

RSA-925-2022 (O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHRSA-925-2022 (O&M)
Decided on : 19.03.2025

Kaushal Rani

..... Appellant

Versus

Sunita and another

..... Respondents

CORAM : **HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present : Mr. Ashok Kumar Khubbar, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)**CM-3005-C-2022**

Prayer in the present application filed under Section 151 CPC, is
for condonation of delay of 300 days in re-filing the accompanying appeal.

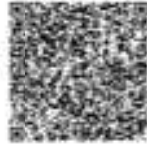
Heard.

For the reasons, mentioned in the application which is duly
supported by an affidavit, the same is allowed and the delay of 300 days in
re-filing the accompanying appeal is condoned.

CM-3006-C-2022

Prayer in the present application filed under Section 5 of the
Limitation Act, is for condonation of delay of 647 days in filing the
accompanying appeal.

Heard.



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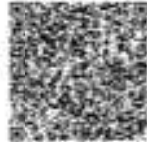
For the reasons, mentioned in the application which is duly supported by an affidavit, the same is allowed and the delay of 647 days in filing the accompanying appeal is condoned.

RSA-925-2022

This is plaintiff's second appeal against the judgment and decree dated 04.08.2017, passed by the Court of learned District Judge, Yamuna Nagar at Jagadhri, dismissing the appeal filed by the appellant-plaintiff against the judgment and decree dated 01.02.2014, passed by the Court of learned Civil Judge (Junior Division), Yamuna Nagar at Jagadhri vide which the suit for permanent injunction filed by the appellant-plaintiff was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

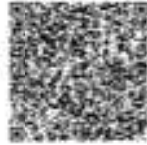
3. The plaintiff (Kaushal Rani) filed a suit for permanent injunction restraining the defendants from interfering in her peaceful and cultivating possession of half share of land measuring 22 *kanals* 07 *marlas* (fully described in the plaint), situated at Village Jathlana, District Yamuna Nagar (hereinafter referred to as 'the suit property'). One Chand Kiran was the owner of land measuring 29 *kanals* 15 *marlas* (comprising of the suit property measuring 22 *kanals* 07 *marlas* and another parcel of land measuring 07 *kanals* 08 *marlas*), situated at Village Jathlana, District Yamuna Nagar. He had two daughters namely Kaushal Rani (plaintiff) and Kamlesh Rani. Chand Kiran expired on 17.09.1993. After his death, Kamlesh Rani filed a Civil Suit No.208 of 1994 claiming that during the lifetime of Chand



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Kiran, Kaushal Rani had fraudulantly obtained a decree dated 29.03.1993 in her favour. The said suit was decreed on 21.08.2001 and the decree dated 29.03.1993 in favour of Kaushal Rani was set aside. Kamlesh Rani was declared as a joint owner in possession of the land which was a subject matter of the said suit. Plaintiff herein Kaushal Rani preferred an appeal against the said judgment and decree dated 21.08.2001 which was dismissed on 22.02.2002. Accordingly, mutation No.6143 was entered depicting both sisters to be the co-sharers in possession to the extent of half share each. A bitter litigation ensued as regards the mutation and ultimately the same was held to have been sanctioned in accordance with law. Kamlesh Rani sold her share to defendant No.1 Sunita vide sale deed dated 13.07.2007. The plaintiff Kaushal Rani, therefore, filed the present suit for permanent injunction claiming that she had been put in possession over the entire land when the decree dated 29.03.1993 was suffered by Chand Kiran in her favour and that despite the subsequent litigation initiated by Kamlesh Rani, she (Kaushal Rani) continued to be in exclusive possession of the land. However, on the strength of the sale deed, the defendants were threatening the plaintiff to interfere in her possession.

4. The defendants contested the suit. It was averred that after the sanction of mutation No.6143, Kamlesh Rani had taken possession of the suit property to the extent of her share. She executed a sale deed in favour of the defendant No.1 Sunita and put her in possession. In respect of the same, mutation was duly entered. It would be relevant to mention here that defendant No.2 was subsequently impleaded as defendant No.1 further sold the land measuring 04 kanals to him vide sale deed dated 27.04.2011.



