

RSA No.5254 of 2014 (O&M)

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

RSA No.5254 of 2014 (O&M)

Date of Decision: September 01, 2015

Chander Kant

...Appellant

Versus

Madhukar S. Gupta & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sudhir Paruthi, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.12399-C of 2014

Prayer in this application is for condonation of delay of 3 days in refiling the appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 3 days in refiling the appeal stands condoned.

RSA No. 5254 of 2014

In the present appeal, challenge is to the judgments and decree passed by the Courts below vide which the suit for partition filed by the plaintiff-respondent No.1 has been decreed, against which the appeal preferred by the appellant-defendant No.3 stands dismissed.

It is the contention of the counsel for the appellant-

defendant No.3 that in the plaint itself, it was mentioned that apart from House No.104, , Sector-8, Panchkula, there were other agricultural land as well but the same have not been sought to be partitioned and the suit being for part partition of the property, the suit was not maintainable and deserved to be dismissed. He has placed reliance upon the written statement which has been filed in the suit, wherein, the appellant-defendant No.2 has detailed the other immovable properties apart from the house in question which was the ownership of Darbari Lal Gupta and his wife Sarla Devi, but that fact has not been taken into consideration by the Courts below and therefore, the judgments and decree passed by the Courts below deserve to be set aside.

I have considered the submissions made by the learned counsel for the appellant-defendant No.3 and have gone through the judgments passed by the Courts below.

On perusal of the judgments passed by the Courts below, I do not find that the Courts below have committed any illegality in rejecting the contention of the counsel for the appellant-defendant No.3 with regard to the maintainability of the suit for partition. The finding as has been recorded that although an assertion to the effect that there were other properties, find mentioned in the plaint as also in the written statement but as no evidence has been produced by appellant-defendant No.2 with regard to the said properties being the ownership of Darbari Lal Gupta or his wife Sarla Devi nor has it been

mentioned that as to how the appellant-defendant and the respondents-defendants would have inherited the same or their rights, cannot be faulted with. In fact, in para 13 and 14 of the judgment of Lower Appellate Court, the matter has been made amply clear which read as follows:-

“13. I failed to understand any reason on behalf of the appellant as to what prevented him from producing record of other properties in order to show that the suit was bad for non-inclusion of those properties of deceased Darbari Lal Gupta and his wife. It is well settled law that suit for partition is maintainable with regard to immovable property only and not with regard to shares, debentures, bonds and other liquid assets owned and possessed by the deceased.

14. Learned counsel for the appellant has repeatedly argued that the performa respondent filed a petition for grant of probate regarding Will dated 3.8.2000 purportedly executed by deceased Darbari Lal Gupta but even this judgment is of no help to the case of the appellant. That petition was filed with regard to grant of probate/letter of administration in relation to residential House No.104, Sector 8, Panchkula and in respect of agricultural land measuring 2 ½ Kanals of agricultural land bearing Khatauni No.1365, Khasra No.16/27, situated at Mauja Jagadhri, District Yamuna Nagar. Thus, learned Trial Court rightly discussed scope of agricultural land in a suit for

partition and from copy of judgment {Ex.P2}, it is not proved that the deceased besides having 2 ½ Kanals of agricultural land bearing Katauni No.1365, Khasra No.16/27, situated at Mauza Jagadhri, District Yamuna Nagar had other immovable properties alongwith his wife. The judgments relied on on behalf of the appellant are applicable when it is proved that other immovable properties have been left out in a suit for partition. Thus, judgment[s] relied on behalf of the appellant is respectfully distinguished from the facts of the present case.”

In view of the above, there being concurrent findings recorded by the Courts below on the basis of proper and correct consideration of the evidence led by the parties. There is no misleading or wrong appreciation of evidence which would persuade this Court to interfere with the same.

No substantial question of law is involved in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

September 01, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE