co-sharers. Other co-sharers had constructed their house in their share. When the appellants-plaintiffs started raising construction in their plot and collected building material etc., the respondents-defendants started causing interference and also tried to dispossess them. Under the circumstances, the suit was filed.

3. The suit was resisted by the respondents-defendants. Preliminary objections with regard to maintainability, cause of action, the appellants-

plaintiffs not having approached the Court with clean hands, true facts having been suppressed etc. were raised. On merits, it was stated that the appellants-plaintiffs had already sold their share in the suit property and under the circumstances they were not in possession of the suit property. It was averred that the site plan filed by the appellants-plaintiffs was false and the disputed property was being used by the respondents-defendants.

4. No replication was filed. From the pleadings of the parties, following issues were framed:-

“1. Whether the plaintiff is entitled for a decree for permanent injunction as prayed for? OPP

2. Whether the suit of the plaintiff is not maintainable? OPD

3. Whether the plaintiff has no cause of action to file the present suit? OPD

4. Whether the plaintiff has not come to the court with clean hands and concealed the material facts? OPD

5. Relief.”

5. Parties led their respective evidence.

6. The trial Court dismissed the suit filed by the appellants-plaintiffs holding that the appellants-plaintiffs had not led any cogent evidence to prove his case. The appeal filed against the said decision was also dismissed leading to the filing of the present appeal.

7. I have heard learned counsel for the appellants-plaintiffs.

8. Learned counsel for the appellants-plaintiffs has submitted that the Courts below have gravely erred in non-suiting the appellants despite cogent evidence having been led by the appellants to prove their case.

9. I have considered the submissions made by learned counsel for the appellants-plaintiffs.

10. Before advertng to the merits of the appeal, it would be essential

to observe that that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including *Hero Vinoth (minor) versus Seshammal 2006 (5) SCC 545*, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing substantial question of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in *Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil) and Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92* respectively.

11. Coming to the appeal in hand, both the Courts have recorded concurrent findings of facts against the appellants-plaintiffs. Apart from the bald statement of the appellants-plaintiffs, no other evidence was led by the appellants-plaintiffs to prove their case. No other witness stepped into the witness box. The revenue record Ex. P-1 which was the Jamabandi for the years 2001-2002 and Ex. D-2 which was the Jamabandi for the years 2006- 2007 revealed that a number of persons were recorded as co-sharers in a large tract of land. The respondents-defendants were also recorded as co-sharers. The appellants-plaintiffs inherited the rights of one Ramji Lal as per mutation Ex. P-4 and Ramji Lal, was also a co-sharer. Both parties were, therefore, co-sharers in the entire land. In so far as possession is concerned, none of the co-sharers was recorded to be in exclusive possession of any portion of the land. The appellants-defendants relied upon site plan Ex.P-5

which was not proved in evidence. No witness not even the draftsman, who is alleged to have prepared the site plan, was examined. Even PW1-Devender, who is appellant-plaintiff No.1, claimed that a mutual partition had taken place but no written document was executed. He could not tell the total number of co-sharers. He was unable to disclose as to how much land had been sold and how much was left. Under the circumstances, both the Courts held that neither the appellants-plaintiffs nor the respondents-defendants had been able to prove their exclusive possession over the suit property. However, since it was for the appellants-plaintiffs to prove their case by leading cogent evidence, the Courts non-suited them. I do not find any illegality in the concurrent findings of facts recorded by the Courts below.

In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

14.09.2023

Prince Chawla

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