

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

RSA No.4289 of 2014 (O&M)
Decided on:-March 13, 2018.

Naresh Kumar.

.....Appellant.

Versus

Rikhi Ram and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. R.S. Mamli, Advocate
 for the appellant.

HARI PAL VERMA, J.

CM-9938-C-2014

Prayer in this application filed under Section 5 of the Limitation Act read with Section 151 CPC is for condonation of delay of 13 days in filing the appeal.

For the reasons stated in the application, the same is allowed and delay of 13 days in filing the appeal is condoned.

RSA No.4289 of 2014

Appellant-plaintiff Naresh Kumar (hereinafter referred to as the plaintiff) has filed the present regular second appeal against the judgment and decree dated 23.12.2013 passed by learned District Judge, Yamuna Nagar at Jagadhri, whereby his appeal against the judgment and decree dated 23.04.2010 passed by learned Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhri, was dismissed.

Briefly stated, the plaintiff had filed a suit for permanent injunction against the appellant-defendants, namely, Rikhi Ram, Bhopal Singh, Sohan Lal and Mohan Lal (hereinafter referred to as the defendants) restraining them from interfering in his actual physical possession over the suit land, as detailed in the head note of the plaint. As per the plaint, the plaintiff along with his father Purshotam Dass and brothers Krishan Kumar and Narender Kumar had purchased the land, as detailed in column 'A' of the head note of the plaint from Mam Raj etc. by way of sale deed dated 17.04.1978. They had also purchased the land as detailed in column 'B' of the head note of the plaint from Bishna Ram vide sale deed dated 24.04.1981. In this manner, the plaintiff had become owner in possession of land in question measuring 37 Kanal 3 Marlas. During the lifetime of his father, the plaintiff became owner in possession of $\frac{3}{4}$ share in the property by way of family settlement. However, after the death of his father Purshotam Dass, the plaintiff inherited $\frac{1}{4}$ th share in the property in question vide mutation No.124 sanctioned on 30.09.2003. Thus, the plaintiff became owner in possession of the total land i.e. 37 Kanal 3 Marlas after the death of his father, but in the Jamabandi for the year 1998-99, he had been recorded as owner in possession of land measuring 36 Kanal 5 Marlas instead of land measuring 37 Kanal 3 Marlas. By taking advantage of this wrong revenue entry, the defendants are threatening to dispossess the plaintiff from the land in dispute without any right, title or interest.

The civil Court had issued notice in the case and pursuant thereto, the defendants had put in appearance and filed their joint written statement taking various preliminary objections. It has been pleaded that the

entire joint land had been partitioned on 14.03.1985 by the Court of Assistant Collector 1st Grade, Jagadhri for which mutation No.471 was sanctioned. However, the order of partition was though set aside vide order dated 18.08.1992 passed by the Collector in appeal (appeal was preferred by Purshotam Dass father of the plaintiff), but in the revision petition filed by defendant No.1 against the order dated 18.08.1992, the Commissioner, Ambala Division accepted the revision petition on 20.04.1993 and, therefore, the present suit is without any cause of action. Though on merits, it was admitted that Purshotam Dass and his sons were co-owners in to the extent of 37 Kanal 3 Marlas in the joint land measuring 115 Kanal 6 Marlas, but at the time of partition, they were allotted only land measuring 36 Kanal 5 Marlas and the partition between the parties has become final. As such, they are in possession to the extent of land which has been allotted to them in the partition proceedings.

On the basis of rival pleadings of the parties, the civil Court framed the issues as under:

1. Whether plaintiff is owner in possession of the suit land, as alleged? OPP
2. Whether suit is not maintainable? OPD
3. Relief.

Since the plaintiff had failed to establish his actual physical possession over the land in question, the civil Court dismissed the suit vide judgment and decree dated 23.04.2010, which was made subject matter of challenge by way of an appeal.

The appeal filed by the plaintiff was also dismissed by the lower appellate Court vide judgment and decree dated 23.12.2013.

It is in these circumstances, the present appeal has been filed by the plaintiff.

Following substantial questions of law have been raised by the appellant-plaintiff:

- i. Whether the impugned judgment and decree passed by both the Courts below are manifest, illegal, perverse, and result of misreading of pleading and evidence, hence the same deserve to be set aside?
- ii. Whether misreading of evidence by the Id. Courts below is by itself a substantial question of law?
- iii. Whether the judgment and decree passed by the Id. Courts below are against the evidence produced on the file and the facts of the case?

Learned counsel for the appellant-plaintiff has argued that the plaintiff had filed a suit for permanent injunction on the ground that he is owner in possession of the suit property, which is in the shape of a triangle and is situated on the Pabni road and has got a commercial value. The property is surrounded by the agricultural land owned by the plaintiff. The defendants had agricultural land towards the northern side of the suit property and are disposing of the property by carving out plots. Therefore, the defendants were not required to encroach upon the property owned by the plaintiff.

He has further argued that the plaintiff had purchased the land measuring 32 Kanal 12 Marlas from the original owner Mam Raj and by other sale deed, the land measuring 4 Kanal 11 Marlas was purchased from Bishna

Ram for which mutation was also entered. In this manner, the plaintiff is owner to the extent of 37 Kanal 3 Marlas land. The suit has erroneously been dismissed by the civil Court while not taking into consideration the fact that in the year 1998-99, the plaintiff was wrongly been recorded as owner in possession of land measuring 36 Kanal 5 Marlas instead of land measuring 37 Kanal 3 Marlas. In fact, the plaintiff is owner of the entire land measuring 37 Kanal 3 Marlas. On the basis of documents i.e. sale deeds Ex.P1 and Ex.P2 and the mutations thereof Ex.P3 and Ex.P4, the land in dispute comes to be 37 Kanal 3 Marlas. Therefore, the land measuring 18 Marlas falls in the share of the plaintiff for which the defendants have no right to interfere in any manner.

I have heard learned counsel for the appellant-plaintiff.

In order to succeed in the suit for permanent injunction, the plaintiff is required to prove that he is in possession of the suit land. Plaintiff Naresh Kumar while appearing in the witness box as PW1 has admitted in his cross-examination that the dispute between the parties is regarding the land measuring 18 Marlas only and he has sold the remaining land in question, but at the same time, he has failed to prove that he is in actual physical possession of this 18 Marlas of land. Instead of proving his possession over this land, it has been admitted by PW1 in his cross-examination that the land measuring 18 Marlas is lying vacant as neither it is cultivable nor any construction has been raised over it. So, once the plaintiff has failed to prove his actual physical possession over the land measuring 37 Kanal 3 Marlas or part thereof, the civil Court has rightly dismissed the suit filed by him. Similarly, the appeal filed by the plaintiff has rightly been dismissed by learned lower appellate Court.

Moreover, the partition proceedings have become final between the parties and as per the partition proceedings, the land measuring 36 Kanal 5 Marlas was allotted to the plaintiff along with his father and brothers. So once the plaintiff has failed to establish his physical possession over the land in question, he is not entitled for the discretionary relief of injunction.

Therefore, this Court finds that there is no illegality in the concurrent finding of facts recorded by the Courts below, which may warrant interference by this Court.

No other point was argued.

Since the controversy involved in the case has duly been considered by the Courts below, no substantial question of law arises in the present regular second appeal.

Thus, affirming the judgment and decree dated 23.04.2010 passed by the civil Court as well as the judgment and decree dated 23.12.2013 passed by the lower appellate Court, the instant regular second appeal, being devoid of any merit, is dismissed.

March 13, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No