

RSA No.384 of 2015 (O&M)

{1}

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

RSA No.384 of 2015 (O&M)

Date of decision:16.11.2018

Gurnam Singh

... Appellant

Vs.

Ranga Ram and others

... Respondents

RSA No.1508 of 2015 (O&M)

Inder Singh (since deceased) through LRs

... Appellant

Vs.

Ranga Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. M.K.Chauhan, Advocate
for the appellant (in RSA No.384 of 2015).

Mr. J.K.Chauhan, Advocate
for the appellant (in RSA No.1508 of 2015)

Mr. S.S.Salar, Advocate
for the respondents (in both appeals).

AMIT RAWAL J. (Oral)

C.M.No.1071-C of 2015

For the reasons stated in the application which is duly supported by an affidavit, delay of 05 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.384 and 1508 of 2015 (O&M)

This order of mine shall dispose of two Regular Second Appeals bearing Nos.384 and 1508 of 2015.

The civil suit bearing No.686 preferred by respondents No.1 to 3 represented by Mr.S.S.Salar, Advocate claiming declaration of having become owners of half share in three khewats 107, 108 and 109 measuring 88 bighas was dismissed by the trial Court but reversed by the Lower Appellate Court. It is in these circumstances, two Regular Second Appeals bearing Nos.384 of 2015 at the instance of defendant no.51 and 1508 of 2015 at the instance of LRs of defendant No.1, have been filed.

The pedigree table noticed by the Lower Appellate Court is not in dispute. The respondent-plaintiff had half share in another khewat no.110 measuring 15 bighas 15 biswas which had already been sold which is not in dispute. The dispute revolves only as to whether the Lower Appellate Court while decreeing the suit apportioned share more or less, in other words, whether there is correct apportionment of share or not. Concededly, in this regard, an application under Sections 151 and 152 of Code of Civil Procedure (Annexure A-1) at the instance of defendant no.1 in RSA No.1508 of 2015 is stated to be pending adjudication for consideration before the Lower Appellate Court.

Mr.S.S.Salar, learned counsel representing the respondents submitted that in fact, prima facie, there is some mis-calculation.

Mr. J.K. Chauhan, learned counsel representing the LRs of appellant-defendant No.1 submitted that respondent-plaintiff had submitted an application under Order 41 Rule 27 of Code of Civil Procedure which has been allowed without seeking reply and certain documents have been taken into consideration. Even mutation Ex.D11 has not been taken into consideration and this is one of the grounds in the application (Annexure A-1).

Mr.S.S.Salar, learned counsel has also not opposed the submission made by Mr. M. K.Chauhan, Advocate representing defendant no.51 that in case, similar application as filed by LRs of defendant no.1, is filed, he would not take any objection qua limitation.

In view of the consensus as noticed above, I dispose of both aforementioned appeals with a direction to the Lower Appellate Court to adjudicate the application (Annexure A-1) in letter and spirit, as per the documents on record including the mutation Ex.D11 and other grounds taken in the contemplated application to be filed on behalf of defendant no.51 on merits, in accordance with law.

The parties are also given liberty to assail the finding in case they are aggrieved of the same, in accordance with law.

The appeals stand disposed of.

(AMIT RAWAL)
JUDGE

November 16, 2018

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No