

2024:PHHC:047448

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

1.RSA-3051-1994 (O&M)

Sh.Harbhajan Singh and another

....Appellants

Versus

Tara Singh and others

..Respondents

2.RSA-2043-1995 (O&M)

Sh.Harbhajan Singh and another

....Appellants

Versus

Sh.Malkiat Singh and another

..Respondents

Date of decision: 08.04.2024

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. K.S.Dadwal, Advocate for the appellants
Mr.Salil Bali, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. With the consent of the learned counsel representing the parties, two connected Regular Second Appeals shall stand disposed of by this common order.

2. In both the appeals, the appellants are the plaintiffs. They filed two different civil suits; civil suit no.42 of 09.02.1987 for the grant of decree of declaration that they are owners in possession of the suit land located in Village Pandori Mail and for the grant of decree of declaration that the sale deed dated 21.01.1987 executed by defendant no.2 and 3 in favour of defendant no.1 is illegal, null and void thus,

ineffective upon the rights of the plaintiffs. The second suit i.e civil suit no.23 of 1987 was filed by the same plaintiffs for the grant of decree of permanent injunction with respect to property located in Bairo Kangri. In substance, the dispute is with regard to the property left behind by Sh.Santa Singh, who was the common ancestor of the parties. He had four sons namely Sh.Harbhajan Singh, Sh.Didar Singh, Sh.Malkiat Singh and Sh.Avtar Singh. Sh.Harbhajan Singh and Sh.Didar Singh are the plaintiffs in both the suits. It is the plaintiffs' case that Sh.Avtar Singh was given in adoption to Sh.Milkha Singh, brother of Sh.Santa Singh. Defendant no.1 claims to be a bonafide purchaser of the property. Both the suits were consolidated and disposed of vide a common judgment passed by the trial court on 08.02.1991. The trial court partly decreed the plaintiffs' suit for the grant of decree of declaration and it was declared that Sh.Avtar Singh was adopted and he was not entitled to any share in the property left behind by Sh.Santa Singh. However, the Will propounded by Sh.Harbhajan Singh and Sh.Didar Singh was disbelieved. Consequently, it was held that Sh.Harbhajan Singh, Sh.Didar Singh and Sh.Malkiat Singh will get 1/3rd share each in the property left behind by Sh.Santa Singh. Consequently, the sale deed to the extent of 1/4th share was declared ineffective.

3. The plaintiffs filed the first appeal on 23.03.1991. At the time of final arguments in the appeal, objection was taken by the respondents that the plaintiffs were required to file two appeals. The First Appellate Court held that two appeals were required to be filed as

two separate decrees were drawn in both the suits. Thus, the First Appellate Court held that the finding recorded in the injunction suit operates as res judicata against the plaintiffs. The First Appellate Court also made casual observation with regard to the validity of the Will.

4. At the advice of the counsel, the plaintiffs filed a separate appeal on 02.02.1995, which has been dismissed on the ground of delay.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the requisitioned lower court record.

6. Learned counsel representing the appellants submits that the First Appellate Court has erred in dismissing both the appeals without appreciating the facts and circumstances of the present case. He submits that appellants being rustic villagers were not expected to know that two separate appeals were required to be filed. He submits that the moment the first appeal was dismissed by the First Appellate Court on 16.09.1994, the appellants (plaintiffs) consulted a counsel to file the Regular Second Appeal. They were advised to file the first appeal in the second suit also, which was filed on 02.02.1995. He submits that a valuable right of the appellants is sought to be defeated on a hyper technical ground. Hence, this Court should remand the matter back to the First Appellate Court to decide the appeals afresh.

7. Per contra, the learned counsel representing the defendants submits that the delay in filing the appeal is nearly 4 years in the injunction suit, which should not be condoned.

8. This Court has considered the submissions made by the learned counsel representing the parties.

9. It appears that the learned counsel representing the plaintiffs was not clear about the legal position to the effect that if in two separate suits, two separate decrees have been passed, then two separate appeals are required to be filed. However, that cannot be the only reason to defeat the plaintiffs' right to file the appeal. The First Appellate Court is the last court for appreciation of facts and evidence. It is a valuable right available to a party to assail the judgment and decree, which has been passed by the trial court. Section 5 of the Limitation Act, 1963 enables the First Appellate Court to condone the delay if sufficient explanation for delayed filing of the appeal has been furnished. In this case, the plaintiffs filed the first appeal in the injunction suit when they were advised by the High Court counsel to file the appeal. In these circumstances, the First Appellate Court was expected to take a holistic view of the matter while appreciating the predicament of the plaintiffs. The view taken by the First Appellate Court is myopic.

10. Though the learned counsel representing the respondents is correct in contending that the First Appellate Court has also made observation with regard to the validity of the Will, however, it is evident that the aforesaid discussion is in a casual manner, particularly when the court had formed an opinion that the appeal was barred by principle of res judicata on account of failure of the plaintiffs to file the appeal against the judgment and decree passed in the connected suit. The First Appellate Court is required to re-appreciate the evidence thoroughly.

However, the First Appellate Court has just made an observation while upholding the findings of the trial court of doubting the correctness of the Will.

11. Keeping in view the aforesaid facts, both the appeals are allowed. The judgment passed by the First Appellate Court on 16.09.1994 as well as on 28.07.1995 are set aside while remitting the matter back to the First Appellate Court to decide both the appeals afresh. The delay in filing the first appeal in the injunction suit shall stand condoned. The parties through their counsels are directed to appear before the First Appellate Court on 08.05.2024.

12. All the pending miscellaneous applications, if any, are also disposed of.

08.04.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE