

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

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Regular Second Appeal No.2076 of 2016 (O&M)
Date of Decision: April 28, 2016

Jiwan (since deceased) through his LRs and others

...Appellants

Versus

Hari Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Suneel Ranga, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.5473-C of 2016

Prayer in this application is for condonation of delay of 134 days in re-filing the appeal.

For the reasons mentioned in the application which is duly supported by the affidavit of the Clerk of the counsel, where it is mentioned that because of an inadvertent mistake, the file was kept in the admitted cases and on the appellants having enquired about the case, the file was traced and the same was re-filed after removal of the objection, the present application is allowed.

Delay of 134 days in re-filing the appeal stands condoned.

RSA No.2076 of 2016

Challenge in this appeal is to the judgment and decree dated 16.08.2012 passed by the Civil Judge (Junior Division), Rohtak, whereby the suit filed by the respondents-plaintiffs for possession, stands decreed, appeal against which preferred by the appellants-defendants has been dismissed by the Additional District Judge, Rohtak, on 05.08.2015.

2. It is the contention of learned counsel for the appellants that the

Courts below have failed to appreciate that no evidence has been brought on record showing the title of the respondents-plaintiffs over the suit land. In the absence of any documentary evidence to that effect, the suit itself was not maintainable and the Courts below have, therefore, proceeded wrongly to grant the decree in favour of the respondents-plaintiffs. He further asserts that the partition proceedings, on the basis of which it has been asserted by the respondents-plaintiffs that they came in possession of the suit land, from where they were dispossessed by the appellants-defendants, are not yet finalised as the same is a subject matter of challenge before the Commissioner, Rohtak, and, therefore, it cannot be said that the partition proceedings have attained finality, on the basis of which the mutation No.1526 has been sanctioned in favour of the respondents-plaintiffs, is in accordance with law nor can it be relied upon for decreeing the suit of the respondents-plaintiffs. Prayer has, thus, been made for setting aside the impugned judgments and decree passed by the Courts below.

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

4. It is not disputed, as a matter of fact, that the respondents-plaintiffs are co-sharers of the joint land and that partition of the joint land, as a consequence thereof, mutation No.1526 was sanctioned of the suit land and entry made in the revenue record and the said fact stands reflected in the jamabandi for the year 2004-2005 in favour of the respondents-plaintiffs. So there is no dispute with regard to the title of the respondents. What has been asserted is that the partition proceedings are

illegal and, thus, the consequential mutation cannot be said to be in accordance with law but this plea cannot be accepted in the light of the fact that on the basis of the said partition proceedings and the mutation, jamabandi for the year 2004-05 exists in favour of the respondents-plaintiffs. It is not in dispute that the partition proceedings which had taken place and the mutation which was entered into in the revenue records, are still operative as there is no stay granted by the Appellate Authority i.e. the Commissioner, Rohtak. The same, therefore, has been rightly relied upon by the Courts below to proceed and decide the matter. It goes without saying that in case the revenue authorities finalise the partition proceedings in the appeal in favour of the appellants-defendants, they may have the remedy in accordance with law, but as of today, the record and the evidence which has been brought on record, especially in the light of the admission on the part of the appellants-defendants, the findings as recorded by the Courts below, are in accordance with the pleadings and the evidence brought on record.

5. The Courts below have rightly held that there has been no counter claim submitted by the appellants-defendants challenging the partition proceedings and, therefore, the Court has rightly refrained itself from interfering in the matter with regard to the partition proceedings and the mutation which has been sanctioned in favour of the respondents-plaintiffs, especially keeping in view the provisions as contained under Section 158 of The Punjab Land Revenue Act, 1887, according to which the jurisdiction of the Civil Court is barred.

6. The Courts below have rightly proceeded to decide the case in

accordance with law.

7. No other point has been argued by the counsel for the appellant.

8. 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.

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

10. In the light of the dismissal of the appeal, the application for stay i.e. CM No.5474-C of 2016, stands disposed of as infructuous.

April 28, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE