

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

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Regular Second Appeal No.5159 of 2014 (O&M)
Date of Decision: January 21, 2016

Harbhajan Pal

...Appellant

Versus

Gurdial Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sarju Puri, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.12157-C of 2014

Prayer in this application is for condonation of delay of 13 days
in filing the appeal.

For the reasons mentioned in the application which is duly
supported by the affidavit of the applicant-appellant, the present application
is allowed.

Delay of 13 days in filing the appeal stands condoned.

CM No.12158-C of 2014

Prayer in this application is to implead the legal representatives
of Disha @ Jagdish Pal, legal heir of plaintiff No.6-Jeet leaving behind his
legal heirs as detailed in para 2 of the application (ii) Mohinder Ram son of
Kartara Ram, who is stated to have died on 18.04.2014, who was the
appellant-plaintiff before the First Appellate Court, the details of his legal
heirs are mentioned in para 3 of the application (iii) Parkasho daughter of
Kartara Ram, who was respondent No.1 before the First Appellate Court

and was defendant No.1, her legal heirs are mentioned in para 4 of the application (iv) Surinder Kaur daughter of Krishan Lal, who was arrayed as respondent No.5 before the First Appellate Court leaving behind her legal heirs as mentioned in para 5 of the application. The present application is supported by the affidavit of the applicant-appellant.

In view of the above, the present application is allowed.

Legal heirs of the said respondents are impleaded as parties to the present appeal.

The memo of parties appended along with the appeal is taken on record.

RSA No.5159 of 2014

Challenge in this appeal is to the judgments and decree dated 02.09.2008 passed by the Civil Judge (Senior Division), Nawanshahr, whereby the suit for separation of possession of 6/9th share of the plaintiffs by way of partition by metes and bounds in the land measuring 19 marlas bearing Khewat No.433, Khatauni No.746, Khasra No.135 as entered in the jamabandi for the year 1984-85, situated in the abadi of village Heon, Tehsil and District Nawanshahr, with an alternative prayer of suit for possession of 6/9th share of the plaintiffs of the suit land, has been dismissed on the ground that partial partition is not permissible in law, appeal against which preferred by the appellant-plaintiffs was dismissed by the Additional District and Sessions Judge, at S.B.S. Nagar, on 12.02.2014.

2. It is the contention of the counsel for the appellant that merely because a stray admission is made by one of the plaintiffs when he appeared as a witness with regard to there being 5/7 houses of Kartara Ram, the

predecessor-in-interest, would not be enough with regard to there being some other properties which were also required to be mentioned in the suit for partition. He asserts that apart from this admission, there is nothing on the record to indicate so. No evidence has been produced by the respondents-defendants proving the factum of there being other houses than the one which has been mentioned in the present suit. He asserts that the findings, therefore, merely on the basis of an admission, cannot be said to be enough to dislodge the claim of the appellants-plaintiffs. That apart, he asserts that the Courts have heavily relied upon the non-filing of the replication by the appellants-plaintiffs to rebut the assertion of the respondents-defendants with regard to the plea of part partition as also the other pleas i.e. with regard to the execution of the Will dated 25.03.1994 in favour of respondent No.6-defendant No.3 and his brother Joginder Ram-plaintiff No.2, Sat Pal-defendant No.2 and Santokh-plaintiff No.1. He, thus, contends that the judgments and decree 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 appellant and with his able assistance, have gone through the impugned judgments but do not find any weight in the contentions as raised by the counsel.

4. Admission is the best evidence and in the cross-examination, what has been stated by the witness, who was the plaintiff as well, i.e. Mr. Parkash Ram, is that apart from the property in question, Kartara Ram was having 5/7 houses regarding which no partition has taken place after the death of Kartara Ram and the said houses are still joint and three shops

have also been constructed in the land in dispute. This property admittedly is not part of the land/property which is being sought to be partitioned. The assertion of the counsel for the appellant that merely because a stray admission has been made by one of the plaintiffs when he appeared as a witness, cannot oust the claim, specially when no documentary evidence has been produced in this regard in support of the said aspect and, therefore, it cannot be made the basis for denying the benefit as claimed in the suit, cannot be accepted. As already stated, admission is the best evidence and once such a situation arises, no further evidence is required to be led by the parties as it is itself a proof of a factum.

5. As regards the contention of the counsel for the appellant that the Courts have heavily relied upon the non-filing of the replication is not provided for in the Civil Procedure Code, suffice it to say that the stand as taken by the respondents in the written statement, if not denied or controverted, would in itself be a persuasive factor for the Court to come to a conclusion that the said assertion is correct, however, wherever such a proof is required, the Court may insist upon such evidence. In the present case, since the suit was filed by the appellant-plaintiffs themselves, they were to stand on their own feet, supporting the factum that all the properties of which the parties are joint owners and are being sought to be partitioned, were included in the suit. By now it is a settled preposition of law that there cannot be any part or partial partition and the partition suit has to include each and every property which is held jointly by the party.

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 being in accordance with law, do not call for any interference.

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

January 21, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE