



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

RSA No.1817 of 2022 (O&M)

Date of decision : 06.08.2024

Wariam Singh

....Appellant

Versus

Yashpal and another

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

**Present : Mr. B.S. Jatana, Advocate
for the appellant.**

PANKAJ JAIN, J. (ORAL)

CM No.6187-C of 2022

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 87 days in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 87 days in filing the instant appeal is hereby condoned.

RSA No.1817 of 2022 (O&M)

Plaintiff is in second appeal.



2. For convenience, the parties herein after are referred to by their original position in the suit i.e. the appellant as the plaintiff and the respondents as the defendants.

3. Plaintiff filed suit seeking declaration to the effect that the sale deed bearing Vasika No.764 dated 26th of May, 1999, sale deed bearing Vasika No.495, dated 21st of May, 2007 executed by defendant No.2 father of the plaintiff in favour of defendant No.1 selling share in the suit land as detailed out in Para No.1 of the plaint, are illegal, null and void. Further relief of permanent injunction was sought against defendant No.1.

4. As per the averments raised in the plaint, the plaintiff claimed that the sale deeds challenged by way of instant suit were result of fraud and impersonation. Defendant No.2 used to sell agriculture produce at the shop of defendant No.1. Defendant No.1 got thumb impressions of defendant No.2 on blank papers which have been misused to forge sale deeds. It was further claimed that the property was a joint Hindu Family Ancestral and Co-parcenary Property and there was no legal necessity for defendant No.2 to sell the same.

5. Defendant No.2 was proceeded *ex parte*. Defendant No.1 contested the suit defending the sale deeds. It was claimed that the



present suit has been filed at the behest of a local political leader who is trying to forcibly dispossess defendant No.1.

6. On the basis of the pleadings of the parties, the Trial Court framed the following issues:

- “i) whether the plaintiff is entitled to the relief of declaration as prayed for ? OPP
- ii) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP
- iii) Whether the present suit is not maintainable in the present form ? OPD
- iv) Whether the plaintiff has no cause of action to file the present suit? OPD
- v) Whether the plaintiff has concealed the material facts from the Court ? OPD
- vi) Relief.”

7. Returning findings on issues No.1 and 2, Trial Court found that the plaintiff failed to prove property in hands of defendant No.2 as a joint family property or co-parcenary property. The present suit has been filed without impleading other members of the family i.e. brothers of the plaintiff namely Jagir Singh, Wazir Singh and Ranjit Singh and thus the suit was bad for non-joinder of necessary parties.

8. In appeal preferred by the plaintiff, lower Appellate Court came to the conclusion that the plaintiff having failed to lead any



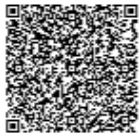
evidence to show the nature of the land and to prove the fraud claimed in the plaint, there was no reason to interfere in the findings recorded by the Trial Court and thus dismissed the appeal.

9. Mr. Jattana while assailing the impugned judgments and decree passed by the Courts below submits that defendant No.1 while appearing before the Court admitted in his testimony that the plaintiff as well as defendant No.2 used to sell their agriculture produce at his shop. Thus, Courts below ought to have taken cognizance of the said fact which points towards fraud played upon by defendant No.2 who sold the land of joint family without any necessity. He thus submits that the Courts below erred in dismissing the suit filed by the plaintiff.

10. I have heard counsel for the plaintiff and have carefully gone through records of the case.

11. Appellant-plaintiff claims land to be a joint Hindu family property.

12. As per settled law, in order to prove joint family property, it is incumbent upon the party who asserts joint Hindu family property to prove nucleus which led to acquisition of the said property. In the present case, there is no evidence to prove that there was a nucleus owned by the joint Hindu family which led to acquisition of the property in dispute. So far as source of the property is concerned, the



plaintiff himself admits in his cross-examination that property was purchased by defendant No.2 during his lifetime and was not inherited by him from his father. Thus, there being no evidence on record to prove the property to be ancestral or joint Hindu family property or a co-parcenary property, this Court is of the opinion that the plaintiff cannot question authority of defendant No.2 in alienating the suit property in favour of defendant No.1.

13. So far as the plea of fraud and misrepresentation is concerned, the only person who is in position to allege that the sale deeds are result of fraud and misrepresentation, is defendant No.2. Conspicuously he has opted not to contest the suit and was proceeded *ex parte*. Mere admission on part of defendant No.1 that the family members of the plaintiff and defendant No.2 used to sell their agriculture produce at his shop is not sufficient to prove fraud alleged to have been played by defendant No.1 upon defendant No.2.

14. In view of above, this Court finds no reason to interfere in the findings recorded by both the Courts below. Resultantly, instant Regular Second Appeal is ordered to be dismissed.

August 06, 2024
Dpr

(Pankaj Jain)
Judge

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