

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

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Regular Second Appeal No.3787 of 2012 (O&M)

Date of Decision: May 26, 2016

Gurdev Singh and others

...Appellants

Versus

Mahabir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. M.S. Randhawa, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.10185-C of 2012

Prayer in this application is for condonation of delay of 24 days
in re-filing the appeal.

For the reasons mentioned in the application which is duly
supported by the affidavit of applicant-appellant No.1, the present
application is allowed.

Delay of 24 days in re-filing the appeal stands condoned.

CM No.10186-C of 2012

Prayer in this application is for impleading the legal
representatives of respondents-Chander Bhan son of Sant Lal, Sadhu Ram
son of Sanwat and Pat Ram son of Pitha, who are stated to have died.
Chander Bhan died on 16.12.2008 leaving behind his legal heirs as detailed
in para 2 of the application. Sadhu Ram has died on 13.05.2007. The details
of his legal heirs are mentioned in para 3 of the application and Pat Ram has
died on 06.09.2004 leaving behind his legal heirs as mentioned in para 4 of
the application.

It has been stated that there are no other legal heirs of

Chander Bhan, Sadhu Ram and Pat Ram except the persons mentioned above. The application is supported by the affidavit of applicant-appellant No.1-Gurdev Singh.

In view of the above, the present application is allowed subject to just exceptions and for the purpose of present litigation alone.

The legal representatives of deceased-respondents-Chander Bhan, Sadhu Ram and Pat Ram are brought on record.

RSA No.3787 of 2012

Challenge in this appeal is to the judgment and decree dated 21.04.2009 passed by the Additional Civil Judge (Senior Division), Hisar, whereby the suit filed by the appellants-plaintiffs for declaration to the effect that they are owners in possession of the property as detailed in the headnote of the suit on the basis of the family partition entered into between them, has been dismissed, appeal against which preferred by the appellants-plaintiffs has also been dismissed by the Additional District Judge, (Fast Track Court), Hisar, on 23.01.2012.

2. It is the contention of learned counsel for the appellants that the Courts below have not properly appreciated the pleadings and the evidence brought on record. He contends that the parties are in possession of their respective shares as per the oral settlement entered into between the parties which have been acted upon. Merely because the said partition has not been entered in the revenue records, cannot be a ground for depriving the appellants-plaintiffs the claim, as has been made in the civil suit. He, thus, contends that the judgments and decree as passed by the Courts below, cannot sustain and deserve to be set aside.

3. I have considered the submissions made by learned counsel for the appellants and with his able assistance, have gone through the impugned judgments.

4. The assertion of the appellants-plaintiffs cannot be accepted that there has been an oral partition between the parties to the suit as there is no evidence which has come on record on the basis of which the Courts could have come to a conclusion that there has indeed been a partition, as has been asserted by the appellants-plaintiffs. In the revenue records as also in the jamabandi which have been placed on record by the appellants-plaintiffs, the possession of the parties have been recorded as co-sharers. In the absence of any proof of oral partition, if any, having taken place, which is also not reflected in the revenue record and there being no evidence in support of the contention that oral partition had taken place between the parties, especially when the respondents-defendants are disputing the same, the findings as recorded by the Courts below, cannot be faulted with.

5. No other point has been argued by the counsel for the appellants.

6. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

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

8. In the light of the dismissal of the appeal, the application for stay i.e. CM No.10187-C of 2012, stands disposed of as infructuous.

May 26, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE