

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

**Regular Second Appeal No.3926 of 2015(O&M)
Date of Order: 19.07.2017**

Baljeet

..Appellant

Versus

Smt. Saroj and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Virender Rana, Advocate,
for the appellant.

ANIL KSHETARPAL, J (Oral)

C.M.No.9616-C-2015

Allowed as prayed for.

C.M.No.9617-C-2015

Prayer in this application is for condonation of delay of 14 days in filing the appeal.

For reasons stated in the application, which is supported by the affidavit, the application is allowed and delay of 14 days in filing the appeal is condoned.

RSA No.3926 of 2015

Plaintiff-appellant has filed the present appeal against concurrent finding of fact arrived at by the courts below.

Plaintiff had filed a suit for declaration with consequential relief of permanent injunction, praying that mutation no.2375, dated 04.06.2009 has been wrongly, illegally and lawfully entered and sanctioned by the revenue authorities. It was claimed that plaintiff is co-sharer in the possession of the suit property measuring 21 Kanalas 01 Marla to the extent of 180/481 share situated within the revenue estate of village Jaurasi, Tehsil

Tauru, District Mewat.

Defendants contested the suit and pleaded that revenue authorities during the course of partition proceedings had partitioned the land between the parties and pursuant to that partition, mutation no.2375 was sanctioned by the revenue authorities showing all the parties to be in separate possession.

Learned trial court after appreciating the evidence available on record, dismissed the suit filed by the plaintiff. The judgment and decree passed by the trial court was affirmed by the learned first appellate Court after re-appreciating the evidence.

During the pendency of first appeal, appellant filed an application under Order 41 Rule 27 of the Code of Civil Procedure for permission to produce on record mutation no.1902, dated 28.12.1999, sanctioned on the basis of registered Will of Charan Singh, in favour of the plaintiff. The application under Order 41 Rule 27 of the Code of Civil Procedure, was dismissed as the Court found that the plaintiff cannot be permitted to lead any evidence beyond the pleadings. The Court further found that ownership of plaintiff is not in question in the present case.

Learned counsel for the appellant has also filed an application for additional evidence under Order 41 Rule 27 of the Act. The same will of Charan Singh is sought to be produced in additional evidence.

On the pleadings of the parties, learned trial court culled out following issues:-

1. Whether the plaintiff is entitled to declaration as alleged?OPP
2. Whether the plaintiff is entitled to injunction, if any ?

OPP

3. Whether the suit is not maintainable?OPD
4. Whether the plaintiff has no locus standi to file the present suit?OPD
5. Whether the plaintiff has not come with clean hands and concealed the true and material facts from the Court?OPD.”

There is no issue on the Will. The succession of plaintiff from Charan Singh on the basis of will is not subject matter of dispute in the present case, therefore, the learned first appellate court has rightly found that the additional evidence cannot be allowed. For the same reason, I also find that application under Order 41 Rule 27 of the Code of Civil Procedure seeking production of registered will has no force, therefore, the same is ordered to be dismissed.

Learned counsel for the appellant has submitted that mutation was recorded and sanctioned for a period of 3 years and, therefore, the same was in violation of Section 122 of the Land Revenue Act, 1887 (hereinafter referred to as 'the Act'). Section 122 of the Act does not deal with the mutation. Mutation is only an entry by the revenue authorities correcting its revenue record. Section 122 of the Act deals with the delivery of possession pursuant to a partition order. Section 122 of the Act does not deal with the mutation. Section 122 of the Act is extracted as under:-

“122. Delivery of possession of property allotted, on partition.- An owner or tenant to whom any land or portion of a tenancy, as the case may be, is allotted in proceedings for partition shall be entitled to possession thereof as against the other parties to the proceedings and their legal representatives, and a Revenue-officer shall, on

application made to him for the purpose by any such owner or tenant at any time within three years from the date recorded in the instrument of partition under the last foregoing section, give effect to that instrument so far as it concerns the applicant as if it were a decree for immovable property.”

Therefore, the first argument of learned counsel for the appellant is liable to be rejected.

Learned counsel has further argued that the courts below have recorded a finding that plaintiff is not a co-sharer and such finding is not correct.

I have noticed that in paragraph 12, the learned trial court has recorded such finding. However, such finding is based on the admission of the plaintiff. In any case, the reading of the issues would prove that there was no issue with regard to the plaintiff being co-sharer or not. Therefore on this ground, I do not find any reason to interfere in the regular second appeal. The short issue before the courts below as well as before me is whether plaintiff could file a suit challenging mutation on the ground that it is beyond limitation as prescribed by Section 122 of the Act or not. As I have already found that Section 122 do not deal with sanctioning of mutation, therefore, the whole basis of the suit fails.

Finding no merits in the present appeal, the same is dismissed.

July 19, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No