IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

112

CM-17452-C-2016 in/and
RSA No.6684 of 2016 (O&M)
Date of Decision : 01.08.2018

Babu Ram and others

..... Appellants

Versus

Hans Raj and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present :- Mr. S.K.Sandhir, Advocate
for the appellants.

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AJAY TEWARI, J. (Oral)

CM-17452-C-2016

For the reasons recorded, the application is allowed. Delay of 117 days in re-filing the appeal is condoned.

RSA No.6684 of 2016

This appeal has been filed against the concurrent judgments of the Courts below decreeing a suit for permanent injunction filed by respondent No.1.

The claim of respondent No.1 was that he was owner in possession of 1 marla of land comprising in Khasra No.942 which he had purchased by way of sale deed. He sought an injunction restraining the appellants from interfering in his possession. In the written statement, the appellants took the plea that in fact the boundaries mentioned in the sale

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deed are wrong and in fact the land in dispute fell in Khasra No.940 and 941 and not in Khasra No.942. Interestingly, neither the appellants sought any declaration nor led any other evidence to prove their assertion that the boundaries mentioned in the sale deed were wrong. The Courts below decreed the suit on the basis of the revenue record which showed that respondent No.1 purchased 01 marla of land out of Khasra No.942. Hence the present appeal.

Learned counsel for the appellants has argued that during the pendency of the case demarcation had been conducted by the Revenue Department which clearly proved what the appellants were alleging. In this connection an application under Order 41 Rule 27 CPC was filed but that was illegally rejected. Certified copy of the order rejecting that application was not placed on record but has been handed over to the Court today and the same is taken on record as mark 'A'.

It would be pertinent to mention that the application was rejected on the ground of being delayed and not meeting the parameters of Order 41 Rule 27 CPC.

Learned counsel for the appellants has argued that this document goes to the root of the matter and the Courts should have allowed the appellants to place it on record as evidence.

In my considered opinion, the arguments is mis-conceived. Even independently of this document the appellants could well have prayed for demarcation. Before the trial Court they did not do so. In the circumstances, it has to be held that the appellants did not lead any evidence in support of their averment.

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Consequently, 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.

(AJAY TEWARI)
JUDGE

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Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No

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