

2024:PHHC:052341
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Date of decision:18.04.2024

Balbir Singh and others ...Appellants

Vs.

2. **RSA-1250-2023(O&M)**

Vs.

Sandeep and others **...Respondents**

Present: Mr. P.K. Ganga, Advocate
for the appellants.

None for the respondents.

ANIL KSHETARPAL, J. (Oral)

CM-4661-C-2023 in RSA-1250-2023

1. This application has been filed under Section 151 CPC for condoning of delay of 120 days in filing the appeal.

2. In view of the grounds taken in the application, delay of 120 days in filing the appeal is condoned.

3. Civil Miscellaneous Application is allowed.

Main case

1. With the consent of the learned counsel representing the

appellants, these two connected regular second appeals arising from a common judgment passed by the trial Court as well as the First Appellate Court shall stand disposed of by this common order.

2. While filing the suit for grant of decree of possession as well as permanent injunction, the plaintiffs claim that their predecessor Mandroop Singh purchased the suit land from Karan son of Jeeta vide sale deed dated 08.02.1971. It is case of the plaintiffs that the defendants have encroached upon some part of the property by constructing a temporary shed. The defendants while contesting the suit also filed a counter-claim claiming that Mandroop Singh has sold the property in their favour by an oral sale for consideration of Rs. 1,100/- and in the alternative, they should be declared owners by way of adverse possession.

3. Both the Courts below on appreciation of evidence have decreed the suit. Though, the First Appellate Court has modified the decree while directing the defendants to remove the structure and hand over the possession to the plaintiffs.

4. Heard the learned counsel representing the appellants at length and with his able assistance perused the paper-book.

5. Learned counsel representing the appellants submits that the possession on the part of the defendants is admitted by PW1-Sandeep. He further submits that the possession of the defendants is very old and therefore, they have become owner by way of an adverse possession.

6. This Court has considered the submission.

7. The plaintiffs while filing the suit have themselves stated that the defendants have encroached upon some part of the disputed land by constructing a temporary shed. For this reason the prayer for grant of possession was also made. Hence, the admission of PW1-Sandeep, will not have any impact on the plaintiffs' case.
8. The next argument of the learned counsel is also not sustainable because the defendants/appellants are required to prove as to when their possession became open, hostile and adverse to the world. Moreover, it is the case of the appellants that they are in possession of the property pursuant to oral sale. In such circumstances, both the pleas of the defendants are contradictory.
9. Both the Courts below have already appreciated the evidence and the learned counsel representing the appellants failed to draw the attention of the Court to any substantive error on account of mis-leading or non-leading of the evidence.
10. Hence, no ground to interfere is made out.
11. Dismissed.

		(ANIL KSHETARPAL)	
		JUDGE	
18.04.2024	Whether speaking/reasoned :	Yes	No
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