

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

RSA No.2203 of 2015 (O&M)

Date of decision : 29.10.2018

Satpal Singh Bains

...Appellant

Versus

Kewal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.S. Dadwal, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.11952-C of 2018

Prayer in the application is for ordering the substituted service by way of publication in a newspaper which is circulated in Canada and in the area where respondent No.1 is ordinarily resident.

Application is dismissed as not pressed.

Main case

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below dismissing his suit for declaration that he and defendant No.2 are owners in possession of the land measuring 1 kanals 9 marlas and 6 sarsai and the entry in the revenue record recording defendant No.1 to be owner of half share is wrong. It is pleaded case of the plaintiff that defendant No.1-Kewal Singh gave up his half share in the partition proceedings.

Defendant No.1 contested the suit and pleaded that neither there was any oral partition nor there was any partition order of the competent authority.

Learned Courts below after noticing that neither the order of partition has been produced nor the plaintiff has stepped into the witness-box, dismissed the suit.

Learned counsel for the appellant has been heard at length. He while drawing attention of the Court to the order dated 02.03.2012, has submitted that defendant No.1 had admitted the claim of the plaintiff. He submitted that once the claim of the plaintiff was admitted, therefore, the suit ought to have been decreed under Order 12 Rule 6 CPC.

This Court had summoned the record. No doubt, on 02.03.2012, defendant No.1 had suffered a statement, as submitted by the learned counsel for the appellant, however, thereafter the case was adjourned for consideration and remained pending for consideration quite sometime. On 19.09.2013, learned Court referred the matter to the Lok Adalat granting opportunity to the parties to enter into the compromise. The order dated 19.09.2013 is extracted as under:-

“The learned counsel for both the parties stated at bar that the parties are trying to effect compromise and for this purpose case may be adjourned. Request allowed. Case be put up in the Lok Adalat on 28.09.2013 for effecting compromise between the parties.”

On 28.09.2013, the Court noticed that the compromise between the parties has not been effected and the case was thereafter adjourned for further proceedings. Order dated 28.09.2013, is extracted as under:-

“Compromise not effected. On request of the counsel for the parties, now the case is adjourned to 7.10.13 for consideration.”

Even thereafter the case remained pending for more than two years. The plaintiff never requested the Court to decree the suit on the basis of the statement dated 02.03.2012. Since on 02.03.2012, the Court did not pass any decree and thereafter counsel for defendant No.1 had brought to the notice of the Court that no compromise has been effected, the plaintiff-appellant cannot be permitted to fall back upon the statement which has lost its significance in view of the subsequent developments. No doubt, under Order 12 Rule 6 CPC, the Court is required to pass a decree if the claim is admitted, however, the Court cannot overlook the subsequent events which took place proving that there was no settlement between the parties. It may further be noted that the plaintiff also moved an application for preponing the date and the Court noticed that due to some differences, the parties could not arrive at a settlement. The order dated 28.02.2014 is also extracted as under:-

“The applicant/plaintiff moved an application for preponing of the case, which is allowed as the matter in controversy was resolved between both the parties on the visit to India. However, today due to some differences, compromise cannot be effected. Now, to come up on 20.03.2014 as the date already fixed for PW's.”

Learned counsel has further submitted that once the claim of the plaintiff has been admitted, therefore, the plaintiff was not required to prove that fact. He placed reliance on Section 58 of the Indian Evidence Act.

In the considered view of this Court, Section 58 of the Indian Evidence Act, would have no application in view of the subsequent developments which took place particularly when the Court on more than one occasion has noticed that the parties have not arrived at any settlement.

In view of the aforesaid, this Court does not find any substance in the appeal filed.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

29.10.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No