

In the High Court of Punjab and Haryana at Chandigarh

.....

CM Nos.3583-C and 3584-C of 2018

and

R.S.A. No.1373 of 2013

.....

Date of decision:18.5.2018

Ghanshyam

.....Appellant

v.

Rajender

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Rajender Kumar, Advocate for the appellant.

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Inderjit Singh, J.

CM No.3583-C of 2018:

For the reasons mentioned in the civil miscellaneous application, the delay of 1230 days in filing the application for restoration of the appeal is condoned.

The civil miscellaneous application is allowed.

CM No.3584-C of 2018:

This application has been filed under Order 41 Rule 19 read with Section 151 CPC for restoration of the above mentioned appeal dismissed in default vide order dated 15.9.2014.

Keeping in view the fact that learned counsel has filed his affidavit and in view of the fact that the rights of the parties should be

determined on merit as far as possible and for the averments made in the application, I accept this application. The regular second appeal No.1373 of 2013 is restored to its original number.

R.S.A. No.1373 of 2013:

Learned counsel for the appellant stated that he is also ready to argue the regular second appeal today itself.

I have heard learned counsel for the appellant and have gone through the record.

This regular second appeal has been filed against the impugned judgment passed by the learned Additional District Judge, Palwal vide which the appeal filed by the appellant against the impugned judgment and decree dated 10.1.2012 passed by learned Additional Civil Judge (Senior Division), Palwal has been dismissed.

From the record, I find that Ghanshyam-appellant/plaintiff filed suit against Rajender Singh, Maina, Urmesh Devi, Savita Devi, Vitesh Devi and Sanjokta for declaration and permanent injunction. As per the plaintiff, he and defendants No.2 to 6 are co-owners in the exclusive physical possession of land measuring 8 Kanals as described in the head note of the plaint. The entries in the revenue record i.e. Rapat Roznamacha No.110 and the subsequent revenue record in the name of defendant No.1 in the column of the possession regarding the suit land are wrong, illegal and the same are liable to be corrected in the name of plaintiff and proforma defendants No.2 to 6 and that decree for permanent injunction dated 28.4.2003 regarding the possession of the suit land in favour of defendant No.1 in civil suit titled as “Rajender Singh Vs. Varendar Singh etc.” is wrong, illegal, null and void

and is liable to be set aside with consequential relief of permanent injunction restraining defendant No.1 from interfering into the possession of the plaintiff and proforma defendants No.2 to 6 over the suit land.

The defendant No.1 contested the suit.

The learned Additional Civil Judge (Senior Division), Palwal, on the basis of evidence produced before him found that the suit was filed by Rajender Singh against Varendar Singh etc., which was decided on 28.4.2003 (copy of the judgment and decree are Ex.D.3 and Ex.D.4). In this case present defendant No.1, namely, Rajender Singh was found to be in possession of the suit land along with some other land. The Court below also discussed the judgment dated 18.9.2010 passed in Civil Suit No.RBT 504 of 2004 titled as "Rajender Vs. Ghanshyam" which shows that present plaintiff-Ghanshyam was restrained from interfering into the possession of the plaintiff over the suit land till the final partition by meets and bounds. The judgments dated 18.9.2010 and 28.4.2003 are binding upon the parties to the suit and it has been established that defendant No.1 is in possession of the suit land.

A perusal of the record shows that already between the same parties, namely, Rajender Singh and Ghanshyam in the earlier suit possession of Rajender Singh was found to be on the suit property and Ghanshyam was restrained from interfering in the possession of Rajender Singh, who is defendant No.1 in this suit.

In the present case, at the time of arguments, learned counsel for the appellant admitted that the judgment dated 18.9.2010 between the parties has become final and no appeal is pending. When the matter has

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been decided on merit between the parties regarding possession of the suit land, therefore, the suit of Ghanshyam has been rightly dismissed. Furthermore, the revenue record etc. is also in favour of Rajender Sigh. The findings given by the Courts below are consistent as per evidence and law. In no way, these findings can be held as perverse or against the evidence or law. The findings have been given after appreciating the evidence on record in a correct and proper manner.

The concurrent findings of fact reached at by the learned Courts below warrant no interference in the regular second appeal. No question of law much less substantial question of law arises for consideration of this Court.

In the circumstances, there is no merit in this appeal and the same is accordingly dismissed.

As the main appeal is decided, therefore, civil miscellaneous application, if any, also stands disposed of.

May 18, 2018.

(Inderjit Singh)
Judge

hsp

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