

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

114

Regular Second Appeal No.211 of 2014 (O&M)
Date of Decision: September 18, 2015

Subhash

...Appellant

Versus

Mehta Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. R.S. Budhwar, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

CM No.480-C of 2014

Prayer in this application is for condonation of delay of 51 days
in filing the appeal.

For the reasons mentioned in the application which is duly
supported by the affidavit of the applicant-appellant, the same is allowed.

Delay of 51 days in filing the appeal stands condoned.

RSA No.211 of 2014

Challenge in this appeal is to the judgments and decree passed
by the Courts below by which the suit preferred by the appellant-plaintiff
for permanent injunction on the ground that the land which is detailed in the
head note of the suit was allotted to Punnu grandfather of the parties and his
brother Kahnu by the Gram Panchyat. Since both of them have expired and
after the death of Punnu, the share has been inherited by the father of the
parties Ram Singh, who also has expired and, therefore, they are co-owners
in the suit land along with other co-sharers, has been dismissed by the trial
Court and the appeal preferred has also been dismissed by the Lower

Appellate Court.

2. It is the contention of learned counsel for the appellant-plaintiff that the findings recorded by the Courts below cannot be sustained, specially when the respondents are not disputing the fact that the land has actually been allotted to their grandfather. Since the factum of allotment of the land is not being disputed, requirement of the Gram Panchayat to be impleaded as a party, cannot be said to be essential in the present suit. His further contention is that the proceedings for initiating partition by metes and bounds cannot be a ground for denying the relief of permanent injunction, as has been prayed for. He thus contends that the judgments and decree passed by the Courts below deserve to be set aside by allowing the present appeal and the injunction as prayed for be granted.

3. This contention of learned counsel for the appellant-plaintiff cannot be accepted in the light of the fact that even if it is an admitted fact that the land was allotted to the grandfather of the parties but since the revenue records reflects the ownership of the property/land as Panchayat Deh as is mentioned in the jamabandi, Gram Panchayat being the owner of the property/land is required to be impleaded as a party. Since the appellant-plaintiff has failed to produce any evidence on record showing the allotment of the land to their grandfather, the findings recorded by the Courts below on this aspect cannot be said to be erroneous.

4. The second question with regard to the non-grant of permanent injunction in a civil suit when it is an admitted fact that it is a jointly owned property/land with the other co-sharers, the same is supported by the provisions contained under Section 41(h) of the Specific Relief Act, which has been rightly relied upon when the appellant-plaintiff had an effective

alternative remedy of initiating proceedings for partition of the land in question.

5. Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

6. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

7. In the light of the dismissal of the appeal itself, the application for stay i.e. CM No.481-C of 2014, also stands disposed of as infructuous.

September 18, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE