

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

**RSA No. 1506 of 2019 (O&M)**

Date of decision : September 19, 2019

Rattan Singh

.....Appellant

Versus

Kamal Singh and others

....Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Anil Kumar Sharma, Advocate  
for the appellants.

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**LISA GILL, J.**

This appeal has been filed by the appellant, who was one of the plaintiffs before the learned trial Court, challenging judgment and decree dated 16.08.2016 passed by the learned Civil Judge (Junior Division), Rewari as well as judgment and decree dated 25.01.2018 passed by the learned Additional District Judge, Rewari, whereby the suit filed by the appellant alongwith others has been dismissed.

Appellant – plaintiff alongwith three others namely Suraj Bai, Sushil Bai and Pushpa Bai (arrayed as respondents No. 2, 3, 3A respectively) filed a suit for declaration with consequential relief of permanent injunction to the effect that order dated 09.08.2011 passed by the learned Assistant Collector First Grade, Rewari regarding partition of land is liable to be set aside being null, void and not binding on the rights of the plaintiff and proforma defendants with a further prayer of permanent injunction restraining defendant – respondent No. 1/Kamal Singh from interfering in the peaceful possession of the plaintiffs and proforma defendants No. 2 to 15 and further not to alienate the suit property under the aegis of an illegal order dated 09.08.2011 passed by the learned Assistant Collector First Grade, Rewari. Partition case No. 326 seeking partition of

the property was filed by defendant No. 1 – Kamal Singh but it was dismissed in default on 18.12.2007. It is pleaded that the plaintiffs alongwith the defendants are the co-sharers of land as described in the plaint. Partition case No. 327 dated 13.11.2007, filed by defendant No. 1 - Kamal Singh, it is stated, was dismissed in default on 18.12.2007. Defendant No. 1 filed an application for restoration and the partition case was restored on 08.04.2009 in an illegal and arbitrary manner. The proceedings for restoration were challenged by the plaintiffs on the ground that specific procedure has been laid down in the Punjab Land Revenue Act, 1887 for restoration of the partition application but the same was not followed by the authorities. Summons were not issued to plaintiffs and proforma defendants before restoration of the partition application. Further it is pleaded that registered summons were not issued to the outsiders and all the co-sharers as per law. Publication was not made and no munadi proceedings were conducted in the village before restoring the application. It is further stated that the order of partition dated 09.08.2011 passed by the learned Assistant Collector First Grade, Rewari is illegal, null and not binding on the rights of the plaintiffs and proforma defendants. Defendant No. 1 was bent upon interfering in the peaceful possession of the plaintiffs and proforma defendants and he wanted to alienate the suit land under the garb of the partition order. Accordingly, suit was filed to declare the partition order to be null and void with further prayer seeking a decree of permanent injunction for restraining defendant No. 1 as described above.

Defendant No. 1 – Kamal Singh resisted the suit while taking various preliminary objections. Material averments in the plaint have been controverted. It is stated that the partition application, which was dismissed

in default was rightly restored in accordance with the provisions of law. Thereafter, partition, which was directed vide order dated 09.08.2011, was binding on all the parties and the answering defendant claiming to be in possession of the property as per his share. Dismissal of the suit was prayed for.

Replication was not filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is entitled to a decree of declaration as prayed for?OPP.
2. Whether the plaintiff is entitled for a decree of permanent injunction as prayed for?OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
4. Whether the plaintiff has no cause of action to file the present suit? OPD.
5. Whether the plaintiff has not come with clean hands before the court and has concealed the material facts from the court?OPD
6. Whether the plaintiff has no locus standi to file the present suit?OPD
7. Whether the suit of the plaintiff is barred by limitation?OPD
8. Whether the civil court has no jurisdiction to entertain the present suit?OPD
9. Relief.

Evidence was led by both the parties to substantiate their respective stands.

Learned trial Court on considering the evidence on record dismissed the suit filed by the plaintiffs while observing that the plaintiffs were very well aware of the pendency of the application for restoration of the proceedings as reflected from the admission of PW4 himself.

