

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

RSA No.877 of 2019 (O&M)
Date of decision : 06.02.2019

Balbir (deceased) through his LRs

...Appellant(s)

Versus

Akshay Tanwar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kul Bhushan Sharma, Advocate for the appellant(s).

ANIL KSHETARPAL, J. (ORAL)

CM No.2018-C of 2019

For the reasons stated in the application, which is duly supported by an affidavit, delay of 162 days in filing the present appeal is condoned.

Application is allowed.

CM No.2019-C of 2019

For the reasons stated in the application, which is duly supported by an affidavit, legal heirs of Balbir (appellant) as mentioned in para 2 of the application are ordered to be brought on record, for the purpose of prosecuting the present appeal.

Application is allowed.

Amended memo of parties is taken on record.

Main case

Defendant-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below decreeing the suit for possession filed by the plaintiff-respondent.

The plaintiff claimed that in the partition proceedings, the property in dispute i.e. comprised in Rectangle No.89, Khasra No.9/1/2 (4 kanals 8 marla) had come to his share and he prayed for decree of possession on the ground that the defendant has taken forcible possession.

Defendant contested the suit and pleaded that the Rectangle No.89, Khasra No.9/1 has never been bifurcated. In alternative, defendant took a plea that he has perfected his title by way of adverse possession.

On appreciation of the evidence, both the Courts held that there was a decree for partition dated 19.09.1988 and thereafter the possession was also delivered to the plaintiff as per rapat No.415 dated 30.05.1989. Thus, both the Courts decreed the suit.

Learned counsel for the appellant submitted that in *Aks Sajra*, land comprised in Khasra No.9/1 has not been bifurcated and, therefore, the suit for possession could not be decreed.

In para 16 of the judgment passed by the First Appellate Court, it has been mentioned that Jalaludeen, a revenue official has appeared who has admitted that in the partition proceedings, the land comprised in Khasra No.9/1 which was originally 6 kanals has been divided into two parts, one killa No.9/1/2 and second killa No.9/1/1. He

has further stated that Killa No.9/1/2 fell to the share of the plaintiff. Thus, it is apparent that the defendant has no right, title or interest in the land comprised in Killa No.9/1/2.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below .

Regular Second Appeal is dismissed.

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

06.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No