IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3064 of 2010 (O&M)
Date of Decision: 11.05.2015

Malkiat Singh and others

... Appellants

Versus

Sher Singh and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Kanwaljit Singh, Sr. Advocate,
with Mr. Ajayvir Singh, Advocate,
for the appellants.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

Three co-plaintiffs are in appeal against the judgment and decree of the learned Additional District Judge, Sangrur dated November 17, 2008 dismissing the appeal. The judgment and decree passed by the learned Additional Civil Judge (Senior Division) Sunam dated November 26, 1999 has been affirmed. Having lost in both the courts below, the plaintiffs are dissatisfied with the orders.

The plaintiffs brought a lawsuit for declaration to the effect that they are owners in possession in equal shares of agricultural land measuring 6 kanals in village Dirba Tehsil, Sunan on the basis of a registered sale deed dated May 28, 1984 as reflected in the ownership column of the Jamabandi for the year 1990-91. The second prayer was for declaration to the effect that the instrument of partition (Sanad Takseem) dated April 30, 1993 passed by the Revenue Court in partition application dated March 12, 1991 filed before the Assistant Collector, 1st Grade-cum-Tehsildar, Sunam finalized in case titled *Mukhtiare vs. Gurcharan Kaur and others* with respect to 124 kanals 5 marlas of land as described in the suit was null and void, not enforceable against them, was non est and ineffective against the rights of the plaintiffs and, therefore, it was liable to be set aside under by resort to Section 34 of the Specific Relief Act, 1963 which prescribes the contours of exercise of discretion of court as to declaration of status or right of a legal character as against any person denying, or interested in denying, his title to such character, and the plaintiff, need not in such suit may ask for any other further relief provided where plaintiff able to seek further relief than a mere declaration of title, omits to do so.

It was urged sequitur that the mutation sanctioned on the basis of a void instrument of partition was also illegal. The prayer was made that their peaceful possession under the sale deed be not disturbed and the plaintiffs be not dispossessed at the hands of the defendants who were their co-sharers. The plaintiffs are non-family members having entered upon the suit land through sale deed/s and claim right to land from a co-sharer who was a member of the family and sold his land to them. Their rights are thus restricted to the share purchased but with no right in specific khasra numbers and thus they cannot claim exclusive possession of the suit property. It is a trite law that even where exclusive possession is claimed by stepping into the shoes of a co-sharer by virtue of transfer of property, the vendee becomes just another co-sharer and cannot enforce specific khasra numbers for permanent settlement at a particular place against the wishes of other co-sharers who have rights equal to their respective shares in joint ownership. Vendees' claim can only be for actual possession through partition proceedings.

The root cause of the trouble, as perceived by the plaintiffs, was that though they purchased a portion of the land by sale deed dated May 28, 1984 but the Halqa Revenue Patwari had refused to enter the mutation in the name of the plaintiffs which was not reflected in the revenue record in absence of mutation duly sanctioned as per law. As a result, when partition proceedings were instituted before the Revenue Court by the other co-sharers for division of land, the plaintiffs were not made party to the application for partition. They complained that neither they got a share as due to them nor their vendor through whom they claimed title. There also appear to have been multiple sales by the co-sharers from the joint khata to third parties which was the cause of more friction.

The learned Additional Civil Judge (Senior Division) Sunam in his elaborate and well reasoned judgment and decree dated November 26, 1999 held that since the question of title is not involved in the proceedings before the Civil Court then the bar in Section 158(2) of the Punjab Land Revenue Act, 1887 would come into play of the plaintiffs which could only be established by questioning then in partition proceedings under the Act but which have already culminated in a final division of property by metes and bounds and the only recourse that the plaintiffs could have was through the channel of further adjudication before the revenue authorities against the instrument of partition of agricultural land, that is, before the Commissioner, the Financial Commissioner (Revenue), Punjab, Chandigarh and then the writ court under Articles 226 and 227 of the Constitution of

India. Therefore, the jurisdiction of the Civil Court to entertain and try the suit was also barred by law. The trial court found that since a revision was pending before the Financial Commissioner (Revenue), Punjab at the hands of others then returning the plaint under Order 7 Rule 10 of the CPC would not suffice with the partition proceedings having been finalized among the contesting co-sharers. The plaintiffs did not take recourse to the remedies available with them against the partition proceedings and the only remedy to be resorted to, as pointed out by the court of first appeal, was for the plaintiffs to seek their remedy by filing an application for partition against the remaining co-sharers but they had no legal right to get the partition declared null and void by the civil court. It also transpires from the judicial file that the land which had fallen to the share of defendant 2, she had already delivered possession of the same. It was defendant 2 who had approached the revenue authorities for partition of land and her khata had been separated from the other co-sharers and the khata of other co-sharers had been kept joint. Thus, defendant 2 came into possession of khasra 187//3/4-0 and the grudge of the plaintiffs that this khasra number had not been put in the share of their ex vendor was too far fetched to be made ground for a civil decree in their favour. Though the judgment and decree of the learned Additional District Judge, Sangrur dated November 17, 2008 is not a detailed and elaborate order but it affirms the well reasoned and elaborate judgment passed by the learned trial court who has considered the entire evidence on record in the correct perspective in his judgment passed in the present Civil Suit No.173 of 19.02.1994.

I have no reason to differ with the findings recorded by the courts below on the twelve issues framed for trial.

Besides, the present appeal was filed on February 13, 2009 and was last re-filed on May 28, 2010 and thereafter when the matter came up for preliminary hearing on December 21, 2010 a written request for adjournment was made which was accepted by the Court and the case was adjourned to March 16, 2011. Thereafter, a series of requests for adjournments have been made either orally or in writing and after five years have gone by arguments were heard for the first time today and on hearing the learned counsel the appeal has been found to be lifeless and is accordingly liable to be dismissed.

It may be pointed out there occured a delay of 349 days in filing of the appeal. The explanation for the delay pleaded is that by inadvertence the clerk of the counsel forgot to affix the stamp on the power of attorney which has led to return of the appeal docket with the limitation clock running. I view this as a trick played in a bad case as is the wont among a section of litigants. Besides, the appeal was filed with deficient court fee as well but which was made good and a fresh power of attorney filed for listing of the appeal. But that is also long ago. It is said that this is neither an intentional nor a wilful act and should be seen as sufficient reason for condoning the huge delay in filing the appeal. There is also a delay of 202 days in re-filing the appeal. The conduct of the appellants in preferring the appeal and in pursuing it without due diligence is rather suspect.

No question of law, much less a substantial one, arises for consideration in the second appeal side.

Therefore, on all accounts, the appeal deserves to be dismissed and it is so ordered.

Appeal dismissed.

(RAJIV NARAIN RAINA)
JUDGE

11.05.2015
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