

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.2751 of 2019 (O&M)
Date of Decision.29.04.2019

Jailal

...Petitioner

Vs

Mohinder and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Lamba, Advocate
for the petitioner.

:-

AMIT RAWAL J. (ORAL)

The present revision petition is at the instance of the petitioner-defendant arising out of impugned order dated 02.04.2019 (Annexure P-5) passed by the Additional District Judge, Gurugram whereby during the pendency of the appeal preferred against the judgment and decree rendered in civil suit for partition and permanent injunction, the application for framing additional issue No.2A has been dismissed.

Mr. Rajesh Lamba, learned counsel appearing on behalf of the petitioner submitted that the respondent-plaintiff filed suit for partition and permanent injunction regarding land bearing Rect. No.34, Killa No.3/1 measuring 1 kanal situated in revenue estate of village Kanhai, Sector 45, Gurugram. The trial Court on the basis of evidence brought on record, vide judgment and decree dated 2.11.2016 decreed the suit. The aforementioned decree was assailed and the application for framing following additional Issue No.2A was moved, which goes to the root of the matter, as in the suit it was alleged to be an agricultural land whereas it is a dwelling unit, which

fact was not disputed by either of the parties.

“2A. Whether the suit property is a dwelling house and the plaintiff purchased the suit property from the family member of the defendant and suit of the plaintiff hit the principle of Partition Act, 1893, Section 4 of Transfer of Property Act, 1882, Section 44? OPD”

I have heard learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit, for, the issues framed in the suit had taken into consideration the stand of the defendants, who claimed themselves to be exclusive owners in possession by way of some oral family settlement and raised construction of the house over the suit property in 1971. Therefore, the trial Court framed the following issues:-

“1. Whether the suit of plaintiff is entitled for partition and permanent injunction as prayed for? OPP

2. Whether the suit is not maintainable in the present form? OPD

3. Whether the plaintiff has no locus standi to file the present suit? OPD

4. Whether the suit is bad for mis-joinder and non joinder of necessary parties? OPD

5. Whether the plaintiff is estopped from filing the present suit by his own act, conduct, acquiescence, admission and latches? OPD

6. Whether the plaintiff has not come with clean hands in the court and has concealed the true and material

facts from this Court? OPD

7. *Whether the suit is time barred and not within limitation? OPD*

8. *Whether the plaintiff has no cause of action to file the present suit? OPD*

9. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*

10. *Relief.”*

Issue No.2 is regarding maintainability, which is of wide amplitude and would take care of additional issue No.2A sought to be framed by the petitioner, thus, the application in my view has rightly been dismissed.

In view of such circumstances, I do not find any illegality and infirmity in the impugned order passed by the lower Appellate Court. No ground for interference is made out. Resultantly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

April 29, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No