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Defendant No.2 adopted the written statement filed by defendant No.1.

5. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled for a decree of permanent injunction as prayed for ? OP--

2. Whether the suit of the plaintiff is not maintainable ? OPD

3. Whether the plaintiff has concealed the true and material facts from the Court ?OPD

4. Relief.

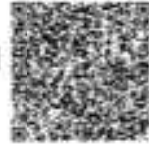
6. Parties led their respective evidence.

7. The trial Court dismissed the suit filed by the plaintiff and the appeal filed against the said decision was also dismissed, leading to the filing of the present regular second appeal.

8. I have heard learned counsel for the appellant.

9. Learned counsel for the appellant-plaintiff submits that both the Court have erred in dismissing the suit filed by the plaintiff. He further submits that despite the sale deed having been executed by Kamlesh Rani in favour of defendant No.1, the plaintiff continued to be in possession of the entire land and, therefore, the defendants had no right to interfere in the same.

10. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit. Admittedly, the entire suit property belong to Sh. Chand Kiran who was the father of the plaintiff and Kamlesh Rani. A decree was suffered by Chand Kiran in favour of the plaintiff on 29.03.1993 (Ex.P-2). However, the said decree was challenged in a suit filed by Kamlesh Rani. The said suit was decreed on the basis of a



statement (Ex.P-3) given by Sh. Chand Kiran. However, a suit was filed by Kamlesh Rani against the plaintiff which was decreed vide order judgment 21.08.2001 (Ex.DA). The decree dated 29.03.1993 was set aside and both Kamlesh Rani and the plaintiff Kaushal Rani were declared as co-sharers to the extent of half share each. An appeal was preferred by the plaintiff which was also dismissed vide judgment and decree dated 22.02.2002 (Ex.DC). Accordingly, mutation No.6143 (Ex.DF) was entered depicting the plaintiff and Kamlesh Rani as owners in possession to the extent of half share each in the entire suit property. It has also come on record that litigation also ensued as regards the said mutation but the mutation was eventually upheld.

11. Kamlesh Rani then sold a part of her share in favour of defendant No.1 Sunita vide sale deed dated 13.07.2007 and is stated to have delivered possession to defendant No.1. Apart from the self serving statement of the plaintiff who stepped into the witness box as PW2, she practically produced no evidence to support her claim that she was in possession of the entire property. The First Appellate Court found that from the Jamabandi (Ex.P5), it is apparent that even before the name of Kamlesh Rani was incorporated as a co-sharer with the plaintiff, the plaintiff was not in exclusive possession of the land as she was a co-sharer over a part of land of a much larger holding and, therefore, under the circumstances no injunction against the defendants could be sought, who for all intents and purposes were her co-sharers (defendant No.2 having stepped into the shoes of defendant No.1). It is equally true that no evidence was produced to prove that Kamlesh Rani had ever come in physical possession of any specific portion of the land. She could not, therefore, give physical possession of any



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portion to defendant No.1 nor could defendant No.1 give possession to defendant No.2. However, since partition had not taken place, the sale by Kamlesh Rani in favour of defendant No.1 and then by defendant No.1 in favour of defendant No.2 would be treated as a sale of undivided share in the joint property.

12. It also came on record that even the plaintiff had sold her share in favour of Bimlesh Devi and Saroj Bala vide sale deed dated 20.06.2008 (Ex.DH) during the pendency of the suit. The position of the vendees of the plaintiff, who did not come forward to be arrayed as parties, would be no better than that of defendant No.2 as both would be vendees of co-sharers. Under the circumstances, no injunction could be granted.

13. In the considered opinion of this Court, both the Courts examined the matter from the correct perspective and rightly declined the relief of injunction. In view of the aforesaid discussion, I do not find any reason to interfere with the said well reasoned findings returned by both the Courts below. No question of law, therefore, arises for the consideration of this Court.

In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

Pending application(s), if any, stand(s) disposed of accordingly.

19.03.2025
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(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No