

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****Date of Decision : February 04, 2025
RSA-216-2025 (O&M)****Sita Ram and others****. . . . Appellants**

Vs.

Thakur Dwara Village Harpalpur and others

. . . . RESPONDENTS

* * * *

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**Present:-** Mr. Kulwinder Singh, Advocate for the appellants.**DEEPAK GUPTA, J.**

Assailing the concurrent findings of the Courts below, whereby the suit of the plaintiff – Thakur Dwara, Village Harpalpur, Tehsil Rajpura, District Patiala (now respondent) for decree of permanent injunction regarding property in dispute, was decreed and the appeal of the appellants-defendants was dismissed, the defendants have approached this Court by way of present regular second appeal. Along with appeal, application bearing CM-621-C-2025 has been moved under Section 151 CPC to condone the delay of 845 days in re-filing the appeal.

2. It is contended by learned counsel for the appellants that after passing of the impugned judgment by the First Appellate Court on 02.02.2022, the appellants had approached their counsel, who presented the appeal on 31.05.2022, but certain objections were raised by the Registry. The appeal was later on misplaced from the office of Mr. Simranjeet Singh Sarwara, Advocate, with whom the present counsel was earlier working and the same could not be found.

3. Reasons as mentioned by the appellants to justify the huge delay of 845 days in re-filing the instant is absolutely not reliable. As such, this Court is not inclined to condone the long delay.

4. Even if, the case is considered on merits, this Court finds that there is no reason to interfere in the concurrent findings of facts recorded by the Courts below. The suit was filed by the plaintiffs to restrain the defendants (appellants herein) from interfering in the disputed passage having width of 20 ft. and to restrain the defendants from encroaching upon the same. The defendants-appellants resisted the suit and claimed width of the passage to be 4.5 feet on the basis of some compromise dated 07.10.2011. After framing necessary issues and taking evidence, the suit was decreed by the trial Court on 04.12.2015. During appeal, the appellants-defendants moved an application under Order 41 Rule 27 CPC so as to produce a site plan dated 05.01.2016 and a document dated 07.09.1989. Learned First Appellate Court rightly dismissed this application after observing that the suit had been filed way back in October, 2011 and the site plan sought to be produced, had been prepared after decision by the trial Court. Apart from this, there was nothing to indicate that agreement dated 07.09.1989, which the appellants-defendants wanted to produce in additional evidence pertaining to the suit property. Even otherwise, the said document was in existence at the time when the appellants-defendants were adducing evidence and there was nothing to indicate that they acted with due diligence.

5. The appellants-defendants also moved another application under Order 26 Rule 9 CPC for appointment of the Local Commissioner to prove the width of passage in dispute. Learned Appellate Court rightly observed that the Local Commissioner could not be used for collecting of the evidence. Since beginning the case of the plaintiffs was that the width of the passage was 20 feet and that defendants wanted to encroach upon the same and so after 10 years, the Local Commissioner could not be appointed to ascertain the position at the spot.

6. Apart from above, learned First Appellate Court has observed that in their evidence, defendants-appellants examined defendant - Sita Ram as DW1 and Labh Singh as DW2 so as to prove the compromise dated

07.10.2011, but neither any such compromise was proved on record nor any site plan was produced by the appellants-defendants.

7. In the aforesaid facts and circumstances, this Court does not find any reason to interfere in the concurrent findings of facts recorded by the Courts below, based upon the appreciation of evidence, proving the width of the disputed passage to be 20 feet as was claimed by the plaintiffs-respondents.

8. Feeble attempt has been made by learned counsel for the appellants-defendants to contend that suit filed by the plaintiffs through Arun Dass, Chela of Mahant Krishans Dass was not maintainable as said Arun Dass was not the only Mahant of the plaintiff. The contention is devoid of any merit. Once, it is admitted that Mahant Arun Dass was one of the Mahants of the plaintiff, it does not matter that all other Mahants had not come forward to file the suit.

9. Consequent to the afore-said discussion, this Court does not find any merit in the present appeal. The appeal deserves to be dismissed not only being barred by limitation, but also on merits.

Ordered accordingly.

February 04, 2025

Sarita

**(DEEPAK GUPTA)
JUDGE**

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No