

RSA-4616-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA-4616-2019 (O&M)
Reserved on : 04.04.2024
Date of Decision : 29.04.2024

Banwari Lal

....Appellant

VERSUS

Dulla & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate for the appellant.

ALKA SARIN, J.

CM-13113-C-2019 & RSA-4616-2019

1. The present appeal has been preferred by plaintiff No.1-appellant herein challenging the concurrent findings recorded by the Trial Court vide judgment and decree dated 31.08.2013 and the First Appellate Court vide judgment and decree dated 17.02.2018.
2. Brief facts relevant to the present *lis* are that the plaintiffs (appellant and proforma respondent Nos.13 to 19 herein) filed a suit for declaration and permanent injunction claiming themselves to be co-owners in possession to the extent of their shares in total land measuring 117 kanals 14 marlas and challenged mutation No.2341 dated 22.05.1956 and mutation No.3327 dated 03.10.1979 as illegal, null and void and consequential relief

of permanent injunction restraining the defendant-respondent Nos.1 to 12 from alienating the suit land. The suit was contested by the defendant-respondent Nos.1 to 12 by filing a written statement raising various preliminary objections. It was averred in the written statement that the plaintiffs had earlier also filed three suits on similar facts and cause of action. The first suit was instituted on 05.09.1994, which was dismissed on 17.11.1994; the second suit was instituted on 12.08.1994, which was dismissed on 18.01.1995 and the third suit was instituted on 07.03.2005, which was dismissed on 19.09.2005 and the appeal against the said judgment and decree was dismissed on 28.04.2008 and as such the plaintiffs were in a habit of filing unnecessary suits. Replication was not filed.

3. On the basis of the pleadings of the parties the following issues were framed by the Trial Court :

1. Whether the plaintiffs are entitled to the decree for declaration as well as permanent injunction as prayed for ? OPP
2. Whether the plaintiffs have got no locus standi to file the present suit ? OPD
3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the suit is time barred ? OPD
5. Whether the plaintiffs have concealed the true and material facts ? OPD
6. Whether the present suit is barred by principles of res judicata ? OPD

7. Whether the plaintiffs have affixed less court fee ?

OPD

8. Relief.

4. The Trial Court vide judgment and decree dated 31.08.2013 dismissed the suit. Aggrieved by the same, an appeal was preferred by the plaintiffs which was also dismissed vide judgment and decree dated 17.02.2018. Hence, the present regular second appeal which has been preferred only by plaintiff No.1-appellant.

5. Learned counsel for the plaintiff No.1-appellant would contend that the plaintiffs (appellant and proforma respondent Nos.13 to 19 herein) are owners in possession of the suit land and that both the Courts erred in dismissing the suit of the plaintiffs. It is further the contention that the defendant-respondent Nos.1 to 12 have no concern with the suit land and mutation No.2341 dated 22.05.1956 and mutation No.3327 dated 03.10.1979 were illegal, null and void. It is further the contention of the learned counsel that the suit land had been mortgaged by the predecessor-in-interest of the plaintiffs which was redeemed on 15.05.1956.

6. I have heard the learned counsel.

7. In the present case the present appeal itself has been preferred after a delay of 409 days. A perusal of the application for condonation of delay being **CM-13113-C-2019** reveals that the same is totally devoid of any details as to why the delay occurred in filing the appeal. It is trite that every day's delay needs to be explained. It is also well settled that the Courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However, the Court while allowing such an

application has to draw a distinction between delay and inordinate delay for want of bonafides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. It has time and again been held that when mandatory provisions are not complied with and that delay is not properly, satisfactorily and convincingly explained, the Court cannot condone the delay on sympathetic grounds alone. In the present case the application for condonation of delay is totally bereft of any details whatsoever.

8. Even on merits the present appeal deserves to be dismissed inasmuch as the plaintiffs appear to be habitual litigants and had been filing multiple litigations against the defendant-respondent Nos.1 to 12. The first suit instituted by the plaintiffs was on 12.08.1994; the second suit was instituted on 05.09.1994; the third suit on 07.03.2005 and the fourth suit on 17.04.2014. All the suits were dismissed. The third suit seeking declaration by way of adverse possession was instituted on 07.03.2005 was dismissed vide judgment and decree dated 19.09.2005 and the appeal against the said judgment and decree was also dismissed on 28.04.2008. Dissatisfied with the said litigation, a fourth civil suit was filed on 17.04.2014 which was dismissed on 02.05.2016. The present suit was instituted on 02.08.2008. Both the Courts found that there was no evidence on record to show that the suit land had been mortgaged and redeemed by the predecessor-in-interest of the plaintiffs. Further still, it was concurrently found that the parties are co-sharers and there can be no injunction against a co-sharer. It is apt to note that one of the suits filed by the plaintiffs was for adverse possession. Once

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the plaintiffs had filed a suit on the ground of being in adverse possession, it necessary entails that the ownership of the defendant-respondent Nos.1 to 12 was admitted. Having lost the said litigation, not only before the Trial Court but also before the First Appellate Court, it does not now lie in the mouth of the plaintiffs to challenge the ownership of the defendant-respondent Nos.1 to 12.

9. In view of the above, no question of law, much less any substantial question of law, arises in the present case. The present appeal is devoid of any merit and there is also no plausible explanation for the extraordinary delay in filing the present appeal. Both the application for condonation of delay (CM-13113-C-2019) and the present appeal are dismissed. Pending applications, if any, also stand disposed off.

29.04.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO