119

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5628-2017 (O&M)
Date of decision : 30.08.2018

Kaur Singh (deceased) through LRs and others

... Appellants

Versus

Jangir Kaur (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Aggarwal, Advocate
for the appellants.

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AMIT RAWAL, J. (ORAL)

CM-14883-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 60 days in re-filing the appeal is condoned.

RSA-5628-2017

The appellants-defendants have not been successful in defending the suit filed on behalf of the plaintiffs claiming partition and separate possession of ½ share in respect of land measuring 2 kanals 1 marla.

It was alleged that the property in the revenue has been shown to be of joint ownership viz-a-viz the plaintiffs and the defendants.

The defendants contested the suit by raising the plea that status of the property was no longer joint as the predecessor-in-interest of the plaintiffs vide writing dated 02.10.1976 transferred the land in favour of

Jaggar Singh, in essence, the counterclaim was also filed for seeking correction in the revenue record.

The trial Court on the basis of the pleadings and evidence brought on record, decreed the suit by rejecting the plea of the defendants that the writing, aforementioned, had not been proved, much less, stamped and dismissed the counterclaim. The appeal laid before the lower Appellate Court also met with the same fate.

Learned counsel appearing on behalf of the appellants-defendants submitted that by virtue of the aforementioned writing, the defendants had been in possession of the suit property since long and raised the construction. This aspect has not been noticed by the Courts below. The deficiency in the stamp duty can always be corrected and therefore, the Courts below ought to have given an opportunity, thus, there is illegality and perversity.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Aggarwal, for, the aforementioned writing was never reflected in the revenue record. If at all, there was actually a writing, nothing prevented the defendants to move an appropriate application in the revenue court with a notice to the opposite for correction. The counterclaim has only been set up when the suit for partition was filed. In the absence of any revenue record to the contrary as one sought to be projected by the defendants, the Courts below had no other option, but to pass a preliminary decree.

I am afraid the argument of Mr. Aggarwal viz-a-viz making deficiency in the stamp duty can be rectified at any stage is also wholly misplaced as there is period of limitation for correcting the deficiency in stamp duty as per the provisions of the Stamp Act, 1899. Section 35 of the Stamp Act specific reveals that the instruments which are not duly stamped, are not admissible in evidence.

Keeping in view the aforementioned facts and circumstances, I do not differ with the concurrent findings of fact and law, which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

No ground is made out for interference.

The present regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

30.08.2018
Yogesh Sharma

Whether speaking/reasoned **[✓ Yes]/ No**

Whether Reportable **Yes/ [✓ No]**