

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

RSA No.2680 of 2014

Date of Decision: January 30, 2015

Harnek Singh and others

...Appellants

Versus

Bant Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vijay Rana, Advocate
for the appellants.

FATEH DEEP SINGH, J.

C.M No.6298-C-2014

Heard on application for condonation of delay in
re-filing of appeal.

In view of the grounds mentioned in the
application for condonation of delay supported by an affidavit of
the counsel for the appellant and in the light of settled position
that a party cannot be allowed to suffer due to the fault of his
Counsel and in the interest of justice taking a lenient view, delay
of 164 days in re-filing the appeal stands condoned.

CM stands disposed off

C.M No.6299-C-2014

Application is allowed as prayed for.

RSA No.2680 of 2014

Having suffered repeated defeats firstly before the
learned trial Court, whereby, through judgment and decree dated

25.7.2012 learned Civil Judge (Junior Division), Dhuri dismissed the suit of the plaintiffs followed by the judgment and decree dated 14.5.2013 whereby, the learned first Appellate Court which dismissed the appeal of the plaintiffs-appellants now the present appellants have sought to have another go.

Heard learned counsel for the appellants. The plaintiffs as is reflected from the impugned award and decree have sought a decree for permanent injunction restraining the defendants from alienating superior or specific part of the suit property and from raising construction thereon which they themselves claimed was in joint possession of the owners. Though, it is sought to be claimed by the plaintiffs that no formal partition has taken place and that partition application is still pending before the competent authority. However, on the basis of the testimony of the plaintiff PW1 Bahadur Singh and revenue records Ex.P1 and Ex.P2 and that of the defendants DW1 Gurdial Singh, DW2 Balwant Singh and DW3 Harjinder Singh and revenue record Ex.D1 the Courts below have come to a justifiable conclusions that though the plaintiffs claim that they were separately cultivating the land that has fallen to the share since the last twenty years, however, the revenue record of the plaintiffs jamabandi Ex.P1 and Khasra girdawari Ex.P2 reflects that the khata is still joint and there being no cogent and substantial evidence of partition or the family settlement having been arrived at between the parties thus, the same certainly needs to be taken with a pinch of salt. Since it is the own case of the appellants-plaintiffs that partition proceedings are underway and in view of the settled position of law reference of which can be taken note from **Bhartu vs. Ram Sarup 81 PLJ 204** which has held that sale of specific portion of land out of the joint holding by one of the co-owner is nothing but a sale of a share out of the joint holding and that

partition is the only efficacious remedy to demarcate the relative shares. In Bhartu's case *ibid* it has been held that every co-sharer is owner and in possession of every inch of the unpartitioned property unless it is shown that the possession of one of the co-sharer has been acquiesced by the other co-sharers and which was open to the knowledge of the co-sharers over a long period of time and which none of the essentialities are there in the present case. Thus, the suit of the plaintiffs is not maintainable as there is more efficacious remedy is available to them and is barred by Section 41(h) of the Specific Relief Act, 1963. More over, there has been consistent findings of the two Court below which does not calls for interference by this Court. Thus, the appeal being without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

January 30, 2015
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