

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1538 of 2017 (O&M)
Date of Order:15.01.2019

Piara Singh

..Appellant

Versus

Mehnga Singh through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Surinder Thakur, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

C.M.No.16401-C-2018

Prayer in this application is for restoration of the appeal.

The appeal is restored to its original number in view of the facts
stated in the application.

MAIN

Although, notice of motion was issued, however, since the
appeal was dismissed for non-prosecution, therefore, counsel has been once
again heard on merits for the purpose of re-admission.

It is the plaintiff's case seeking separate possession by way of
partition. Plaintiff has pleaded that with the intervention of the
respectables there was settlement between the parties arrived at on
06.04.2006, 25.05.2006 and 02.08.2006. It is the case of the plaintiff that
the aforesaid settlement/compromise has not been reflected in the revenue
record forcing the plaintiff to file the suit for partition.

Defendant no.1 contested the suit and pleaded that the joint

property between the parties was 48 kanals and the remaining property was purchased by him. He also pleaded that there was partition between the co-sharers with the intervention of the respectables.

Both the courts after appreciating the evidence have found that the property has already been partitioned and none of the party is disputing that fact. Ex.D2, which is settlement dated 02.08.2006 has been proved and admitted by the plaintiff-appellant. According to that settlement, 8 marlas of land had fallen to the share of plaintiff-appellant.

Keeping in view the aforesaid facts, there is no ground to interfere.

Learned counsel for the appellant submitted that the appellant is not even in possession of land which had fallen to his share as per the settlement/compromise which had been arrived at and proved on the file. Since the suit filed the plaintiff is not based upon the compromise, therefore, if the plaintiff is out of possession of the land which had fallen to his share, he would be entitled to file a separate suit for possession, if permissible in law.

Regular Second Appeal is disposed of accordingly.

January 15, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No