

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****117****RSA-748-2021 (O&M)****Date of Decision : 30.07.2024**

Haryana Wakf Board

....Appellant

VERSUS

Manohar Lal (deceased) through LRs

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jai Bhagwan, Advocate for the appellant.

ALKA SARIN, J. (Oral)**CM-3761-C-2021**

1. This is an application for condonation of delay of 246 days in re-filing the present appeal.

2. For the reasons stated in the application, the same is allowed. The delay of 246 days in re-filing the present appeal is condoned.

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3. Present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 05.08.2019 passed by the First Appellate Court reversing the judgment and decree dated 19.09.2015 passed by the Trial Court.

4. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein preferred the present suit for possession in respect of the property measuring 0 Kanal 10 Marlas (300 sq. yards) comprised in Khewat No.920 Khatauni Nos.1446 and 1447 and Khasra No.236 situated in Mauja Agroha, District Hisar on the ground that the defendant-respondent was in

illegal possession of the said land and had no concern whatsoever with the suit land as also for recovery of mesne profit @ Rs.10,000/- per month from 13.07.2011 alongwith interest @ 24% per annum. It was the case of the plaintiff-appellant that the property was Wakf property and had been notified as Wakf property vide notification dated 17.10.1970 issued by the Government of India. It was further the case that a legal notice dated 13.07.2011 had been served upon the defendant-respondent under Section 106 of the Transfer of Property Act, 1882 and he had been called upon to hand over vacant possession. However, since possession was not handed over, hence the present suit. The defendants raised various preliminary objections regarding cause of action, locus standi, maintainability, mis-joinder and non-joinder of necessary parties. On merits it was contended that Shamsuddin was not competent and duly authorized to file the suit. It was further averred that Manohar Lal, the husband of defendant No.1 and father of defendant Nos.2 and 3, was in possession of the land in question and had constructed the house over 40 years ago and after his death the defendant-respondents were in possession of the suit land and their possession was legal. On the basis of pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled to a decree for possession in respect of property measuring 0K-10M (300 Sq.yards) as detailed in the head note of the plaint on the grounds as alleged in the plaint ? OPP

2. If issue no. is proved whether the plaintiff is entitled to recover mesne profit @ 1000/- per month from 13.7.2011 alongwith interest @ 24% per annum till the date of handing over the possession of property in dispute ? OPP
3. Whether the suit of the plaintiff is not maintainable ? OPD
4. Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD
5. Whether the plaintiff has not come to the court with clean hands and suppressed the true and material facts of the case ? OPD
6. Relief.

5. The Trial Court decreed the suit vide judgment and decree dated 19.09.2015. Aggrieved by the same an appeal was preferred which appeal was accepted. Vide judgment and decree dated 05.08.2019 the suit, being a nullity and not maintainable, was dismissed by the First Appellate Court holding that the suit had been instituted against a dead person i.e. Manohar Lal who had died on 05.10.2011 and the suit was instituted on 07.10.2011 and the substitution of the defendant by his legal representatives could not be done under the provisions of Order XXII Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 nor provisions of Order VI Rule 17 CPC could be invoked. Aggrieved by the same the present regular second appeal has been filed by the plaintiff-appellant.

6. Learned counsel for the plaintiff-appellant would contend that though the suit was filed two days after the death of Manohar Lal, however, his legal representatives were duly impleaded and hence the suit was maintainable.

7. Heard.

8. In the present case, admittedly defendant – Manohar Lal – had died prior to filing of the suit. It is trite that a suit against a dead person is not maintainable. This Court in the case of **Smt. Anguri Devi & Ors. vs. Vikas Bajaj [2015(5) RCR (Civil) 646]** has held as under :

“14. Thus, from the above discussion, this issue is settled that wherever a suit is filed against a dead person who is the sole defendant in the suit, the suit would be a nullity and the legal representatives of the said defendant cannot be substituted with the help of Order 22 Rule 4 read with Section 151 of the CPC.”

9. In view of the admitted position that the suit was filed against a dead person, no fault can be found with the judgment and decree passed by the First Appellate Court. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

30.07.2024
jk

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