

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

**RSA- 6729-2016(O&M)
Date of decision :14.11.2018**

Jeewan Lal and others

..... Appellants

versus

Dal Chand and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K.Sharma, Advocate for the appellants.

AMIT RAWAL, J. (ORAL)

CM No. 17545-C of 2016

This is an application seeking condonation of delay of 350 days in re-filing the accompanying appeal.

For the reasons set out in the application, that is duly supported by an affidavit, the delay of 350 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA- 6729-2016(O&M)

Appellant-plaintiff has not been successful in claiming declaration though granted injunction from forcible interference and dispossession.

The case as set out in the plaint was that the appellants were owners in possession of a Gair Mumkin plot measuring 0 kanal 17 marlas comprised in Khewat No. 528, Khatauni No. 597, Khasra No. 249 and plot No.250 measuring 0 kanal 17 marlas whereas the defendant No.1 was the

owner in possession of Gair Mumkin plot comprising of khasra No. 527, khatauni No.597, khasara No.145 measuring 0 kanal 17 marlas. During consolidation one Udai Ram, Devi Ram and Mani Ram had applied for allotment of the plot whereas Chiranji son of khubi did not apply for allotment. Eight plots were allotted to different allottees. Vide resolution No. 15 dated 17.02.1957, plot No.249 was allotted to Devi Ram, father of plaintiffs No. 1 and 2, plot no. 250 was allotted to Mani Ram, father of plaintiffs No.3, 4 and 5 whereas plot No 145 was allotted to Udai Ram, father of defendant No.1 and since then plaintiffs are lawful owners in exclusive possession of plots no.249 and 250 and raised construction over the said plots. However, in jamabandi for the year 1958 up to the year 1972-73 Udai Ram, father of defendant No.1 was shown in exclusive possession as co-sharer whereas Devi Ram and Mani Ram to be in exclusive possession of plots No.249-50 as co-sharer. Plaintiff No.1 claimed that defendants in collusion with Halqa Patwari got the names of defendants No.2,3 and 4 incorporated in the plot Nos. 145, 249 and 250, thus, in these circumstances cause of action arose to them to file the suit and sought injunction.

Defendants opposed the suit and denied that plaintiff No.1 was exclusive owner of the plot no.145. It was stated to be owned and possessed by defendant No.2 Kashi Ram and one Ramji Lal vis-a-vis plots no. 249-50, it was Chiranji son of Khubi, who applied for allotment and the same were allotted to him. On the basis of evidence produced before it, the trial Court, as noticed above, decreed the suit but denied the relief for declaration. Both the parties went in appeal but were dismissed.

Mr.R.K.Sharma, learned counsel appearing on behalf of the

appellants submitted that judgments and decrees of the courts below are not sustainable as wrong entries were incorporated in jamabandi for the year 1972-73 and had no binding effect upon the plaintiff. A fraud had been committed in claiming right of plots no. 249 and 250. Thus in these circumstances a declaration was sought. Plaintiff-appellant could not be said to be co-sharer but despite that ownership rights have not been granted. Partition suit at the instance of defendants could not be brought on record, therefore, learned counsel prayed that his suit be decreed in toto.

I am afraid the aforementioned argument of learned counsel is not sustainable. The appellant had no other remedy except to file a suit for partition. This court was not apprised whether any suit claiming partition, has been filed or not but as noticed above suit or its decision has not been disclosed to the Court, the remedy in such circumstances is only for partition by metes and bounds. The suit was filed only in the year 2006 whereas the entries continued to exist from 1972 to 1973 onwards. In my view the plaintiff has acquiesced the fact and cannot be permitted to rake up the issue after a lapse of almost three decades.

No ground for interference is made out.

Appeal is dismissed.

(AMIT RAWAL)
JUDGE

14.11.2018
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No