
(2013) 08 P&H CK 0891
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 2379 of 2011

Smt. Bohati and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2013) 08 P&H CK 0891

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Monika Thakur, for the Appellant; Deepak Girotra, AAG, Haryana for Respondent Nos. 1 and 2, Mr. Deepinder Ahlawat, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Legal representatives (LRs) of original plaintiff Ganga Ram (since deceased) have filed this revision petition u/s 115 of the CPC (in short-CPC) impugning judgment dated 22.01.2011, passed by learned District Judge, Faridabad, thereby dismissing application (Annexure P-1) filed by the petitioners for condonation of delay in filing the first appeal. Suit filed by plaintiff Ganga Ram was partly decreed by the trial court vide judgment and decree dated 10.09.2008 for permanent injunction, whereas the suit regarding relief of declaration of ownership of the plaintiff over the suit land was dismissed. Petitioners, as LRs of original plaintiff, filed first appeal in the Court of learned District Judge on 26.03.2010 along with application (Annexure P-1) for condonation of delay in filing the appeal. The petitioners alleged that the plaintiff misunderstood the judgment of the trial court that the suit had been decreed. Even document writer contacted by him asked him to get the decree registered. Accordingly, the plaintiff got the decree registered on 29.09.2008. Thereafter, the plaintiff kept on going to the revenue officials for entering of mutation. Ultimately Ganga Ram fell ill and remained indoor patient since 09.01.2009 till 26.02.2009 and died on 27.02.2009. Thereafter, wife of Jodha Ram-petitioner no. 2 (son of

plaintiff Ganga Ram) also fell ill and remained hospitalized in March and April 2009. Consequently, the petitioners could not inquire about the case and remained under the impression that the suit had already been decreed. Now, the petitioners contacted the revenue officials for inheritance mutation of plaintiff Ganga Ram and only then they learnt that the suit had been decreed partly only.

2. Respondents, by filing replies (Annexures P-2 and P-3), controverted the averments made in the application.

3. Learned lower appellate court, vide judgment dated 22.01.2011, dismissed the petitioners' application for condonation of delay in filing the first appeal. Feeling aggrieved, petitioners have filed this revision petition assailing the said order.

4. I have heard counsel for the parties and perused the case file.

5. Counsel for the petitioners reiterated the stand taken in application Annexure P-1. I have carefully considered the same. There was delay of almost 11/2 years in filing the first appeal. Even if averments made in the application (Annexure P-1) are taken at face value, the same are not sufficient to condone the long and inordinate delay of almost 1 1/2 years in filing the first appeal. The plaintiff was being represented by counsel in the trial court. Consequently, it cannot be said that the plaintiff was not aware of his suit having been dismissed regarding the relief of declaration. The plaintiff himself remained alive for more than five months after decision by the trial court. He allegedly fell ill almost four months after the judgment and decree of the trial court. Consequently, the limitation period for filing the first appeal had expired long before even the plaintiff had fallen ill, but he himself did not prefer any appeal. Even after death of plaintiff on 27.02.2009, the petitioners would not have waited for more than a year to get his inheritance mutation entered and sanctioned in their favour. Even if wife of petitioner no. 2 had fallen ill in March/April 2009, there is no explanation why the petitioners waited for almost one more year to file the first appeal. On the contrary, petitioners no. 3 and 4 are also sons of the original plaintiff, and therefore, all the petitioners could not have been prevented from filing the first appeal due to alleged illness of wife of petitioner no. 2. Moreover, no documentary evidence has been produced regarding hospitalization of wife of petitioner no. 2. Documentary evidence from the hospital has been produced regarding hospitalization of plaintiff Ganga Ram. However, even according to said record, Ganga Ram remained admitted in hospital since 09.01.2009 till 18.01.2009 and again since 22.02.2009 till 26.02.2009 and not continuously from 09.01.2009 till 26.02.2009, as alleged in application (Annexure P-1).

6. No doubt, the Courts are liberal in condoning the delay. However, even the liberal approach cannot be extended to the extent of condoning long and inordinate delay of almost 11/2 years without there being any ground, much less sufficient ground for the same.

7. For the reasons aforesaid, I find that application (Annexure P-1) filed by the

petitioners for condoning the delay of almost 11/2 years in filing the first appeal has been rightly dismissed by the lower appellate court. There is no perversity, illegality or jurisdictional error in impugned judgment of the lower appellate court so as to call for interference by this Court in exercise of limited revisional jurisdiction u/s 115 CPC. Resultantly, the revision petition is devoid of merit and is accordingly dismissed.