

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

**R.S.A No. 3444-2017 (O&M)
Date of decision : 07.09.2017**

Gurtek Singh

...Appellant

versus

Sukhwinder Kaur & ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. N.S. Sodhi, Advocate
for the applicant-appellant

Mr. Tribhuwan Singla, Advocate
for the caveators.

RITU BAHRI, J.

C.M. No. 8313-C-2017

For the reasons mentioned in the application, delay of 05 days
in filing of the present appeal is condoned.

The application stands disposed of.

R.S.A No.3444-2017

The appellant has come up in regular second appeal against the
judgment and decree dated 17.03.2017 whereby appeal filed by the
plaintiffs-respondents (for short 'respondents') against judgment and decree
dated 11.05.2015, has been allowed.

Brief facts of the case are that respondents filed a suit against
the appellant stating therein that they purchased 13/21 share of the suit land
in auction held on 29.01.2005. The suit property was attached in auction

proceedings on 27.03.2003 and sale certificate of the suit property has been issued in their favour on 26.10.2013. Earlier Mohan Lal was the owner in possession of the property in dispute. The remaining 8/21 share is owned and possessed by the present appellant. Thus, both appellant and respondents were co-sharers in the suit property. The symbolic possession of the suit property was delivered to the respondents under the order of the Court, vide rapat No.184 dated 27.01.2014 made by patwari.

Initially the learned trial Court dismissed the suit on the ground that said Harbhagwan Singh and Mohan Lal have not been made the parties in the case and as such suit property cannot be partitioned in their absence.

However, the learned lower Appellate Court reversed the finding of the learned trial Court and observed that Mohan Lal did not remain owner of any part of the suit property after issuance of sale certificate dated 26.10.2013 in favour of the respondents. A perusal of the certified copy of the Rapat Roznamcha dated 27.01.2014 would show that it was entered in the presence of son of Mohan Lal and it has also been mentioned in this rapat that possession of the land measuring 13 marlas regarding which sale certificate has been issued in favour of the respondents could not be delivered to them without police help as JD Mohan Lal is of quarrelsome nature.

It has further been observed that it is evident that a decree dated 14.06.1997 for recovery of Rs.27,500/- along with costs and future interest was passed in favour of the respondents against one Mohan Lal. Since then, they are contesting one litigation after the other to enjoy the fruits of that

decree. They are facing the protracted trial for the last more than 20 years and Mohan Lal is doing his best to frustrate the efforts made by the respondents to get the decree dated 14.06.1997 executed. In the execution proceedings of the decree dated 14.06.1997, Harbhagwan Singh who appears to be a person of Mohan Lal has been filing objections one after the other claiming himself to be the owner of the suit property and succeeded in delaying the execution for a period of 15 years.

Thus, Harbhagwan Singh and Mohan Lal were co-sharers in the suit property and it has also been admitted by D.W.1 that their names have wrongly been entered in jamabandi for the year 2008-09.

Accordingly, the concurrent findings of facts recorded by the learned Appellate Court does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

07.09.2017
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No