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

Date of decision : 08.03.2018

1.

RSA-2523-2017 (O&M)

Raghubir Singh

... Appellant

Versus

Girdhari Lal and another

... Respondents

2.

RSA-6454-2016 (O&M)

Raghubir Singh

... Appellant

Versus

Girdhari Lal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munish Gupta, Advocate
for the appellant(s).

AMIT RAWAL, J. (ORAL)

CM-6194-C-2017 IN RSA-2523-2017

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 115 days in re-filing the appeal is condoned.

CM-16915-C-2016 IN RSA-6454-2016

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 44 days in re-filing the appeal is condoned.

MAIN CASES

This order of mine shall dispose of two appeals bearing RSA No.2523 of 2017 titled as “Raghubir Singh V/s Girdhari Lal and another” and RSA No.6454 of 2016 titled as “Raghubir Singh V/s Girdhari Lal and another”, arising out of the decretal of the suit bearing No.471 of 2007 titled as “Girdhari Lal V/s Raghubir Singh and another” and dismissal of the counter-claim claiming more share.

The respondents-plaintiff instituted the suit for possession after removal of superstructure from the property measuring 0 kanals 4 marals situated in Village Sandwal, HB No.356, comprised in Khewat No.900 Khatoni No.1072, Khasra No.920 (0-4), as per jamabandi for the year 2001-02, with permanent injunction as consequential relief restraining the defendants from raising construction or changing the nature of the property on the premise that the father of the plaintiff was owner in possession of the aforementioned land, who died leaving behind the plaintiff only legal heirs under the Hindu Succession Act. The mutation bearing No.7008 viz-a-viz estate of deceased Bhagtu was sanctioned in favour of the plaintiff. The plaintiff exchanged Khasra No.922 inherited by him from his father with Som Raj and Kuldeep Singh sons of Gian Chand, vide exchange deed dated 10.09.2007 and the possession was also taken. In view thereof, Som Raj and Kuldeep Singh, became the owners of Khasra No.922. The property of the defendants adjoined the property in the suit. They forcibly and illegally with the help of their party men and with sheer show of force wanted to take the possession. In that regard, the suit aforementioned was filed.

The appellant-defendant contested the suit by filing written

statement and counter-claim by taking the plea of non-maintainability of suit, much less, concealment of certain facts as well as for want of cause of action. It was averred that the factum of the ownership of the land was not denied, but it was averred that actually father of the defendant, namely, Gurbachan Singh @ Doda @ Bhantha, was adopted son of Bhagtu and Bhagtu married with mother of Gurbachan Singh @ Doda @ Bhantha, who was widow, namely, Chinti Devi. The plaintiff Girdhari Lal. was born to Chinti Devi out of wedlock with Bhagtu. Gurbachan died on 07.09.1994, whereas Chinti Devi died on 18.01.1981. Bhagtu died on 14.02.1974. After the death, the property was inherited by Chinti Devi as widow, Gurbachan @ Doda @ Bhantha as son and Girdhari Lal, plaintiff, as son to the extent of 1/3rd share each and after death of Chinti Devi, the plaintiff and Gurbachan Singh inherited her share as sons and became the owner to the extent of ½ share. Mutation No.7008 was stated to be illegal, null and void. The defendants in counter-claim stated that they were joint owners to the extent of half share of the land measuring 4 marals, comprised in Khewat No.899 Khatoni No.1071 bearing Khasra No.922 and reiterated the averments referred to while rebutting the pleadings in the plaint.

The trial Court on the basis of the pleadings of the parties framed the following issues:-

- 1. Whether the plaintiff is entitled to relief of possession as prayed for? OPP*
- 2. Whether the suit of the plaintiff is not maintainable? OPD*
- 3. Whether the plaintiff has not come to the Court with clean hands and has concealed true and material facts from the court? OPD*

3-A) Whether the plaintiff has not cause of action to file the

present suit? OPD

4. *Whether the plaintiff has no locus standi to file the present suit? OPD*
5. *Whether the defendants/counter claimants are entitled to relief of permanent injunction as prayed for? OPD*
6. *Whether the defendants/counter claimants are entitled to alternative relief of joint ownership in possession as prayed for? OPD*
7. *Whether the defendants/counter claimants are entitled to relief of permanent injunction as prayed for? OPD*
8. *Whether the counter claim of the defendant is not maintainable in the present form? OPP*
9. *Whether the counter claim is bad for possession of the specific performance? OPP*
10. *Whether the defendants have not locus standi to file the counter claim? OPP*
11. *Relief"*

The respondent-plaintiff in order to prove his case, himself examined as PW1, PW2 Munish Bassi, Inspector Food and Supplies, PW-3 Balwinder Singh, Clerk and closed the evidence. On the other hand, the defendant/appellant examined Shanti Devi as DW-1, Arjun Singh as DW2, Raghubir Singh as DW3, Lashkari Ram, Asstt. Office Kanungo as DW4 and closed the evidence.

The trial Court on the basis of the preponderance of evidence dismissed the suit as well as the counter-claim and in an appeal preferred thereto, the lower Appellate Court, dismissed the counter-claim, but decreed the suit by holding the plaintiff and the defendants to be co-owners while determining the share to the extent of 3/4th share viz-a-viz the plaintiff and 1/4th viz-a-viz the defendants.

Mr. Munish Gupta, learned counsel appearing on behalf of the appellant-defendant submits that the lower Appellate Court has committed illegality and perversity in decreeing the suit and dismissing the counter-claim as the plaintiff miserably failed to prove the jointness of the property, for, it was a known case that he had exchanged khasra No.922. The claim of the defendants in the counter-claim was to the extent of half share and not 1/4th as erroneously determined by the lower Appellate Court. The revenue record has not been taken into consideration in a correct perspective. Girdhari Lal/plaintiff admitted that appellant was in possession of the suit property and had not sought the partition of the suit land, which itself was a clincher. The lower Appellate Court dismissed the counter-claim on the ground that the appellant had not sought the correction of the revenue record, thus, urges this Court for setting aside the judgment and decree, under challenge by formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard the learned counsel for the appellant-defendant and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Gupta, for, judgment rendered by the lower Appellate Court is a preliminary decree determining the share of the parties as per revenue record, whereby his share has been determined as 3/4th viz-a-viz the defendants as 1/4th. No evidence has been brought on record to establish that the appellant-defendant in Khasra No.922 in respect of land measuring 0 kanal 4 marlas, had half share on the basis of the revenue record.

Mr. Munish Gupta, during the course of the hearing, has made

an attempt to issue notice for the purpose of arriving at a compromise by buying each other share. I am of the view that the said exercise can only be done at the time of moving an application for drawing the final decree as the preliminary decree is only confined the determination of his share.

As an upshot of my observations, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court as the same is based upon the appreciation of oral and documentary evidence, much less, no sustainable question of law arises for determination and accordingly, the regular second appeals are dismissed.

08.03.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No	✓
Whether Reportable	Yes/ No	✓