

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

RSA No.2105 of 2015 (O&M)

Date of Decision: 2.8.2017

Bhalla and another

... Appellants

Versus

Duni Chand and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.H.R.Bhardwaj, Advocate for the appellant

RAJIV NARAIN RAINA, J.

1. This is a regular second appeal assailing the judgments and decrees of the courts below dismissing the suit of the plaintiffs. The appellants/plaintiffs filed the suit challenging the final order passed in partition proceedings. Plaintiffs challenged the mode of partition by way of a separate suit. The suit was filed on 29th September, 2009. The defendants put in appearance and five issues were framed by order dated 20th August, 2010. The plaintiffs were granted four opportunities including the last one to produce evidence, but they failed to produce oral and documentary evidence in support of their pleadings. The trial court closed the evidence on 8th June, 2012 by invoking the provisions of Order 17 Rule 3 of the CPC. In the first appeal, a plea was made for remand of the case on the ground that counsel for the plaintiffs was sick and under treatment for which certain OPD slips were produced. The medical record showed that plaintiffs' counsel took treatment for his teeth and the first appellate court observed that sickness was not such that required hospitalization nor any record was shown that hospitalization or rest was required on the relevant day of non-appearance. The version of the

plaintiffs was disbelieved. There was failure to appear on account of sickness. The first appellate court noticed that in the impugned judgment of the trial court, the presence of counsel was marked. The court observed that the suit was rightly dismissed on merits for plaintiffs having not substantiated their pleadings by bringing evidence. It was also observed that mere pleadings is no proof of facts and mere tendering of documents without formal mode of proof is no evidence in the eyes of law. The provisions of Order 9 Rule 8 of the CPC was not applicable in the given facts and circumstances. The plaintiffs failed to challenge the order dated 8th June, 2012 by which evidence was closed. Nevertheless, the evidence of the defendants was also closed by order and thus the suit was brought to a grinding conclusion entailing its dismissal.

2. It is argued that proper procedure was not followed by the court under Order 17 Rule 3 of the CPC in as much as when evidence of the plaintiffs was closed and the next date was fixed for defendants' defence, then instead of adjourning the case, the trial court should have dismissed the case forthwith. This is an argument of desperation. After the evidence of the plaintiffs was closed by invoking Order 17 Rule 3 of the CPC, even then the defendants must be given an opportunity to lead evidence, if they wished to. The argument in my view is without any substance and is liable to be rejected.

3. Besides, the order closing the evidence of the plaintiffs was not challenged by them when it could have been before the High Court. This was a fatal lacuna in the prosecution of the appeal before the first appellate court and the position was duly noticed in the judgment appealed from. In short, the suit itself was a futile effort of the plaintiffs to re-open the case, even when the revenue courts had concluded the

matter by final partition of the suit property identifying shares to soil. I have no reason to interfere with the findings of fact recorded by the courts below. The judgments and decrees of the courts impugned do not suffer from any illegality, irregularity or perversity nor the same can be said to be tainted with any error apparent on the face of record so as to require interference by this Court in appeal. No question of law, much less a substantial one, arises for consideration.

4. For the foregoing reasons, this appeal is held to be without substance and is dismissed and the application for condonation of delay of 21 days in refiling the appeal is condoned.

2.8.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No