

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 362 of 2016 (O&M)
Date of Order: 25.09.2018

Shimbhu Dayal

..Appellant

Versus

Krishan and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ramender Chauhan, Advocate,
for the appellant.

ANIL KSHETARPAL, J (Oral)

C.M.No.1115-C-2016

Prayer in this application is for condonation of delay of 558 days in re-filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 558 days in re-filing the appeal is condoned.

Application is allowed.

Main

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiff filed a suit for declaration to the effect that he is joint owner in possession of land described in the plaint and plaintiff has ½ share, whereas defendants are owner of the remaining half. It is pleaded that application for partition was moved before the Assistant Collector and an oral settlement was arrived at between the parties, which was later on reduced into writing on 03.05.1996 and as per the oral settlement, the order

of Collector, partitioning the land was nullified.

Defendants contested the suit and pleaded that a competent court of jurisdiction had partitioned the property vide order dated 20.11.1995. There was further dispute between the parties which resulted in to the litigation and judgment and decree was passed by the civil court on 18.10.2001.

Now the plaintiff has filed the present suit pointing out errors in the aforesaid judgment and decree. Learned courts below have held that no separate suit is maintainable and if there is any error or mistake in the judgment and decree dated 18.10.2001, the remedy for the plaintiff is to file an application for correction therein. It has been held that the present suit is barred as per Section 11 of the Code of Civil Procedure.

This Court has heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellant did not dispute that judgment and decree dated 18.10.2001 had decided the dispute between the parties. However, he submitted that unless plaint filed in the previous suit is amended, the judgment and decree cannot be amended. However, he admitted that no application was filed for correction thereof.

In the considered opinion of this court, both the courts have correctly recorded a finding that once there is a judgment and decree passed by a competent court of jurisdiction, if a party wants correction of any mistake, the remedy is before the same court by way of applications under Sections 151, 152 and 153 of the Code of Civil Procedure and no separate suit is maintainable. In the present case, admittedly, no application for

correction has been filed by the parties.

Hence, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The Regular Second Appeal is dismissed.

September 25, 2018
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(ANIL KSHETARPAL)
JUDGE

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