

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1555 of 2011 (O&M)
Date of Order: 12.09.2017

Bikker Singh

..Appellant

Versus

Sukhdev Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S. Dhaliwal, Advocate,
for the appellant.

Mr. Rajan Bansal, Advocate,
for respondent nos.1 and 2.

ANIL KSHETARPAL, J (Oral)

C.M.No.4338-C of 2011

Prayer in this application is for condonation of delay of 107 days in re-filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 107 days in re-filing the appeal is condoned.

Application is allowed.

C.M.No.4339-C-2011

Allowed as prayed for.

RSA No.1555 of 2011

Plaintiff is in regular second appeal against concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for declaration, possession and permanent injunction with respect to land measuring 13 kanals 11 marlas.

Plaintiff had also challenged the sale deed executed by Chuhar Singh in favour of defendant no.1-Sukhdev Singh (grand son of Chuhar Singh), dated 03.01.1996, on the ground that the property was joint Hindu Coparcenary property.

Both the Courts after appreciating the evidence available on the file have held that the plaintiff has failed to prove that the property was joint Hindu Coparcenary property in the hands of Chuhar Singh.

Before the first appellate Court, plaintiff filed an application for additional evidence under Order 41 Rule 27 of the Code of Civil Procedure to produce on record mutation regarding inheritance of Wariam Singh son of Anokh Singh in favour of Chuhar Singh and Sarban Singh. The aforesaid application was dismissed by the first appellate Court.

I have heard counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has argued that the application for additional evidence was wrongly dismissed as the plaintiff was only wanting to produce copy of the mutation which would have helped the Court in properly adjudicating the matter. He submits that since half share of the property had come from Wariam Singh, brother of Harnam Singh, therefore, such evidence should have been allowed.

In my considered opinion, learned trial Court was wrong in refusing to admit in additional evidence copy of the mutation sought to be produced. Mutation is a part of official record and, therefore, the Court was in error in refusing to admit the additional evidence.

However, merely because the application for additional evidence has been allowed, the case of the plaintiff is still at the same

position. Plaintiff has failed to prove that the land is joint Hindu family Coparcenary property. Coparcenary is a creation of law and it has to be shown that four generations were living jointly at particular point of time. Once brother of Harnam Singh, namely, Wariam Singh had transferred the property to Harnam Singh, then there is no question of any coparcenary. Chuhar Singh had executed the registered sale deed in favour of his grand son Sukhdev Singh. Plaintiff was required to prove that the property in the hands of Chuhar Singh was joint Hindu family Coparcenary property, which he failed to establish.

In view of the discussion, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is dismissed.

September 12, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No