

107 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-4046-2016 (O&M)
Decided on:-28.08.2023

Hari Ram

....Appellant..

VS.

Sube Singh and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Jai Vir Yadav, Sr. Advocate with
Ms. Parul Sharma, Advocate and
Mr. Nitish Sharma, Advocate,
for the appellant.

HARKESH MANUJA J. (Oral)

CM-10431-C-2016

Prayer in this application is for condonation of delay of 36 days in
refiling the appeal.

In view of the contents of the application, duly supported by an
affidavit, sufficient cause has been made out for the purpose of condoning
the delay of 36 days in refiling the appeal. Accordingly, delay of 36 days in
refiling the appeal is condoned.

Main case

1. By way of present appeal, challenge has been laid to the
judgments and decrees dated 01.11.2012 and 14.12.2015 passed by the
Courts below, whereby, suit for declaration and permanent injunction, filed
at the instance of respondent No.1-plaintiff, has been decreed.

2. Very briefly, based on registered sale deed dated 29.11.1994,

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respondent No.1-plaintiff sought declaration, claiming himself to be owner in possession of the suit property with further declaration that the subsequent sale deed dated 18.07.2006, executed by respondents No.4 and 5/defendants No.1 and 2 was not binding upon his rights, besides, seeking permanent injunction with a prayer for restraining the appellant as well as proforma respondents from interfering into his peaceful possession over the suit land.

3. Upon notice, appellant-defendant No.3 appeared and contested the suit while claiming himself to be owner in possession of the suit property on the basis of sale deed dated 18.07.2006.

4. The trial Court vide its judgment and decree dated 01.11.2012, found respondent No.1-plaintiff to be owner in possession of the suit land based on registered sale deed dated 29.11.1994, executed by respondents No.1 and 2 in his favour. Aggrieved thereof, appellant-defendant No.3 filed first appeal before learned Additional District Judge, Narnaul, which came to be dismissed vide judgment dated 14.12.2015.

5. Impugning the aforementioned judgments and decrees, learned counsel for the appellant submits that no doubt, sale deed dated 29.11.1994, executed in favour of respondent No.1-plaintiff qua the suit property was prior in time, however, a simple suit for declaration without claiming possession, filed at the instance of respondent No.1-plaintiff was not maintainable as his possession over the suit land was not proved. No other argument has been addressed.

6. I have heard learned counsel for the appellant and gone through the paper book.

7. A perusal of record shows that no such plea was specifically or

categorically raised in the written statement relying upon Section 34 of Specific Relief Act, 1963 (hereinafter referred to as “1963 Act”), as regards the non-maintainability of the suit filed at the instance of respondent No.1-plaintiff, besides it, neither any issue in this regard was ever pressed upon. In the absence of any such plea having been raised by appellant-defendant No.3 that a simple suit for declaration, filed at the instance of respondent No.1-plaintiff was not maintainable, the same cannot be permitted to be agitated, at this belated stage, as it would cause serious prejudice to the substantial rights of respondent No.1-plaintiff and thus, was required to be raised at the earliest. Once, no such plea as regards Section 34 of 1963 Act, was raised at the instance of appellant-defendant No.3 in the written statement, the same would be deemed to have been waived of.

8. Moreover, the validity of the sale deed dated 29.11.1994 executed by defendants No.1 and 2 in favour of respondent No.1-plaintiff has been proved on record followed by concurrent finding of fact by the Courts below. Further, as per the contents of the said sale deed, respondent No.1-plaintiff was handed over possession of the land purchased by him in pursuance to the said transaction.

9. In view of the discussion made hereinabove, thus, finding no illegality & perversity in the impugned judgments & decrees passed by the Courts below, the present appeal is hereby dismissed.

10. Pending application(s), if any, stand(s) disposed of.

28.08.2023

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(HARKESH MANUJA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No