

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

**RSA No.1894 of 2016 (O&M)
Date of decision:29.07.2016**

Ved Singh

... Appellant

Vs.

Joginder Singh Malik and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep K. Sharma, Advocate
for the appellant

AMIT RAWAL J. (Oral)

C.M.No.5047-C-2016

For the reasons stated in the application, duly supported by an affidavit, delay of 233 days in re-filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.5048-C-2016

For the reasons stated in the application, duly supported by an affidavit, delay of 10 days in filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.5049-C-2016

The deficiency of the Court fee, has been made good.

C.M. stands disposed of.

C.M.No.5050-C-2016

Prayer in the application is for permission to adduce the additional evidence in the aforesaid appeal.

There is no averment in the application that despite exercise of due diligence the evidence sought to be produced was not in the knowledge of the applicant when the evidence in the suit was going on.

In view of the aforementioned, the application for seeking permission to adduce additional evidence, is hereby dismissed.

RSA No.1894 of 2016 (O&M)

Appellant-plaintiff is aggrieved of the dismissal of the suit and appeal filed thereto seeking declaration and consequential relief of permanent injunction by claiming the ownership of the suit land alleged to have been sold by defendant 2 in favour of defendant No.1, vide sale deed dated 25.10.2004.

Mr. Sandeep K. Sharma, learned counsel appearing on behalf of the appellant-plaintiff submits that Kewal Singh, maternal grandfather of the appellant-plaintiff was owner of the property/land. After his death, the property devolved upon his two sisters, namely, Chander and Batto. Appellant is none else but the son of Chander, who died on 05.01.1996. There was a family settlement in the year 1961-62 and certain property had fallen in the share of Chander and Batto and the sale deed is in respect of the property which according to the family settlement had fallen to the share of the appellant-plaintiff. It is in this background of the matter, the suit,

aforementioned was filed and both the Courts below have not relied upon the family settlement on the premise that no witness thereof, has been proved. Whereas, on the contrary, there is a statement of the plaintiff which has gone un-rebuted. He further submits that even if the parties had made the family arrangement, there was no change in the revenue record which would entail into jointness of the holdings and thus, urges this Court for formulation of the substantial questions of law as culled out in the memorandum of appeal.

I have heard learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below.

After demise of Kewal Singh, the property was mutated in the name of Chander and Batto in equal share and the mutation continues till the date of the aforementioned sale deed. In fact, appellant has failed to prove the family settlement, much less, oral in the absence of the documentary evidence. The remedy, if any, is to seek partition of the property on the basis of the revenue record and in those proceedings, the restraint order could be sought against the defendants qua alienation of the property till the property is partitioned by metes and bounds but not in the mode and manner chosen.

In view of the aforementioned observations, I am of the view that the findings rendered by both the Courts below do not warrant any interference as the same are based upon the appreciation of oral and documentary evidence. No substantial question of law arises for

adjudication of the present appeal.

Accordingly, the appeal is dismissed.

July 29, 2016
savita

(AMIT RAWAL)
JUDGE

Wheather speaking/reasoned

Yes/No

Whether Reportable

Yes/No