

(2015) 01 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh

Case No: RSA No. 1249 of 2012

Jaswanti and Others

APPELLANT

Vs

Gram Panchayat and
Others

RESPONDENT

Date of Decision: Jan. 12, 2015

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 8, Order 22 Rule 3, 151
- Limitation Act, 1963 - Section 5

Citation: (2015) 178 PLR 665

Hon'ble Judges: Amit Rawal, J.

Bench: Single Bench

Advocate: Krishan Singh, for the Appellant

Final Decision: Dismissed

Judgement

Amit Rawal, J.

CM No. 3323-C of 2012

1. This is an application under Order 22 Rule 3 read with Section 151 of Code of Civil Procedure for bringing on record the legal representatives of Ramji Dass son of Sh. Mirwa Ram. It is stated that Ramji Dass has expired on 25.08.2009. There are no other legal representatives as mentioned in the paragraph 3 of the application.

2. For the reasons stated in the application, the legal representatives of Ramji Dass are directed to be brought on record for the purpose of prosecuting the appeal.

3. The application is accordingly allowed subject to all just exceptions.

CM No. 3322-C of 2012

4. This is an application under Section 5 of the Limitation Act seeking condonation of delay of 899 days in filing the present appeal. It is stated that the suit was filed under Order 1 Rule 8 CPC of the Code of Civil Procedure in representative capacity. Ramji Dass is stated to have been expired on 25.08.2009 whereas the judgment and decree of the Lower Appellate Court was passed in 2010. Still the appellants i.e. legal representatives of Ramji Dass did not know about the outcome of the judgment. It is only in the month of January in the year 2012 when the Gram Panchayat started numbering the eucalyptus trees. Legal representatives of the Ramji Dass acquired knowledge of the decree and thereafter the present Regular Second Appeal had been filed in the month of February, 2012. In support of the contentions, the auction notice of 392 trees of Safeda (Annexure A-1) which was held in October, 2012 is also annexed. The reasoning and the explanation giving in seeking the condonation of delay of 899 days in filing the present appeal is plausible and does not suffer from any mala fide or ignorance.

5. Learned counsel appearing on behalf of appellants has relied upon judgment of Hon"ble Supreme Court of India in [Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others](#), and contends that the case of the applicant-appellants was within the principles laid down by the Hon"ble Supreme Court of India in Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others 2014(1) WBLR 381 as there was no intentional delay on the part of the applicants in approaching this Hon"ble Court.

6. For the reasons stated above, the application which is duly supported by affidavit, delay of 899 days in filing the appeal has been condoned.

7. The application stands disposed of.

Main Case

8. The appellant-plaintiffs are in Regular Second Appeal against the impugned judgment and decree of the trial Court and as well as Lower Appellate Court, whereby Lower Appellate Court though has partly allowed their plea. The appellant-plaintiffs in the year 2006 filed the suit under Order 1 Rule 8 of Code of Civil Procedure in representative capacity against the Gram Panchayat and other defendants i.e. members of the Panchayat for seeking permanent injunction restraining the defendants from interfering in their peaceful, actual continuous possession and as well as from cutting and removing the trees standing in the evacuee properties and other inhabitants of Ward No. 13, Sadhaura, measuring 161 Kanals 6 Marla bearing Khewat/Khatauni No. 1966 min/2276 min, Khasra No. 95/2 Min (161- 6), situated within the revenue estate Abadi of town Sadhoura-155, Tehsil Jagadhri, District Yamuna Nagar as per Jamabandi for the year 1995-96. The Gram Panchayat was proceeded ex parte.

9. The trial Court on the basis of the evidence found that the plaintiff was not in possession nor brought in any evidence with regard to the number of trees or the land in

which the trees were alleged to be standing. It also observed that Khasra No. 95 was big chunk of land measuring 161 Kanals 6 Marla and no specific portion had been shown to be under the cover of trees. It also relied upon the report of Local Commissioner wherein it was mentioned that the land measuring 16 Kanals 2 Marlas eucalyptus trees are standing but neither the exact number of trees had been mentioned nor the ownership thereof and thus dismissed the suit.

10. Lower Appellate Court, in appeal filed by the plaintiff, after examining the oral and documentary evidence found that the evidence led by the plaintiffs in support of the claim un rebutted because the defendants were proceeded ex parte before the trial Court yet and trial Court dismissed the suit on the ground that the plaintiff did not place on record any documents showing the possession of the suit property much less the number of trees standing on the land and ownership of plaintiff over the trees. It further found that there was no dispute that abadi land vested in Gram Panchayat and whatever the land occupied by the occupants for various inhabitants of the Village for the residence or for Kuraris and Goharas belong to them, but however observed that vacant land whether in the form of the street or otherwise vests in the Gram Panchayat. Lower Appellate Court further held that the ownership of the trees would also vest in the Gram Panchayat. While giving the aforementioned findings, lower Appellate Court granted the injunction in favour of the plaintiffs by restraining the defendants from interfering into the peaceful possession of land and their houses or baras out of the land of Khasra No. 95/2 which has been described as Gair Mumkin Abadi and in possession of the village.

11. Lower Appellate Court thus with aforementioned modification dismissed the appeal of the appellant-plaintiff.

12. I do not find any illegality and perversity in the findings recorded by the Courts below who particularly allowed the appeal filed by the appellants granting any injunction restraining the respondents qua the houses and baras. The plaintiffs did not prove on record by leading direct and cogent evidence much less documentary evidence that they were in possession of the trees standing on the land and the ownership of the trees vested in them. In the absence of the evidence, no injunction can be granted. Since they have been able to prove to be in possession of their houses. Lower Appellate Court has granted the injunction in support of the said houses.

13. No substantial question arises for adjudication of the present appeal.

14. Accordingly, the present appeal is dismissed.