Furthermore, possession of the suit property was admitted to have been given to defendant No. 1. Present appellant i.e. plaintiff No. 1 alone preferred an appeal challenging judgment and decree dated 16.08.2016. His appeal was dismissed by the learned Additional District Judge, Rewari vide judgment dated 25.01.2018. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant argues that both the learned courts below have grossly erred in law and on facts in dismissing the suit filed by the appellant – plaintiff and three others (who have, however, not challenged the decision against them). It is argued that after dismissal of the partition application in default on 18.12.2007, proper procedure was not adopted and partition application was restored in an illegal manner on 08.04.2009. It is further contended that possession of the specific killa numbers allotted to the co-sharers are not sought by them and defendant No. 1 seeks to dispossess the plaintiff and alienate the suit property under the garb of illegal order dated 09.08.2011. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 16.08.2016 passed by the learned Civil Judge (Junior Division), Rewari as well as judgment and decree dated 25.01.2018 passed by the learned Additional District Judge, Rewari be set aside and suit filed by the appellant – plaintiff and three others be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

Appellant – plaintiff, in this case, seeks a declaration to the effect that order dated 09.08.2011 passed by the learned Assistant Collector First Grade, Rewari effecting partition between the plaintiffs and the

proforma defendants is illegal, null, void and not binding on their rights. It is further urged that restoration of the partition application, which was dismissed in default on 0 18.12.2007 without following proper procedure is unjustified. I do not find any merit in this argument. Both the learned courts below have concluded that the plaintiff – Rattan Singh while testifying as PW4 has himself admitted, that he was aware of the pendency of the restoration application filed by the contesting defendant before the court of learned Assistant Collector First Grade, Rewari. It is rightly held by the learned trial Court that this admission of PW4 – plaintiff itself demolishes their case. Defendant No. 1, on the other hand, has led specific evidence in this regard i.e. proceedings of possession (Ex.DW1/3), list of marking presence of parties Ex.DW1/4, rapat rojnamcha Ex.DW1B. DW4 Prabhu Dayal Girdhar, Halka Girdawar has proved the notices given to the parties as Ex. DW4/A and Ex. DW4/E. DW4 has also proved the receipt of notice by the plaintiff – Rattan Singh, defendant – Kamal Singh and the village watchman. Plaintiff – Rattan Singh is stated to have refused to sign the proceedings regarding possession. Deposit of munadi fees with the village watchman and the receipts are proved by DW4 as Ex. DW4/D and Ex.DW4/H. DW1 and DW4 are admittedly official witnesses qua whom no prejudice is even alleged, much less proved. PW1 Jagdish Singh has admitted the factum of giving possession on the spot. PW2 and PW3 have also not supported the plaintiffs' case as these witnesses stated that they had no knowledge of the case. An injunction, it is rightly held, does not lie against the co-sharers in the factual matrix of this case. Learned Additional District Judge, Rewari has correctly observed that jurisdiction of the civil Court in matters like the present is barred. It is further rightly observed by

the learned Additional District Judge, Rewari that if at all the plaintiffs were aggrieved in respect to the procedure followed for restoration of the partition proceedings earlier dismissed in default, the plaintiffs should have filed appropriate proceedings before the revenue courts. It is correctly held that the remedy of the appellant, if at all, lies elsewhere. The appellant indeed failed to prove his case on the basis of the evidence adduced.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law, is involved for consideration in this appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 16.08.2016 passed by the learned Civil Judge (Junior Division), Rewari as well as judgment and decree dated 25.01.2018 passed by the learned Additional District Judge, Rewari, which calls for any interference by this Court in second appeal.

There is a delay of 200 days in re-filing and 69 days in filing of RSA No. 1506 of 2019. Keeping in view the fact that the matter has been decided on merits, the question of delay in re-filing and filing of this appeal has been rendered academic. Applications are, accordingly, disposed of.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

**(Lisa Gill)**  
**Judge**

September 19, 2019

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| Whether speaking/reasoned : | Yes/No |
| Whether reportable :        | Yes/No |