

RSA-5398-2015 (O&M)

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

**RSA-5398-2015 (O&M)
Date of decision : 08.03.2019**

Shri Pat @ Parbhu Dayal

... Appellant

Versus

Sandeep and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Kaushik, Advocate for the appellant.

AMIT RAWAL, J. (ORAL)

CM-12844-C-2015

For the reasons stated in the application, which is supported by
an affidavit, delay of 136 days in refiling the appeal is condoned.

CM stands disposed of.

CM-12846-C-2015

For the reasons stated in the application, which is supported by
an affidavit, delay of 66 days in filing the appeal is condoned.

CM stands disposed of.

MAIN CASE

The point involved in the present regular second appeal
whether the plaintiff can claim the declaration to the effect that the property
mentioned in para Nos.1 to 3 had already been partitioned with a direction
to the revenue authorities for effecting the entry in the revenue record with a
further decree of symbolic possession, on the basis of the order dated
26.07.1989 passed by Assistant Collector Grade-II, Palwal. The answer
would be 'No', for the simple reason that the reliance of the aforementioned
order was based upon the basis of the compromise dated 24.04.1989

RSA-5398-2015 (O&M)

(Ex.P5). In the aforementioned proceedings, the defendants were Chhanga, Smt. Prem Wati, Har Dutt, Mojbir and Satbir, but the statement was only suffered by Chhanga, Amar Singh and Shri Pat.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that Chhanga had the power of attorney of Prem Wati and other defendants, therefore, the Courts below ought to have taken into consideration the orders of the Assistant Collector Grade-II, which carried presumption of truth, thus, there is gross illegality and perversity.

I am afraid the aforementioned argument is not sustainable in the eyes of law for the simple reason that the power of attorney, allegedly executed in favour of Chhanga, has not seen the light of the day, therefore, order of 1989 cannot be said to be binding upon all the co-sharers. Even the revenue records reflected the joint-ness. The remedy is to seek the separate possession by way of partition, instead of laying the focus on the aforementioned relief.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Kaushik, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the second appeal is dismissed.

08.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**