

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

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**CM-8711-12-C-2015 in/and
RSA No.3599 of 2015 (O&M)
Date of Decision : 25.04.2018**

Subeg Singh and others

..... Appellants

Versus

Didar Singh and others

..... Respondents

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Abhinav Gupta, Advocate &
Mr. Vinay Kumar Pandey, Advocate
for the appellants.

AJAY TEWARI, J. (Oral)

CM-8711-12-C-2015

These applications have been filed for condoning the delay of
27 days in refiling and 4 days in filing the appeal.

For the reasons recorded, the applications are allowed. Delay
condoned.

RSA No.3599 of 2015 (O&M)

This appeal has been filed against the concurrent judgments of
the courts below dismissing a suit filed by the appellant.

The appellant had claimed possession over a piece of property from his uncle. The case which was set up that the father and the uncle had purchased the property in equal shares and had mutually partitioned it in the year 1967. However, the uncle had taken illegal possession of the property of the property and that is why the instant suit for possession was filed. The crucial fact which went against the appellant was that the document of partition which they relied upon gave only 1/3rd share to the uncle and 2/3rd share to their father and there was no explanation for that. The case which was set up by the respondent on the other hand was that no partition had ever taken place and had denied the document of partition. Both the courts below held that even if the document is proved, once the partition gave a disproportionate share to one co-sharer it became compulsorily registrable and the document which was relied upon by the appellant not being registered could not be looked at.

Today the counsel for the appellant has sought to argue that actually there was one another shop which was jointly owned by the father and uncle and that shop had gone to the uncle and that is why this property was partitioned in what seems to be a lopsided manner. However, he has fairly accepted that neither this document refers to any such shop nor any evidence was led to this effect. Counsel for the appellant has argued that in a previous injunction suit the court had accepted this document.

In my opinion, the glasses through which the court looks at a document always change with the relief. In an injunction suit the court is not looking at a definitive determination of title. In that suit what was granted in favour of the appellant admittedly was that they were in possession and should not be dispossessed except in due course of law.

This fact has been discussed by the courts below in the present case also and the courts have correctly held that the prima-facie finding in an injunction suit would not bind the court in a later suit which was filed for title. In the circumstances, no fault can be found with the findings of the courts below.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

April 25, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No