

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

103

Regular Second Appeal No.5259 of 2014 (O&M)
Date of Decision: March 14, 2016

Karnail Singh

...Appellant

Versus

Bhajan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Aakash Singla, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.12403-C of 2014

Prayer in this application is for condonation of delay of 4 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 4 days in filing the appeal stands condoned.

RSA No.5259 of 2014

Challenge in this appeal is to the judgment and decree dated
17.12.2010 passed by the Civil Judge (Junior Division), Nakodar, whereby
the suit filed by the appellant-plaintiff for grant of decree of permanent
injunction restraining the respondents-defendants from interfering in the
peaceful and lawful possession of the appellant-plaintiff over the land
measuring 34 kanals 12 marlas as detailed in the headnote, situated in the
area of village Mirpur Saidan, Tehsil Shahkot, District Jalandhar, stands
dismissed on the ground that the partition proceedings as initiated by the
respondents-defendants, who admittedly are the co-sharers of the land have
already attained finality and the appellant-plaintiff is in possession of the
said land, appeal against which preferred by the appellant-plaintiff has also
been dismissed by the Additional District Judge, Jalandhar, on 21.05.2014.

2. It is the contention of learned counsel for the appellant that no doubt the proceedings before the Financial Commissioner, Revenue, Punjab, for partition have attained finality but he wants time to verify as to whether the appellant-plaintiff has filed a writ petition challenging the said proceedings and the order passed therein. He contends that if the writ petition is pending, the proceedings for partition have not attained finality and, therefore, the judgments of the Courts below would not be sustainable. He, thus, contends that time may be granted to verify this aspect.

3. Having considered the submissions made by learned counsel for the appellant, I do not find any justification for granting time for verifying the said aspect, especially when it is not in dispute that the appellant-plaintiff is in possession of the land holding, of which admittedly respondents-defendants are co-sharers and entitled to their respective shares.

4. The suit was filed primarily for restraining the respondents from interfering in the peaceful possession of the appellant-plaintiff over the suit land which was claimed by him to be in his exclusive possession. The remedy available to the respondents was admittedly partition proceedings which they have availed of and the same have attained finality upto the Financial Commissioner, Revenue, Punjab. The pendency of the writ petition, assuming it is so, would not in itself make any difference as far as the dismissal of the suit by the Courts below on the grounds mentioned therein, is concerned. The suit has rightly been dismissed in the light of the fact that the legal remedy available to the respondents has been availed of by them. In the garb of the present suit, an effort is being made by

the appellant-plaintiff to hold on to the land which he is not entitled to possess and the partition proceedings would govern his right of ownership and possession of the suit land. The Civil Courts cannot be used as a process of perpetuating illegality or illegal possession over a suit land which is admittedly joint ownership of the parties and the respondents admittedly are the co-sharers.

5. Mere pendency of the writ petition would not, therefore, make any difference with regard to the observations of the Courts which are in accordance with law and do not call for any interference.

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

7. 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.

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

9. In the light of the dismissal of the appeal, the application for stay i.e. CM No.12404-C of 2014, stands disposed of as infructuous.

March 14, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE