

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) Regular Second Appeal No.2887 of 2017(O&M)
Date of Order: 02.08.2017

Ajay Kumar

...Appellant

Versus

Naresh Kumar

...Respondent

(2) Regular Second Appeal No.2899 of 2017(O&M)

Ajay Kumar

...Appellant

Versus

Naresh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Chaudhary, Advocate,
for the appellant.

ANIL KSHETARPAL, JUDGE (Oral)

C.M.Nos.7198-C of 2017 &
C.M.No.7248-C of 2017

Prayer in these applications is to condone delay of 34 and 32 days in filing the respective appeals.

For the reasons stated in these applications, which are supported by affidavits, the applications are allowed and delay of 34 and 32 days in filing the respective appeals are condoned.

MAIN CASE

Through this common judgment, I shall be disposing of Regular Second Appeal Nos.2887 and 2899 of 2017, arising between the same parties with respect to the same property, in dispute.

Plaintiff-respondent filed a suit for permanent injunction asserting that he was in possession of 1165 sq. yds. of land being 38.51/1932 share out of total land measuring 96 kanals and 12 marlas. Pursuant to the sale deed executed by a co-owner, dated 19.07.2006, Plaintiff became co-owner and was put in possession of specific plot with specific boundaries.

Defendants contested the suit.

Appellant-defendant no.4 had pleaded in the written statement that defendant no.4 had purchased land measuring 695 sq. yds. , vide sale deed dated 31.01.2008.

The learned trial Court after appreciating the evidence available on record found that plaintiff is in possession of only 700 sq. yds. plot on the western portion of khasra no.20//17. With these finding, the suit for permanent injunction was decreed restraining the defendants from interference in the peaceful possession of the plaintiff over suit property i.e. 700 sq. yds., except in due course of law.

First appeal filed by defendant no.4, appellant herein, has also been dismissed after re-appreciating the evidence available on the file.

Counsel for the appellant has submitted that the finding arrived at by the Courts below is result of misreading of evidence. Counsel for the appellant has further submitted that once all the parties are co-owner of joint khata, therefore the suit for injunction was not maintainable.

I have heard counsel for the appellant at length. I have also examined the records of the courts below.

There is no dispute that parties are co-owner/co-sharer. The property can be divided only by way of partition. When the parties are co-owner, every co-owner has a right in every inch of land. The Courts below have only

protected possession of the plaintiff to the extent of 700 sq. yds and that of course is except in due course of law. During partition proceedings, the competent Court of jurisdiction is free to allot particular portion to a co-owner.

Learned counsel for the appellant has further submitted that there is no evidence available on record that the plaintiff had been delivered possession of western portion in khasra no.20//17.

A reading of the sale deed would show that possession of specified plot was handed over. As I have already observed earlier that parties are co-owner, the remedy for them is to seek partition. Only partition of the property can resolve this dispute. The injunction granted in favour of the plaintiff is only to protect his possession till the competent Court passes an order of partition and, thereafter orders delivery of possession.

With these observations, the regular second appeals are dismissed.

August 02, 2017
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(ANIL KSHETARPAL)
JUDGE

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