

CR-6204-2023(O&M)

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

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CR-6204-2023 (O&M)

Date of Decision: 15.01.2024.

Smt. Shanti through LRs

...Petitioners.

Versus

Ramesh Chand through LRs and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Gaurav Singla, Advocate for the petitioners.

Sukhvinder Kaur, J.

CM-19386-CII-2023

This application has been filed for bringing on record the LRs of deceased/ petitioner-Smt. Shanti alleging therein that she had expired on 04.04.2023.

Keeping in view the averments made in the application, which is duly supported by an affidavit, her legal heirs as mentioned in Para No.4 of the application, are allowed to be impleaded on record, subject to all just and legal exceptions, for the purpose of representation in the present revision petition.

Amended memo of parties has been taken on record.

CM stands disposed of.

Main case

By way of present revision petition, the petitioner/ defendant

has challenged the order dated 20.04.2023 passed by the First Appellate Court, vide which the appeal No.CA-22 of 2021 titled as 'Smt. Shanti Vs. Sh. Ramesh Chand since deceased through LRs and others' in the Civil Suit No.35 of 2015 titled as 'Ramesh Chand Vs. Smt. Shanti and others', alongwith application for condonation of delay in filing the appeal were dismissed.

2. Brief facts of the case are that deceased Ramesh Chand father of the contesting respondents filed a suit for declaration and permanent injunction claiming himself to be owner in possession of 1/8th share in the suit property as detailed in the head note of the plaint. It was alleged that plaintiff is one of the legal heirs of deceased Bhagwat and has inherited the suit property along with other persons. The brothers of the plaintiff, namely, Omi and Bhagwat purchased the suit property from Soni and Giriraj vide a sale deed dated 10.05.1993. Mutation No.869 was entered and sanctioned in favour of his brothers and actual physical possession of the suit property was also delivered to them. Bhagwat died on 11.08.1994 leaving behind his legal heirs as per the mutation of inheritance bearing No.2335. Bhagwat never leased out the suit property to anybody. But the entries in cultivation column of the jamabandies are contrary to factual position at the spot thereby showing defendant No.1 as the lessee in possession of the suit property. As per the plaintiff, none of the defendants cultivated the suit property in the capacity of lessees at any point of time. Omi, husband of defendant No.1 and father of defendants No.2 to 7 expired on 16.12.2011. Through this suit plaintiff challenged the lease deed No.389 dated 10.05.1993 executed by Soni and Girraj in favour of defendant No.1 on the

ground that on the same date suit property was purchased by Omi and Bhagwat from Soni and Girraj. In the lease deed the lease amount and the conditions of lease are not given. Under the garb of the said lease deed, defendant wants to interfere into the peaceful and lawful ownership and possession of the plaintiff over the suit property and also wants to change the nature of the suit property by raising construction over the same.

3. The said suit of respondent No.1/plaintiff was partly decreed by the trial Court vide judgment and decree dated 11.03.2016. Thereafter, the petitioners/defendants filed appeal before the First Appellate Court alongwith application for condonation of delay which were dismissed vide order dated 20.04.2023. Hence the present revision petition has been filed by the petitioners/ defendant No.1.

4. Learned counsel for the petitioner/ defendant No.1 has submitted that the petitioner had filed the appeal before the learned Additional District and Sessions Judge, Palwal on 30.11.2021 after delay of about 2000 days alongwith the application for condonation of delay. He has contended that the specific reasons for delay had been disclosed in the said application, which has been wrongly dismissed vide impugned order dated 20.04.2023. He has further contended that right of First Appeal is substantive right and delay should have been condoned when the petitioner is an old, illiterate, rustic and pardanashin lady. The First Appellate Court should have given an opportunity to the petitioner to lead the evidence and for the said purpose issues were required to be framed and delay should have been condoned. The First Appellate Court had not touched the merits of the case. The Trial Court had committed a serious error by holding that

there is doubt regarding the execution of the lease deed in question. He has contended that the plaintiff/ respondent intentionally did not incorporate the decree in question in the revenue records in order to keep the petitioner in dark and the factum of the decree in question came into the notice and knowledge of the petitioner only on 21.11.2021, when the plaintiff/ respondent tried to take illegal and forcible possession of the suit land from the petitioner.

5. I have heard learned counsel for the petitioner and have gone through the relevant record.

6. The judgment and decree by the trial Court was passed on 11.03.2016. It is the admitted fact that the appeal along with the application for condonation of delay was filed before the First Appellate Court on 30.11.2021, after delay of more than 05 years and 06 months. The sole ground for condonation of delay that has been taken is that the appellant/petitioner was an illiterate, rustic and pardanashin lady and she was not informed by her counsel about the outcome of the case.

7. From the perusal of the judgment of trial Court dated 11.03.2016, it transpires that the petitioner appeared as her own witness before the trial Court on 28.01.2016. In her affidavit which was tendered in her examination-in-chief, she did not mention that she was a pardanashin lady. She appeared to be well aware about the contents of the lease deed and had admitted that she had not paid any chokota/ rent. The other defendants are her sons and family members. Moreover, she was being represented by her counsel. So, it has been rightly observed by the First Appellate Court that it is highly improbable that since 11.03.2016 they remained silent for a

long period of five years and never bothered to enquire about the status from their counsel or from Court. Being a villager is not a sufficient reason for condoning the delay for such a long period, when it is also not the case of the petitioner that they were not having any means of communication.

8. Now this plea has been taken that the petitioner came to know about the judgment and decree of the trial Court only when plaintiff alongwith his musclemen visited the suit property to take forcible possession from her. But no date and time of the alleged incident has been disclosed. As there was no sufficient cause to condone the delay of such a long period of more than five years and six months, the delay in filing of the appeal was not condoned. So, consequently the appeal by the First Appellate Court was also dismissed being time barred and as such no findings were required to be returned on the merits of the case.

9. Thus, there being no illegality or infirmity in the impugned order no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

10. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

15.01.2024.
komal

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No