

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2055 of 2012 (O&M)
Date of Decision: July 02, 2015

Surender Kumar and others

...Appellants

Versus

Suraj Mal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gorkah Nath, Advocate
 for the appellants.

INDERJIT SINGH, J.

CM No.5688-C of 2012

For the reasons mentioned in the application, the same is allowed. The delay of 57 days in re-filing the appeal is condoned.

CM No.5689-C of 2012

For the reasons mentioned in the application, the same is allowed. The delay of 11 days in filing the appeal is condoned.

RSA No.2055 of 2012

Appellants-defendants Surender Kumar, Virender Kumar, Smt.Dhanno @ Channo, Pawan Kumar and Krishana Devi have filed this regular second appeal against respondents-plaintiffs Suraj Mal, Dharampal, Rai Singh, Rajpal and Maha Singh, challenging the impugned judgment and decree dated 27.08.2009 passed by learned Addl. Civil Judge (Senior Division) Tohana vide which the suit filed by

the plaintiffs-respondents for possession was allowed and also the judgment and decree dated 19.09.2010 passed by learned District Judge, Fatehabad vide which the appeal filed by the appellants-defendants was dismissed.

At the time of arguments, learned counsel for the appellants has simply argued that findings given by the Courts below are incorrect and not as per law and the suit should be dismissed.

I have heard learned counsel for the appellants and have gone through the record.

The brief facts of the case are that plaintiffs-respondents filed a suit against Jangu and other defendants seeking possession of two plots in dispute by way of partition and also for restraining the defendants from raising any construction over the plots in question. It is the case of the plaintiffs that they are in possession of the suit property being co-sharers and no partition has ever taken place regarding the suit land. It is further stated that defendants are adamant to raise construction without getting the land partitioned. The plaintiffs being co-sharers are entitled to possession of suit land to the extent of their shares.

On the other hand, the case of the defendants No.2 to 4 is that their grand father and great grand father had entered into family settlement with the father of the plaintiffs namely Tehal Singh and his two brothers as well as Naraina. According to said settlement, grand father and great grand father had relinquished their half share of plot situated within Lal Dora of revenue estate of Kanheri, which was equal

in value in comparison to disputed one. In return, Tehal Singh etc. had relinquished their shares and the said settlement had taken place 50 years back. It is further stated that for the last 50 years, the defendants are in possession of the disputed plots in the capacity of exclusive owners. Defendants No.15 and 17 have also filed written statement. Issues were framed.

Learned Addl. Civil Judge (Senior Division), Tohana, vide judgment and decree dated 27.08.2009 passed preliminary decree in favour of the plaintiffs to the effect that parties to the suit are co-sharers in gair mumkin plots to the extent of their shares mentioned in the jamabandi for the year 1999-2000. Learned Court, after discussing the evidence, disbelieved the version of the defendants regarding oral partition, which was held about 50 years back. Learned District Judge, Fatehabad, in the appeal, upheld the findings given by the learned Addl. Civil Judge (Senior Division), Tohana and dismissed the appeal vide judgment and decree dated 19.09.2010.

The perusal of the judgments and decrees passed by the Courts below shows that findings are correct and as per law. Both the Courts below have given the concurrent findings. Nothing has been argued as to how the findings given by the Courts below are incorrect and which evidence has been misread and how the judgments and decrees are perverse or against the evidence. Nothing has been argued as to what substantial question of law arises in the present appeal. The defendants have taken vague plea regarding oral partition without mentioning the date and year of the oral partition.

Even if it is taken that oral partition took place, then why it is not got entered into the revenue record.

In view of the above discussion, I find that the findings of the Courts below are concurrent, as per evidence and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

July 02, 2015
Vgulati

(INDERJIT SINGH)
JUDGE