



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1378-2020(O&M)
Reserved on:14.10.2024
Pronounced on: 18.10.2024

MADAN LAL TYAGI

... APPELLANT

Vs.

ANAND AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Gaurav Deep Goyal, Advocate,
for the appellant.

DEEPAK GUPTA, J.

CM-3987-C-2020

Application is allowed as prayed for.

CM-3989-C-2020

This is an application to condone the delay of 693 days in filing the appeal.

For the detailed reasons, as mentioned in the application, which is supported by an affidavit of the appellant, the same is allowed and the delay of 693 days in filing the appeal is hereby condoned.

CM-4077-C-2020

This is an application to condone the delay of 48 days in re-filing the appeal.

For the reasons explained in the application, which is supported by an affidavit of Mr. Gaurav Deep Goyal, Advocate, the same is allowed and the delay of 48 days in re-filing the appeal is hereby condoned.

RSA-1378-2020

Plaintiff of the case is against the concurrent findings of the Courts below. Suit filed by the plaintiff seeking decree of declaration, joint possession and permanent injunction regarding property in dispute was

dismissed by the trial Court on 18.11.2014. The appeal filed by the plaintiff has been dismissed by the First Appellate Court on 09.09.2017.

2.1 As per the case pleaded by the plaintiff, Ram Swarup had three sons namely Ramphal, Tika Ram and Sita Ram. Sita Ram is the father of the parties. Said Sita Ram had performed two marriages. Plaintiff was born out of the wedlock of Sita Ram with Kailasho; whereas, defendants were born out of the wedlock of Sita Ram with his second wife Shakuntla. Sita Ram died in 1989, whereas his brother Ramphal had died in 2001 as unmarried and issueless. It was alleged that Shakuntala, having evil eye on the property of Ramphal, filed a collusive suit bearing Civil Suit No.407 of 1996, which was decreed on 11.10.1996. According to plaintiff, though that suit was instituted by six plaintiffs, but in the judgment and decree, name of Shardha was deleted without any reason. Mutation No.2644 was also entered and sanctioned by Assistant Collector, 1st Grade, Gannaur in the name of five plaintiffs including the plaintiff of the present case namely, Madan Lal. It was also his allegation that neither he (plaintiff) Madan had engaged any advocate nor had filed any power of attorney. It was further alleged that even Ramphal had never appeared before the Court so as to suffer the decree. Aforesaid judgment and decree and the consequent mutations are alleged by the plaintiff to be null and void, claiming that properties of Ramphal and Sita Ram are required to be mutated as per the Hindu Succession Act. He also prayed for consequential relief of joint possession.

2.2. The stand taken by the defendants was that judgment and decree dated 11.10.1996 was passed with the active participation and consent of the plaintiff. Mutation was accordingly sanctioned. It was further averred that after getting the land by way of mutation No.2544 and 2664, on the basis of the impugned decree dated 11.10.1996, plaintiff had sold his entire share on 24.09.2008 by virtue of sale deed No.1765 to one Munish Kumari, regarding which mutation No.3028 had been sanctioned in favour of

said Munish Kumari and that plaintiff was not in possession of any inch of the suit land. Prayer was made for dismissal of the suit.

2.3 Necessary issues were framed. Evidence produced by the parties was taken on record. After appreciating the evidence, trial Court dismissed the suit on 18.11.2014 and the First Appellate Court affirmed the judgment of the trial Court on 9.9.2017.

2.4. It has been found by the Courts below that plaintiff failed to prove that he was not party to the Civil Suit No.407 of 1996; or that suit was not instituted by him; or that he had not signed the plaint or Vakalatnama or that the suit was filed or decided at his back. Plaintiff had failed to discharge the onus in this regard. His bald statement could not be believed in the absence of any cogent evidence to support his averments. It was further observed that plaintiff failed to produce any evidence that the signature appearing on the plaint and Vakalatnama etc. of Civil Suit No.407 of 1996 were not appended by him, as he had not examined any handwriting and fingerprint expert in this regard. It was further found that there was ample evidence to show that Ramphal i.e. defendant of Civil Suit No.407 had appeared before the Court and had filed his Vakalatnama by engaging Sh. Harender Singh, Advocate, to contest his suit. Finding no merit in the case, both courts returned concurrent findings of facts.

3. Ld. counsel for the appellant could not convince this Court regarding any fault in the findings of the facts as recorded by the Courts below. The findings of facts, as recorded by the Courts below, are found to be based upon proper appreciation of evidence. This Court does not find any reason, whatsoever, so as to interfere in the said finding of facts based upon the proper appreciation of evidence. No substantial question of law is found to be involved.

5. As such, finding the present appeal to be devoid of any merit, the same is hereby dismissed.

18.10.2024

Vivek

(DEEPAK GUPTA)
JUDGE

	Whether speaking/reasoned?	Yes
	Whether reportable?	No