



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-2033-C-2024 in/and
RSA-547-2024 (O&M)
Reserved on: 24.07.2024
Pronounced on: 29.07.2024

Hari Ram deceased through his LRs
Vs.
Dharambeer and another

.... Applicant/appellant
.... Respondents

CORAM: HON’BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Mukesh Yadav, Advocate, for the applicant/appellant.

DEEPAK GUPTA, J.

Along with the main RSA, the applicant/appellant has moved an application bearing CM-2033-C-2024 under Section 5 of the Limitation Act, 1963 to condone the delay of 1703 days in filing the appeal.

2. It is contended by Id. counsel that by way of impugned judgment and decree dated 27.05.2019 passed in Civil Appeal No.237RT of 2015-2017 [CNR No.HRNR01-003942-2015], the First Appellate Court of Id. Additional District Judge, Narnaul has reversed the well reasoned judgment and decree dated 16.10.2015 of the trial Court passed in Civil Suit No.45 RBT [CIS No.CS/2295/2013]. It is submitted that the case was contested by the father of the appellants and that appellants were not aware regarding the pendency of the proceedings and only after the house of the appellants has been demolished that they came to know regarding the judgment and decree dated 27.05.2019, as no notice was ever received by them in any execution petition. They then applied for certified copy of the judgments on 19.01.2024, arranged the funds and contacted the counsel and all this has caused delay of 1703 days in filing the present appeal.

3. After hearing learned counsel for the applicants-appellants, this Court is not convinced about the huge delay of 1703 days in filing the appeal.

4. A perusal of the impugned judgment of the First Appellate Court would reveal that it was passed on 27.05.2019 in the presence of counsel for the plaintiff (*respondent therein*); and the appellants before this Court. Neither in the application nor in the supporting affidavit, it is disclosed by the applicants-appellants as to when the father of the applicants-appellants expired. To the specific query put to the learned counsel, he was unable to tell the date of death of the father of the applicants-appellants.

5. In these circumstances, the ground to condone the huge delay of 1703 days as pleaded by the applicants-appellants is absolutely not convincing. As such, the application under Section 5 of the Limitation Act for condonation of delay of 1703 days in filing the appeal is hereby rejected.

6. Although, the main case i.e. RSA-547-2024 deserves to be dismissed being barred by limitation. As the application for condonation of delay in filing the appeal, has been dismissed as above, but even if the appeal is considered on merits, this Court does not find any substance therein.

7.1 As per the pleaded case of the plaintiff (*appellant herein*), his father Omkar was owner of Khasra No.144 measuring 01 Bigha 17 Biswas prior to the consolidation, in which he had constructed his residential house. It was pleaded that after consolidation, the new Khasra numbers were allotted as khasra No.82(0-14) and 83(0-6) in the name of father of the plaintiff-Omkar; and grandfather of the defendants namely Mangtu Ram in equal share and in this way, plaintiff and defendants were owner in possession to the extent of $\frac{1}{2}$ share in the disputed house, which had not been partitioned by meets and bounds. Plaintiff pleaded further that in the jamabandi for the year 1963-64 and subsequent jamabandis, the disputed house comprised in khasra Nos.82 and 83 was being shown in the name of Mangtu Ram i.e. grandfather of the defendants, which are wrong and illegal entries and that taking advantage thereof, defendants wanted to dispossess them. Plaintiff prayed for decree for declaration as well as perpetual injunction.

7.2 Defendants in their written statement denied any concern of the plaintiff or his father with Khasra No.144 or that in lieu of the said Khasra number, new Khasra Nos.82 and 83 were allotted. Defendants pleaded further that khasra No.82(0-14) and khasra No.83(0-6) were allotted solely in the name of Mangtu Ram,

the predecessor-in-interest of the defendants and ever-since then, they have been in physical possession of the same, with which plaintiff has no concern. They prayed for dismissal of the suit.

7.3 Necessary issues were framed. After taking the evidence produced by the parties, although learned trial Court decreed the suit on 16.10.2015, but the First Appellate Court reversed the finding of Id. trial Court. It was held by the First Appellate Court that plaintiff had failed to prove any concern whatsoever with the suit property and that trial Court had failed to appreciate the evidence in right perspective. By accepting the appeal, suit was dismissed.

8.1 While dismissing the appeal, it was observed by the First Appellate Court that though plaintiff pleaded the two parties to have a common ancestor but failed to place on record any pedigree table to support this claim. Even the oral evidence produced by the plaintiff did not support this claim, inasmuch as PW-2 Chiranji Lal as well as PW-3 Ram Chander admitted during their cross examination that plaintiff and defendants were not connected with each other in the pedigree table. Thus, neither the oral evidence supported the case of the plaintiff nor there was any documentary evidence so as to show that plaintiff and defendants were related by any common ancestor.

8.2 Learned First Appellate Court on the basis of evidence on record further found that new Khasra Nos. 82(0-14) and 83(0-6) could not be connected with the old Khasra No.144, inasmuch as in place of Khasra No.144 Min, the Khatauni paimaish which was placed on record, showed that the new numbers 169 and 348 had been allotted. After appraising the revenue record, learned First Appellate Court came to the conclusion that by no stretch of imagination, the revenue record produced by the plaintiff could connect the plaintiff with the suit property.

8.3 It was further found by the First Appellate Court that the relief of decree of declaration and perpetual injunction only was sought despite the fact that it is the defendants, who were found to be in exclusive possession of the suit property as was admitted by their own witness namely Chiranji Lal during the cross-examination. It was also observed that consolidation proceedings had taken place long back and neither the plaintiff nor his father had ever challenged the correctness thereof, in case the new numbers had been allotted exclusively to Mangtu Ram i.e.

predecessor of the defendants.

9. After going through the impugned judgment passed by the First Appellate Court, this Court does not find any reason whatsoever to interfere in the well reasoned finding of fact as recorded by the Id. First Appellate Court, based on proper appreciation of evidence on record. No substantial question of law is found to be involved.

10. Consequent to the aforesaid discussion, the present appeal is hereby dismissed on merits as well as being barred by limitation.

29.07.2024 <i>Vivek</i>	(DEEPAK GUPTA) JUDGE
<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>