

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

RSA No. 1068 of 2018(O&M)

Date of decision: 17.2.2018

Varinder Kumar

....Appellant

VERSUS

Deewan Chand and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Shailendra Sharma, Advocate for the appellant.

REKHA MITTAL, J.

CM No.2652-C of 2018

Prayer in this application is for condoning delay of 995 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Shailendra Sharma, Advocate, the application is allowed. Delay of 995 days in re-filing the appeal stands condoned.

Disposed of accordingly.

CM No.2653-C of 2018

Prayer in this application is for bringing on record the legal representatives of Lachmi Devi – respondent No.3 (since deceased).

In view of averments made in the application supported by an affidavit of Varinder Kumar - appellant, application is allowed and the persons mentioned in para 3 of the application are ordered to be brought on

record being the legal representatives of deceased Lachmi Devi for the purpose of present lis, subject to just exceptions.

Amended memo of parties is taken on record.

Disposed of accordingly.

RSA No.1068 of 2018

The present appeal directs challenge against concurrent findings recorded by the Courts below whereby suit filed by the appellant/plaintiff for possession and permanent injunction was dismissed by the Civil Judge (Senior Division), Barnala vide judgment and decree dated 30.01.2013 and the appeal against the judgment and decree passed by the trial Court remained unsuccessful, decided by the District Judge, Barnala vide judgment and decree dated 18.11.2014.

The appellant/plaintiff claiming himself to be entitled to 1/4th share in the suit property prayed for possession thereof by way of partition. He also claimed that the respondents/defendants be restrained from changing nature of the suit property and selling the same beyond their share.

The appellant is the real brother of respondents Diwan Chand and Rajinder Kumar, sons of Daya Krishan and respondent No.3 Lachmi Devi (since deceased) was their mother. As per plea of the appellant, Pawan Kumar, another brother of plaintiff and defendants No.1 and 2 was owner of 1/4th share and he died bachelor and issue-less and defendant No.3 is his successor. The suit property is stated to be jointly owned by the plaintiff and defendants to the extent of 1/4th share each, therefore, the plaintiff is entitled to seek possession of 1/4th share by way of partition.

The defendants/respondents filed the written statement and in turn controverted plea of the plaintiff. They had averred that family partition had taken place on 15.12.1992 and 28.02.2003 and the appellant is left with no concern with the suit property. The property mentioned in head-note A was the ownership of Daya Krishan who died on 19.09.1986. The property at head-note B was purchased by the plaintiff, defendants and Pawan Kumar in equal share vide sale deed dated 18.06.1975. As per family partition on 15.12.1992, property measuring 16' x 40' fell to the share of Pawan Kumar and defendant No.2 and portion 16'. x 60' to the share of defendant No.3. The property mentioned in part B of head-note fell to the share of defendant No.1. Pawan Kumar died who was residing with Rajinder Kumar – defendant No.2. A family partition was executed in writing on 28.02.2003 whereby property shown in part B measuring 1 kanal fell to the share of defendant No.1. The plaintiff signed the partition deed and produced copy of memorandum of family partition before Halqa Patwari and the same was recorded in roznamcha waqaiti for the year 2002-03. On the basis of partition, the property in question has been entered in the name of defendants in the municipal record and house tax is being paid by defendant No.1.

Counsel for the appellant has fairly informed that the appellant does not dispute the family partition on 15.12.1992 and 28.02.2003. However, it is argued with vehemence that as per the said partition, appellant/plaintiff was given one plot measuring 250 square yards situated in Delhi. It is argued that Diwan Chand – defendant No.1 in his cross examination has admitted that the defendants are not in possession of document of title qua plot in Delhi nor they have executed

any document for transfer of the said property in favour of the plaintiff/appellant. It is further argued that a fraud has been committed against the appellant/plaintiff by depriving him of share in the suit properties in lieu of the plot at Delhi when as a matter of fact no such plot actually exists. The plaintiff has initiated criminal proceedings by lodging FIR No.249 dated 27.09.2006 registered against Diwan Chand and Rajinder Kumar and criminal case is pending in the Court. It is further argued that as the appellant did not get any share or property on the basis of memorandum of partition dated 28.02.2003, a serious prejudice shall be caused to him in case he is denied 1/4th share out of suit properties.

Counsel for the appellant has fairly conceded that in the plaint, there is no reference to memorandum of partition dated 15.12.1992 and 28.02.2003. It is admitted position of the case that despite the plaintiff having lodged FIR No.249 dated 27.09.2006 against Diwan Chand and Rajinder Kumar for having committed fraud with him, he did not challenge the memorandum of partition and the family partition to which the appellant/plaintiff was a party. As the appellant has not challenged the family partition admittedly effected between the parties and until that partition/memo of partition is set aside in appropriate proceedings, the appellant cannot seek his claim of being co-owner in the suit properties and entitled to seek partition and possession of 1/4th share. As has been rightly held by the Courts below that the appellant is guilty of concealing a material fact of partition among members of his family, therefore, he is disentitled to any relief, equitable or otherwise. In view of the above, contention raised by counsel for the appellant is untenable and liable to be

rejected. That being so, the instant appeal does not raise a substantial question of law that needs adjudication after hearing the contesting party.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As a consequence, judgments and decrees passed by the Courts below are affirmed. No order as to costs.

FEBRUARY 17, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no