

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.3528 of 2014 (O&M)
Date of decision: 30.08.2018

Puran and others

..... Appellants

Versus

Ramphal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Jitender Nara, Advocate
for the appellants.

Mr. Surender Saini, Advocate
for respondents No.1, 2 and 4 to 6.

Mr. Arun Singhal, Advocate
for respondents No.9, 10, 12 to 17, 20 to 25 and 28 to 31.

ANIL KSHETARPAL, J. (ORAL)

CM-8164-C-2014

There is a huge delay of 401 days in re-filing the appeal.

Counsel for the respondents has no objection. Hence, the delay is
condoned and the application is allowed.

Main Case

Defendants-appellants are in the regular second appeal against the
judgment passed by the learned First Appellate Court decreeing the suit for
possession by way of partition.

Plaintiffs who are successor-in-interest of Mehar Chand seven in
number filed a suit for possession by way of partition. The defendants
contested the suit and pleaded that the suit is not maintainable and the plaintiffs
are not co-sharers. It was further pleaded that certain houses has been
constructed and therefore, there is a deemed partition. Learned trial Court

dismissed the suit by passing a judgment which was erroneous. Learned First Appellate Court after re-appreciating the evidence decreed the suit while noticing that in the revenue record after the death of Mehar Chand, his share has been mutated in favour of the plaintiffs and as per revenue record, the plaintiffs and some of the defendants are recorded as co-owners. Learned First Appellate Court has also considered that merely because in some portion of the property houses has been constructed, that would not give rise to conclusion that the property has been partitioned.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the records.

Learned counsel for the appellants has submitted that some of the defendants-respondents were wrongly impleaded as party as they were not co-owners. Hence, the suit was bad for mis-joinder of parties. Learned counsel has further submitted that none of the plaintiff has appeared in the witness-box and the plaintiffs had appointed son of Ramhpal, plaintiff No.1 as General Power of Attorney who appeared in the witness-box. Learned counsel submitted that since none of the plaintiff has appeared in the witness-box, therefore, adverse inference is to be drawn in terms of Section 114 of the Evidence Act.

On the other hand, learned counsel for the respondents contested the position and pleaded that there is no misjoinder as all the persons who were effected have been impleaded. He further submitted that the defendants-appellants have failed to show any prejudice on account of non-appearance of the plaintiffs and further submitted that once there is sufficient evidence available on the file, the suit filed by the plaintiffs could not be dismissed on this ground.

This Court has considered the submissions of learned counsel for the parties. With regard to first argument, it will be noted that if some of the defendants are not co-sharers, the Court would ignore and not determine their share. At this stage, only a preliminary decree for partition has been passed strictly on the basis of entries in the revenue record which is not shown to be erroneous. Hence, the suit cannot be held to be bad for mis-joinder of parties.

As regards non-appearance of the plaintiffs in the witness-box, it will be noted that this suit was based upon the documentary evidence. The documentary evidence in the form of revenue record has been produced including mutations which shows that originally Mehar Chand was co-owner and subsequently, after his death, the plaintiffs who are successor-in-interest and some of the defendants are recorded as co-owners.

As regards drawing of adverse inference, this Court while dealing with the aforesaid issue in detail has laid down certain parameters, before a Court decides to draw adverse inference for non-appearance of the party in the witness-box. Reference in this regard can be made in the case of Navneet Kaur Vs. St. Soldier Properties and Industries Ltd., 2018(3) 191 PLR 158.

Counsel for the appellants could not establish that any prejudice has been caused or the evidence available on the record is not sufficient to prove the case of the plaintiffs.

In view thereof, there is no scope for interference with the judgment passed by the learned First Appellate Court.

Appeal is dismissed.

30.08.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No