

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3082 of 2018 (O&M)

Date of Decision: May 16, 2018

Gurdev Singh @ Mal Singh

...Appellant

Versus

Jang Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

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

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 12.12.2006 rendered by the Additional District Judge, Muktsar, whereby the appeal preferred by the respondent-defendant against the judgment and decree of the trial Court has been partly allowed by setting aside the decree to the extent of declaring the plaintiff to be owner in joint possession of 3 kanals 9 marlas of land and uphold the remaining decree.

Mr.Inderjit Sharma, learned counsel for the appellant-plaintiff submitted that the suit aforementioned was filed on the premise that the plaintiff is owner in possession as co-sharer of land measuring 3 kanals 9 marlas on the basis of inheritance from his father Dalbir Singh and mother Surjit Kaur, therefore, sought possession by way of partition of the plot, gair mumkin Nohra and residential house situated in the area of village Bhalaiana with consequential relief of rendition of accounts of 1/12th share

regarding the share of his mother in the tractor bearing No.PIK 435.

He further contended that Dalbir Singh was Karta of joint Hindu family, who inherited the property from his fore-fathers and, thus, was owner in possession of 1/4th share. Defendant Nos.1 to 3, in order to cause loss to the plaintiff, obtained a decree in Civil Suit No.168 of 24.2.1992 titled as “Jang Singh Versus Dalbir Singh” being sons of Dalbir Singh. The said decree was not binding upon the appellant-plaintiff being the brother of defendant Nos.1 and 2 and son of Dalbir Singh. Dalbir Singh could not execute the sale deed as it was ancestral property. On acquiring knowledge, the aforementioned decree was challenged vide Civil Suit No.250 of 23.4.1994 titled as “Gurdev Singh Versus Jang Singh etc.”, which was decreed vide judgment and decree dated 14.8.1995 according to the plaintiff status of co-sharer to the extent of 1/4th share as co-parcener of the joint Hindu family and 1/6th share in the other property mentioned above. The defendants herein filed appeal bearing No.206 dated 9.9.1995, which was dismissed vide judgment and decree dated 4.1.2000. Mutation No.9502 regarding land measuring 17 kanals 7 marlas, i.e., 1/4th share out of 69 kanals 9 marlas, was sanctioned in favour of the plaintiff.

It was further contended that Dalbir Singh, father of the parties, died about six years back. Surjit Kaur also died thereafter. After the death of Dalbir Singh, his widow Surjit Kaur and her legal heirs inherited 1/24 share each from ¼ share of Dalbir Singh. Surjit Kaur died on 15.10.1998 and thereafter the parties were entitled to 1/5 share out of 1/24 share. Mutation of inheritance of Dalbir Singh and Surjit Kaur was not sanctioned as appeal against the judgment and decree of the trial Court was pending at that time.

Since the appeal has been decided, it is in that background, the suit

aforementioned was filed.

The suit was contested by defendant Nos.1 and 2 by raising numerous preliminary objections qua limitation, barred by provisions of Section 11 CPC. It was admitted that an appeal was filed against the judgment and decree of the trial Court, but during the pendency, a compromise was arrived at and reduced into writing where all the parties had given a consent.

He submits that on the basis of the aforementioned findings, the trial Court decreed the suit, but the Lower Appellate Court reversed the findings. The Lower Appellate Court committed illegality and perversity in reversing the findings in a most cryptic manner, which is not sustainable, particularly when the decree obtained has already been set-aside and the appeal filed by the aggrieved party had been dismissed.

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Sharma, for, from a perusal of the judgment Ex.P6, it revealed that the decree dated 7.5.1992 was held to be invalid only regarding 1/4th share of the plaintiff in the land in question and the remaining decree was not set-aside. This aspect was not taken into consideration by the trial Court while decreeing the suit, therefore, there was illegality and perversity. Moreover, in the decree dated 4.1.2000, Ex.P4, rendered by the Addl.District Judge, while deciding issue No.2, it was held that the decree was clearly illegal, null and void qua 1/4th share of the plaintiff. The aforementioned findings lead to an irresistible conclusion that Dalbir Singh deceased was not having share in the land in dispute at the time of his death as he had already transferred the land in dispute in favour

of defendant Nos.1 and 2, therefore, the suit, in entirety, should not have been decreed declaring the plaintiff to be owner in joint possession of land measuring 3 kanals 9 marlas on the basis of inheritance of his father Dalbir Singh. Even preliminary decree with regard to 1/12th share in the tractor could not have been passed as remedy for the plaintiff was to file a suit for recovery.

Vis-a-vis partition of the suit property, the Lower Appellate Court upheld the findings. It is also matter of fact that during the pendency of the appeal, parties had arrived at a compromise. Be that as it may, I do not intend to delve any further.

As an upshot of aforementioned findings, the findings of fact and law arrived at by the Lower Appellate Court are perfectly legal and justified and do not call for any interference. The appeal cannot be said to be suffering any illegality or perversity. No substantial question of law arises for determination by this Court.

The appeal is accompanying by an application, i.e., CM No.7893-C of 2018 seeking condonation of delay of 3157 days in re-filing the appeal on the premise that the appeal was filed within limitation, but the Registry raised certain objections. After removing the objections, the appeal was re-filed, but the same was again returned by the Registry. Thereafter, the original paper book was misplaced. The appellant engaged other counsel but the original file was not returned by the earlier counsel and, thus, delay occurred in re-filing the appeal, which is unintentional and beyond the control of the appellant.

There is no plausible, much less, any reasonable explanation for delay of 3157 days in re-filing the appeal.

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Resultantly, the appeal is dismissed on merits and as well on delay.

May 16, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No