

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

RSA No.6550 of 2016 (O&M)
Date of Decision.23.04.2019

Mahender

.....Appellant

Vs

Hanuman and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arpandeep Narula, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The present regular second appeal is directed against the concurrent finding of fact whereby suit of the appellant-plaintiff claiming declaration to be in joint possession of agricultural land to the extent of 1/8th share of land measuring 66 kanals 14 marlas out of total land measuring 533 kanals 15 marlas vis-à-vis other defendants while laying to the challenge to mutation No.5093 of 28.7.2006 reflecting partition amongst the co-sharers, has been dismissed.

The aforementioned relief primarily based on the premise that in view of the dismissal of the partition proceedings in the Revenue Court, the defendants misused the affidavit duly thumb marked by the plaintiff, resulting into an order, having been passed without resorting to the provisions of Section 123 of the Punjab Land Revenue Act. In fact, the plaintiff was never called by the Revenue Authority. The land fallen to the share of the defendants had more potential value than the one given to the plaintiffs.

Defendants opposed the suit and raised preliminary objection qua maintainability of the suit. On merits, it was stated that thumb marking of affidavit was a voluntary act of the plaintiff.

Plaintiff examined himself and two other witnesses and brought on record jamabandi, aks-shijra, copy of plaint and written statement whereas defendants also examined four witnesses and brought on record various documents.

Learned counsel for the appellant submitted that the Revenue Court did not hold any enquiry as required under the provisions of Section 123 of the Punjab Land Revenue Act. The value of the land, as per aks-shijra, fell to the share of defendants was much higher than the one of the plaintiff, therefore, there is fraud and misrepresentation. Plaintiff came to know only when defendants extended threats of forcible dispossession.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no substance in the submissions of Mr. Narula, for the simple reason that no evidence has been placed on record regarding value of the land allegedly fallen to the share of defendants vis-à-vis claim of the plaintiff. On going through the jamabandi Ex.P1 for the year 2002-2003 and affidavit Ex.R3, Khewat No.192/164, Khatauni No.383 showed possession of Mahender, Surender and Vinod Kumar over various killa numbers. The plaintiff was given other khasra numbers and there was not much difference in the value or possession. In view of such circumstances, there cannot be any element of fraud and misrepresentation and filing of the suit by the plaintiff is nothing else but an act of disgruntlement.

There is delay of 56 days in filing of the appeal. The explanation given lacks reasonable cause and bona fide.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact and law rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second

appeal is dismissed on the ground of delay as well as on merit. In view of decision taken in the main appeal, the application for bringing on record legal representatives of respondent No.1 is also dismissed.

(AMIT RAWAL)
JUDGE

April 23, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No