

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

RSA No.818 of 2014 (O&M)

Date of decision : 28.04.2016

Ishwar Singh

...Appellant

Versus

Hari Singh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.**

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Manoj Tanwar, Advocate for the appellant.

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**AMIT RAWAL, J. (Oral)**

**CM No.1837-C of 2014**

For the reasons stated in the application, which is duly supported by an affidavit, delay of 2 days in filing the appeal is condoned.

Application is allowed.

**CM No.1838-C of 2014**

For the reasons stated in the application, which is duly supported by an affidavit, delay of 34 days in refiling the appeal is condoned.

Application is allowed.

**Main Case**

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking declaration that he is owner in possession of the suit land and the defendants have no concern with the ownership and possession of the plaintiff and partition proceedings dated 17.06.1993 decided on 24.01.1995 by the Court of Assistant Collector, Ist Grade and further its order dated 28.07.1997 is being against the law and beyond record, be declared null and void and the sale deed dated 06.05.1985 on the basis of which the mutation bearing No.1014 and judgment and decree dated 27.08.1986, and mutation No.929 and sale deed dated 30.01.1987 and mutation No.904 and sale deed dated 30.05.1991 and mutation No.996 and judgment and decree dated 06.04.1991 and mutation No.990, sale deed dated 25.09.1991 and mutation No.997 and sale deed dated 12.05.1994 and mutation No.1070, judgment and decree dated 16.01.1996 and mutation No.1105 being against the law having obtained by way of fraud and misrepresentation.

It has been contended that both the Courts below have committed illegality and perversity in dismissing the suit, whereas the appellant had purchased the disputed property by virtue of sale deed. Court below have not appreciated the fact that partition proceedings are similar in nature because question of title raised therein had not been decided and the remedy only was to file the civil suit, therefore, it cannot be said to be not maintainable.

I have heard learned counsel for the appellant and appraised the paper book and of the view that both the Courts below gave a finding by negating the plea of plaintiff that the land acquired was in his possession

and should not have reduced from the share as neither the date, month, year of acquisition has been pleaded, much less, proved on record. On perusal of the document i.e. the order passed by the Assistant Collector shows that objection was raised on behalf of plaintiff and, therefore, order cannot be said to have been passed at the back of the appellant. Thereafter the objections were withdrawn but no objection qua his share was ever raised in any partition proceedings. The remedy available to the plaintiff was to file appeal before the Collector instead of choosing the remedy to file the suit after proceedings before the Revenue Court culminated. Of course at that stage, the appellant-plaintiff could have chosen to file the suit or invoke the provision of Article 226 of Constitution of India but not in the manner and mode as has been chosen.

In view of what has been mentioned above, I do not intend to differ with the findings rendered by both the Courts below, much less, no substantial question of law arises for determination by this Court.

Appeal stands dismissed.

**28.04.2016**

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**(AMIT RAWAL)  
JUDGE**