

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

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Regular Second Appeal No.726 of 2014 (O&M)
Date of Decision: September 07, 2015

Net Ram and another

...Appellants

Versus

Avinash Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vipul Dharmani, Advocate
for the appellants.

Mr. Maninder Arora, Advocate
for the caveators.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.1660-C of 2014

Prayer in this application is for condonation of delay of 110 days in re-filing the appeal. The application is supported by an affidavit.

For the reasons mentioned in the application, the same is allowed.

Delay of 110 days in re-filing the appeal stands condoned.

CM No.1661-C of 2014

Prayer in this application is for impleading the legal representatives of Som Nath, respondent-defendant No.1. The detail of the legal representatives is mentioned in para 4 of the application. The application is supported by the affidavit of the applicant-appellant No.1.

Prayer made in the application is allowed.

Legal representatives as mentioned in para 4 i.e. Avinash Kumar, Rakesh Kumar, Asha Rani, Rekha Rani and Kunta Devi are impleaded as legal representatives of respondent-defendant No.1 subject to

just exceptions.

Registry to carry out necessary amendments in the memo of parties.

CM No.1663 of 2014

Prayer in this application is for leading additional evidence under Order XLI Rule 27 by placing on record the reply filed in the partition proceedings before the Assistant Collector 1st Grade, Anandpur Sahib, as Annexure A-1.

Prayer made in the application cannot be accepted at this belated stage as the said document i.e. reply in the partition proceedings was very much available with the appellant-plaintiff and was within their knowledge when the proceedings were going on and now there is no justifiable reason for having not placed the same on record, which would fulfil the requirement of the statute where additional evidence can be permitted, therefore, the present application stands dismissed.

RSA No.726 of 2014

Challenge in this appeal is to the judgments and decree passed by the Civil Judge (Junior Division), Anandpur Sahib, dated 19.01.2013 by which the suit of the appellants-plaintiffs for declaration and permanent injunction, stands dismissed and thereafter the appeal preferred has also been dismissed by the Additional District Judge, Rupnagar, on 23.03.2013.

2. It is the contention of the counsel for the appellants-plaintiffs that the revenue authorities did not have the jurisdiction to entertain the partition proceedings in the light of the fact that the title of the suit property was in dispute as a civil suit was preferred by the appellants-plaintiffs being Civil Suit No.250 which was filed on 15.10.2001 and was pending before

the Civil Judge (Junior Division), Anandpur Sahib, when the proceedings for partition were initiated. He, therefore, contends that since the revenue authorities did not have the jurisdiction to decide the matter, the Civil Court had the jurisdiction to entertain the suit in the present form, whereby the orders passed in the partition proceedings had been challenged by the appellants-plaintiffs and a prayer for declaration was made for declaring them to be illegal, null and void. He thus contends that the judgments passed by the Courts below cannot sustain. His further contention is that the Courts below have not appreciated that the land in question was an abadi property and the same, therefore, could not have been the subject matter of the partition before the revenue authorities. On this ground also, the orders passed by the Assistant Collector 1st Grade, Anandpur Sahib and the appeal dismissed by the Collector cannot be sustained. Further, the partition proceedings initiated by impleading Khillu as a party whose whereabouts were not known for a very long time, could not have been, therefore, proceeded with. He thus contends that the present appeal may be allowed by setting aside the judgments and decree of the Courts below.

3. I have considered the submissions made by the counsel for the appellants-plaintiffs and have gone through the judgments passed by the Courts below but am afraid that the said contentions of the counsel for the appellants-plaintiffs cannot be accepted.

4. The first argument which has been raised by the counsel for the appellants-plaintiffs is that there was a civil suit pending with regard to the title of the property and, therefore, the revenue authorities could not have entertained the application for partition. This contention of the counsel for the appellants-plaintiffs even if assuming that an objection was raised in the

written statement, which is sought to be placed on record by way of additional evidence before this Court, is correct but since the same has not be pressed before the revenue authorities, it cannot now at this stage be permitted to be raised in the civil proceedings. Neither in the order passed by the Assistant Collector 1st Grade, Anandpur Sahib nor the Appellate Authority points out/refers/mentions that such an objection was ever pressed into service. That apart, as per the provisions of Section 117 of the Punjab Revenue Act, 1887, the Revenue Court could refuse to proceed with the partition or decline it but it is not mandated that as and when there is a dispute with regard to the title of the property, the authority cannot proceed specially when the revenue authorities itself have been conferred with the power to determine the question of title where it is so raised. The findings thus recorded by the Courts below on this issue cannot be faulted with.

5. As regards the second contention which has been raised by the counsel for the appellants-plaintiffs that the property was an abadi property and, therefore, could not have been subject matter of partition, suffice it to say that nothing has been placed on record indicating this to be so. Had the appellants-plaintiffs brought on record the jamabandi for the years 1996-97 reflecting so in support of the contention, there would be some evidence stating so before the Assistant Collector 1st Grade, who had passed the order on 09.09.2002. There being nothing on record indicating that the property was an abadi property except for the bald statement, the findings so recorded by the Courts below cannot be said to be without any basis or due to misreading of the evidence produced by the parties.

6. As regards the third contention of the counsel for the appellants-plaintiffs that the proceedings by impleading one Khillu son of

Fattu would render the partition proceedings illegal and void, suffice it to say that there was no judicial pronouncement or any evidence on record indicating that he was dead at the time of partition proceedings except for the decree dated 20.08.2012 which has been passed by the Civil Court which is subsequent to the date when the partition proceedings have come to an end i.e. 09.09.2002 and, therefore, the same would not make any difference with regard to the merits of the case.

7. 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.

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

9. In view of the dismissal of the appeal itself, all the pending applications stand disposed of.

September 07, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE