

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

RSA No.5311 of 2017 (O&M)

Date of decision : 03.08.2018

Kashmir Chand

...Appellant

Versus

Beena Gupta and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

ANIL KSHETARPAL, J. (ORAL)

CM No.14198-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 35 days in refiling the present appeal is condoned.

Application is allowed.

Main Case

The plaintiffs-appellant is in the Regular Second Appeal against the judgment passed by the First Appellate Court.

On careful reading of para 19 of the judgment passed by the learned First Appellate Court, it is found by the Court that the partition between the parties has been effected by the Revenue Authorities and, therefore, the plaintiffs cannot claim that they are joint owners in possession of the property. Para 19 of the judgment passed by the First Appellate Court

is extracted as under:-

“19. Thus the plaintiffs could get their share after a partition which admittedly took place among the co-sharers in 1984. Though the entire record pertaining to the said partition proceeding could not be traced out and was not brought on record, yet the mutation No.2426 on its basis is on file as Mark B and Mark A. The document is a marked document but since it has been relied upon by both the sides, it can be looked into to resolve the matter in dispute. Perusal of Mark B reveals that plaintiffs had some share in Khata No.286/314 along with Sushma Rani,defendant No.12 in khasra No.175//18/1(5-1),out of which khasra No.175//18/1/1(3-0) fell to the share of Nachattar Kaur. Share of plaintiffs in Khata No.287/315 in khasra No.175//1/1/2(1-0) and 175//1/2(4-0) fell to the share of Nachattar Kaur and Shyam Kaur. Khasra No.175//18/1/2 (2- 1) fell to share of Krishan Chand and others as it was, which included the names of Krishan Chand and Kashmir Chand having ½ share and Sushma Rani having 20 shares. Thus three persons were shown as owners in newly constituted khasra No.175//18/1/2(2-1). Whereas plaintiffs are owners of 2kanal 2 marlas and Sushma Rani is owner of 1kanal as per their respective sale deeds. The entry regarding partition proceeding was first reflected in the jamabandi for the year 1981-82. It is pertinent to mention here that both the parties had brought separate jamabandis Ex.P2 and Ex.D6 for the year 1981-82. In Ex.P2 only plaintiffs are shown to be having equal shares in khasra No.175//18/1/2(2-1) whereas in Ex.D6 entry bearing No.2426 mentions Krishan Chand and others as it was. Meaning thereby that the jamabandi Ex.D6 bears the entry in consonance with the mutation in partition 2426. Hence plaintiffs had approached the court of law on the basis of

entry in Ex.P2 which does not truly depict the shares as mentioned in Mark B and as such they failed to prove that their entire share fell in khasra No.175//18/1/2(2-1) which is otherwise also 1 marla less than their purchased share. Therefore, the plaintiffs could not be granted any relief qua khasra No.175//18/1/2 only, as prayed for by them.”

Learned counsel for the appellant before this Court has tried to make a new case for the plaintiffs by asserting that the plaintiffs are entitled to at least declaration that as per order of partition as noticed in the mutation No.2426, the plaintiffs are entitled to land which has fallen to their share. It may be noticed that this was not the case of the plaintiffs when the suit was filed. The findings arrived at by the First Appellate Court are clear. Whatever benefits the plaintiffs are entitled to in view of the aforesaid finding, they shall be free to utilize such finding.

In view thereof, the present Regular Second Appeal is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

03.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No