

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

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1. Regular Second Appeal No.2728 of 2013 (O&M)
Date of Decision: April 07, 2016
- Roop Lal ...Appellant
- Versus
- Sita Ram and others ...Respondents
2. Regular Second Appeal No.3371 of 2013 (O&M)
- Roop Lal ...Appellant
- Versus
- Karam Chand and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.K. Shukla, Advocate
for the applicant-appellant (in both cases).

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.7228-C of 2013 in RSA No.2728 of 2013

Prayer in this application is for condonation of delay of 2 days
in filing the appeal.

For the reasons mentioned in the application which is
supported by the affidavit of the counsel, the same is allowed.

Delay of 2 days in filing the appeal stands condoned.

CM No.9025-C of 2013 in RSA No.3371 of 2013

Prayer in this application is for condonation of delay of 10 days
in re-filing the appeal.

For the reasons mentioned in the application which is
supported by the affidavit of the counsel, the same is allowed.

Delay of 10 days in re-filing the appeal stands condoned.

CM No.9026-C of 2013 in RSA No.3371 of 2013

Prayer in this application is for condonation of delay of 15 days in filing the appeal.

For the reasons mentioned in the application which is supported by the affidavit of the counsel, the same is allowed.

Delay of 15 days in filing the appeal stands condoned.

CM No.9024-CII of 2013 in RSA No.3371 of 2013

Prayer in this application is for placing on record and for exemption from filing the certified copy of judgment and decree dated 06.08.2011 passed by Civil Judge (Junior Division), Patiala and grounds of appeal filed before the Lower Appellate Court as well as Annexures attached with the appeal.

Application is allowed.

Exemption from filing the aforesaid documents is granted and the same are taken on record subject to just exceptions.

RSA Nos.2728 and 3371 of 2013 (O&M)

Notice of motion.

Mr. Vikas Mehsempuri, Advocate, accepts notice on behalf of the caveators-respondents.

Caveat discharged.

By this order, I propose to decide two Regular Second Appeals, i.e. *RSA No.2728 of 2013* titled as *Roop Lal Versus Sita Ram and others* *RSA No.3371 of 2013* titled as *Roop Lal Versus Karam Chand and others*, as both have arisen out of a common judgment and decree dated 26.11.2012.

Challenge in these appeals is to the judgment and decree dated

06.08.2011 passed by the Civil Judge (Junior Division), Patiala, whereby the suit filed by the appellant-plaintiff No.4 for permanent injunction qua 14 biswas, was decreed but the claim with regard to restraining respondents No.1 and 2-defendants and interfering qua the other land has been dismissed, appeal against which preferred by the appellant-plaintiff No.4 has been dismissed by the Appellate Court on 26.11.2012 and the cross-appeal which has been filed by respondent-defendant No.2 has been allowed by granting injunction to the extent of 10 biswas.

It is the contention of learned counsel for the appellant that appellant admittedly is a co-sharer along with his other three cousins, who were also the plaintiffs. He states that during the pendency of the suit, three of his cousin brothers have withdrawn their suit and it is only Roop Lal, who had contested the same, whereby suit was partly decreed to the extent of injunction, appeal against which preferred by both the parties have been heard together and the appeal qua appellant-Roop Lal has been dismissed, whereas that of the respondent-defendant No.2, the decree has been modified to the extent of grant of injunction with regard to 10 biswas of the land. He contends that the Courts below have not been able to appreciate the pleadings and the evidence brought on record. Assertion is made that the injunction, as has been prayed for, is based upon the factum that 14 biswas of land was in possession of the plaintiff and, therefore, the trial Court has rightly decreed the suit qua 14 biswas and the judgment passed by the Appellate Court reducing it to 10 biswas merely because he is owner to that extent, cannot sustain.

I have considered the submissions made by learned counsel for the parties and with their assistance, have gone through the impugned

judgments.

As per the jamabandi for the year 2002-03 Exhibit P-2 which has been relied upon by the plaintiffs, Sukhdev, Kishan and Gurdial were owners to the extent of half share of the land, whereas Roop Lal was owner of another half share. As the total land is 1 bigha, the share of the appellant would be only 10 biswas. This factum could not be disputed by the counsel for the appellant. There is nothing which has come on record which would clearly specify that he is in possession of 14 biswas of land. In the absence of any evidence to that effect, the findings as recorded by the Lower Appellate Court granting him injunction to the extent of 10 biswas of land, cannot be faulted with.

Assertion has been made that the appellant being the co-sharer of the property, is in possession of 20 biswas of land as joint owner. This plea of the counsel for the appellant also cannot be accepted as it is an admitted case that the respondents have dispossessed the appellant from the suit land to the extent of 6 biswas. Gurdial and his two brothers have categorically stated that there had been an agreement/compromise Exhibits D-1 and D-2 which has been entered into between the parties which is with regard to 3 biswas of land from Khasra No.613 min, who are now in possession of this land. The claim, therefore, of the appellant to the extent of his possession of the share in the property, has rightly been granted by the Lower Appellate Court. Rightful owner has been granted the benefit to the extent of he is entitled to by the Lower Appellate Court and, therefore, the judgments and decree as passed by the Courts below, cannot be faulted with.

No other point has been raised or argued by the counsel for the parties.

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.

No substantial question of law is involved in the present appeals. Therefore, finding no merit in the appeals, the same stand dismissed.

In the light of the dismissal of the appeals, the applications for stay i.e. CM No.7229-C of 2013 in RSA No.2728 of 2013 and CM No.9027-C of 2013 in RSA No.3371 of 2013, stand disposed of as infructuous.

April 07, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE