

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

RSA No.4327 of 2017 (O&M)

Date of decision : 22.10.2018

Komaldeep Singh

...Appellant

Versus

Balwinder Singh @ Binder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ravish Bansal, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.11208-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 75 days in re-filing the present appeal is condoned.

Application is allowed.

CM No.11209-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 36 days in filing the present appeal is condoned.

Application is allowed.

Main case

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Defendant No.1, the father of the plaintiff sold the property in favour of defendant Nos.2 to 4 vide registered sale deed dated 10.06.1997.

Son, the plaintiff-appellant challenged the aforesaid sale deed by instituting a

suit on 10.06.2009 claiming that the property is joint hindu family coparcenary property having come from Jawala Singh, a common ancestor.

Both the Courts have found that the property was mutated in favour of sons of Jawala Singh including defendant No.1 as per the Civil Court decree dated 17.03.1978 (somewhere, the date is mentioned as 18.03.1978). In view thereof, the Courts have found that the plaintiff has failed to prove that the property continues to be joint hindu family coparcenary property.

Learned counsel for the appellant, while drawing the attention of the Court to the finding of the Court that original record of the Civil Court decree in the previous suit has not been produced, submitted that in absence of the original record and judgment and decree, the Courts erred in assuming the existence of judgment and decree solely on the basis of the mutation.

This Court has considered the submissions. It has come on record that old record in that particular District had been burnt in fire. The defendants have produced on file a copy of the Institution Register of the Civil Court, which proves that the suit was instituted and decided. Pursuant to the aforesaid decision, the mutation has been entered which also makes a reference to the judgment and decree of the Civil Court.

In view thereof, there can hardly be any doubt about the existence of the judgment and decree, as pleaded by the respondents-defendants.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

22.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No