

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

R.S.A No.6054 of 2014(O&M)

Date of decision : 06.05.2016

Davinder and another

..... Appellants

Versus

Balbir Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Aditya Jain, Advocate
for the applicants-appellants.

1. **Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
2. **To be referred to the Reporters or not?Yes.**
3. **Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH,J

CM No. 5674-C of 2016

This application has been filed by the appellants-plaintiffs under Order 41 Rule 19 read with Section 151 of the Code of Civil Procedure, 1908 (for short CPC) for restoration of the appeal, which was dismissed in default on 01.04.2016 by this Court.

Heard on the application.

In view of the reasons mentioned in the application, the application stands allowed and the appeal is ordered to be restored at its original number and is taken up today itself.

R.S.A No. 6054 of 2014

The present appeal has been preferred against the judgment and decree dated 13.10.2014 passed by Dr. Pankaj, Additional District

Judge, Faridabad, whereby the appeal filed by the plaintiffs-appellants against the judgment and decree dated 31.07.2014 passed by the learned Civil Judge (Junior Division), Faridabad, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Appellants-plaintiffs have filed the suit for declaration to the effect that they are owners in possession of the land comprised of rectangle no. 11 Killa no.21/2 (4-0) adjoining 4 Karam wide passage leading from village Jasana to Dhakola with consequential relief of permanent injunction.

4. As per the case of the appellants-plaintiffs, they are owners in possession of the land bearing Khewat No. 88 Khata no. 121, total measuring 88 Kanals 16 Marlas situated within revenue estate of village Jasana, Tehsil and District Faridabad. Respondents are also owner in possession of the land bearing Khewat no. 87, Khata no.117, 118, 119 and 120 total measuring 90 Kanals situated within the revenue estate of village Jasana, District Faridabad. The land in dispute was the ancestral property of the parties, which was partitioned between their predecessor-in-interest during the year 1970-1971 by way of oral/mutual partition. In pursuance of which the land detailed in para no.1-A of the plaint had fallen in the share of the predecessor-in-interest of the appellants and the land detailed in para no. 1-B of the plaint had fallen to the share of predecessor-in-interest of respondents vide mutation no. 569. The land comprised of rectangle no. 11, Killa no.21, measuring 8 Kanals was divided into two equal parts by the parties. Killa no. 21/1 (4-0) had fallen

to the share of the predecessor-in-interest of the respondents and Killa no.21/2 had fallen to the share of the predecessor-in-interest of the appellants. Since then, both the parties are in possession of their respective portions. It is further pleaded that the land of the respondents is adjacent to Faridabad-Manjawali road including Killa no.21/1. Whereas, the land belonging to the appellants is also adjoining to Faridabad Manjawali road. Part of rectangle no.11 Killa no.21 i.e. Killa no.21/2(4-0) which had fallen to the share of the appellants adjoins Sare Aam Rasta of 4 Karams leading from village Jasana to Village Dhakola. Now, the metalled road has been laid at the said passage. As such the defendants have developed greed and had threatened forcibly to dispossess the appellants from the land comprised of Killa no.21/2 adjoining the passage. Hence, the suit.

5. Respondents-defendants contested the suit on the grounds *inter alia* that the predecessor-in-interest of respondents were allotted the land measuring 90 Kanals 10 Marlas in the partition including the land comprised of rectangle no.11 Killa no.21/1 (4-0) situated on Jasana road. The appellants have no concern with the said land. Rest of the pleas raised in the plaint were controverted.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court 09.11.2012:-

1. Whether the plaintiff is entitled to a decree of declaration as prayed for?OPP
2. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for?OPP
3. Whether the plaintiff has no locus standi to file the present suit?
OPD

4. Whether the plaintiff is estopped from filing the present suit by his own act, conduct and acquiescence?OPD
5. Whether the suit is not maintainable in the present form?OPD
6. Whether this Court has jurisdiction to try the present suit?OPD
7. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit filed by the appellants-plaintiffs with costs, vide impugned judgment and decree dated 31.07.2014.

8. Aggrieved with the aforesaid judgment and decree, appellants-plaintiffs preferred the appeal, which was also dismissed by the learned Additional District Judge, Faridabad, vide impugned judgment and decree dated 13.10.2014. Hence this Regular Second Appeal by the appellants-plaintiffs.

9. I have heard Mr. Aditya Jain, Advocate, learned counsel for the appellants and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellants contended that the appellants-plaintiffs are owner in possession of the land comprised of rectangle no.11 Killa no.21/2 (4-0) adjoining 4 Karam wide passage leading from village Jasana to Dhakola, which had fallen to the share of the predecessor-in-interest of the appellants in the mutual partition. He contended that the appellants are owners in possession of the land comprised of Killa no.21/2 which adjoins to the metalled road leading from Jasana to Dhakola. The defendants wants to forcibly dispossess the plaintiffs from the aforesaid land, for which they have no legal right. Thus, he contended that the suit has been wrongly dismissed

by the learned Courts below.

11. I have duly considered the aforesaid contentions.

12. This fact is not disputed that the partition of the land has taken place between the parties. The dispute is only with respect to the land comprised of rectangle no.11 Killa no.21 measuring 8 Kanals, which has been equally divided in favour of both the parties. It is the admitted case of the appellants-plaintiffs that Killa no.21/2(4-0) had fallen to their share and Killa no.21/1(4-0) had fallen to the share of the defendants. The plaintiffs are claiming that Killa no.21/2 which had fallen to their share adjoins to Jasana to Dhakola road. On the other hand, the respondents-defendants have pleaded that the land adjoining to the road leading from village Jasana to Dhakola is comprised of Killa no.21/1, which had fallen to their share.

13. Copy of Jamabandi for the year 2003-04 shows that the plaintiffs-appellants are owners in possession of the land comprised of Killa no.21/2. The copy of the Jamabandi Ex.D-1 shows that defendants are owners in possession of Killa no.21/1. So, from the documentary evidence adduced by the parties as well as from the pleadings of the parties, it comes out that the appellants -plaintiffs are owner in possession of the land comprised of rectangle no.11 Killa no.21/2(4-0) and defendants-respondents are owner in possession of the land comprised of rectangle no.11 Killa no.21/1(4-0). The only dispute is as to whether the land adjoining to Jasana-Dhakola road is comprised of Killa no.21/1 or 21/2. Ex.P-7 is the copy of Aks Shajra of village Jasana for the year 1953-54. The learned First Appellate Court has categorically observed on

perusal of the said Aks Shajra that Killa no.21/1 of rectangle no.11 is adjacent to the road leading from village Jasana to Dhakola and the back portion is Killa no.21/2. Even, as per the admitted case of the appellants-plaintiffs, the land comprised of Killa no.21/2 had fallen to their share and 21/1 to the share of defendants at the time of the partition. So, even from the documents produced by the appellants-plaintiffs themselves, it comes out that the land adjoining to the road leading from village Jasana to Dhakola is comprised of rectangle no.11 Killa no.21/1, which had fallen to the share of the defendants. The land allotted to the plaintiffs comprised of rectangle no.11 Killa no.21/2 is on the backside and is not adjoining to the road. Thus, the appellants-plaintiffs cannot claim themselves to be the owner in possession of the land adjacent to the Jasana-Dhakola road.

14. Therefore, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

15. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

16. Resultantly, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

May 06, 2016

s.khan

(DARSHAN SINGH)
JUDGE