

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1117-2012 (O&M)
Date of decision: 26.11.2015

Harchand Singh and others

... Appellants

Vs.

Mewa Singh and others
(deceased through LRs)

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.V. Sharma, Senior Advocate with
Ms. Akshita Chauhan, Advocate for the appellants.

Mr. Vijay Lath, Advocate and
Mr. Naveen Sharma, Advocate for respondent No.1 & 2.

AMIT RAWAL, J. (ORAL)

CM-2999-C-2012

For the reasons stated in the application which is duly supported by an affidavit, the same is allowed and the delay of 229 days in re-filing the appeal is condoned.

CM stands disposed of.

CM-3000-C-2012

This is an application for impleading the LRs of Gurdev Singh-appellant.

For the reasons stated in the application, duly supported by an affidavit, the same is allowed and the LRs of Gurdev Singh-appellant are brought on record. Amended memo of parties is also placed on record.

CM stands disposed of.

CM-14976-C-2014

This is an application for impleading the LRs of Mewa Singh-respondent No.1.

For the reasons stated in the application, duly supported by an affidavit, the same is allowed and the LRs of Mewa Singh-respondent No.1 are brought on record. Amended memo of parties is also placed on record.

CM stands disposed of.

RSA-1117-2012

Appellants-defendants are in Regular Second Appeal against the concurrent findings of facts and law, where the suit filed by the respondents-plaintiffs seeking separate possession to the extent of 1/8th share has been decreed.

Mr. D.V. Sharma, learned Senior Counsel assisted by Ms. Akshita Chauhan, Advocate submits that the suit ex-facie was bad for partial partition and as certain co-sharers have not been impleaded. He further submits that plaintiff No.1 during pendency of the suit, vide sale deed of 2008 sold part of land in joint ownership and therefore the Courts below have committed illegality and perversity in not appreciating the facts.

He further submits that as per Ex.D2 certain property bearing different khasra numbers along with Bhajan Kaur and another, the parties being co-sharers, have not been included in the suit, therefore suit was liable to be dismissed. Therefore, the substantial questions of law arise for determination by this Court.

Mr. Lath, Advocate appearing on behalf of respondents No.1 & 2-plaintiff submits that all the abovementioned pleas taken by Mr. D.V. Sharma

have been taken care of by the learned trial Court vis-a-vis Ex.D2. There are different co-sharers Jasmer Singh, Kirpal Singh and Chhinder Kaur. Therefore it is a separate khata and khewat which has no relevance with regard to the joint ownership vis-a-vis suit property. The Court has already taken cognizance of this fact and has further observed that the subsequent purchaser i.e. son of plaintiff No.1 shall be bound by the decree.

I have heard learned counsel for the parties and appraised the paper book.

As per Ex.D2 few of the parties to the lis are co-sharers but there are different co-sharers, whereby the suit has been filed vis-a-vis the property which has been exclusively and jointly owned by the co-sharers i.e. parties to the lis. The sale deed is of 2008 whereas the suit was filed in 2005 therefore, in my view the suit could not be dismissed being not maintainable/or bad for partial partition. The learned trial Court has taken care of the abovementioned sale deed by observing that the subsequent vendee would be bound by the judgment and decree.

I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises to be adjudicated by this Court.

Accordingly, the appeal is dismissed.

[AMIT RAWAL]
JUDGE

26.11.2015
vishnu