

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4610 of 2017 (O&M)

Date of Decision: January 18, 2019

Jagjit Singh

(Deceased through LRs)

...Appellant

Versus

Thoba Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Raj Kumar Chandana, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal is directed against the judgments and decrees of both the courts below, whereby suit of the respondent-plaintiffs for possession has been decreed. The appeal is accompanied by an application seeking condonation of delay of 387 days in filing the same.

Respondent-plaintiffs sought the possession of the suit property by partition of a plot M 275 Killa No.12 (0-5), situated in Village Ferozeshah, Tehsil and District Ferozepur, which was stated to be a gair-mumkin on the premise that the plaintiffs along with defendants were the owners in possession of the plot in equal shares as prior to the institution of the suit, there were certain exchanges of land by various sale deeds, which were challenged and ultimately vide judgment and decree dated 16.09.2006, all the sale deeds were set-aside and the plaintiffs and defendant Nos.1 and 2 were held to be owners in possession, but the relief of partition was declined in the absence of impleadment of all the co-

sharers.

Defendant No.6- appellant opposed the suit holding the same to be barred by principle of *res judicata*. On merits, it was stated that by way of family settlement, the defendants No.1 and 2 were owners in possession of the plot and had sold their share to him and, therefore, was in possession of the suit property for the last 20-25 years.

Mr. Raj Kumar Chandana, learned counsel appearing on behalf of the appellant-defendant submitted that the suit was barred by doctrine akin to *res judicata* as in the previous instituted suit resulting into decree, same very relief was granted and, therefore, it was barred by provisions of Section 11 CPC. Jamabandi Ex.PX did not reflect the impleadment of all the co-sharers. Suit was, thus, also liable to be dismissed on the ground of non-joinder of necessary parties.

I have heard the learned counsel for the appellant and appraised the paper book.

The previous judgment and decree only set-aside the sale deeds by which appellant-defendant No.6 derived the title from defendant Nos.1 and 2 as they failed to prove oral family partition. That decree had attained finality as the same had not been challenged.

Jamabandi Ex.PX reflected the names of all the co-sharers which were impleaded in the suit. In such circumstances, the courts below had passed the preliminary decree in the manner and mode, therefore, the plea of the defendant having acquired the co-ownership by virtue of the sale deed is not sustainable and hereby rejected/repelled.

The reasoning given in the application seeking condonation of delay is that Malkit Kaur being widow of Jagjit Singh appellant and old lady

could not arrange the funds and, therefore, the delay had occurred. The same is also bereft of reasonable cause.

For the reasons mentioned above, I do not find any illegality and perversity in the concurrent findings under challenge. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed on merits and as well as on delay.

January 18, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No