

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4620 of 2017 (O&M)

Date of Decision: March 07, 2019

Goma

...Appellant

Versus

Ram Partap & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. G.S.Kaura, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.3257-C of 2019

For the reasons mentioned in the application, which is supported by an affidavit, delay of 295 days in filing the application for restoration is condoned.

CM stands disposed of.

CM No.3259-C of 2019

Prayer in the application for restoration of the aforementioned appeal which was dismissed for non-prosecution on 03.04.2018.

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed and the order dated 03.04.2018 is recalled and the appeal is restored to its original number.

CM No.12161-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 146 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.4620 of 2017

Appellant-plaintiff has not been successful before the courts below in seeking declaration that he is owner in joint possession of total land measuring 92 kanals 12 marlas by challenging the judgment and decree dated 13.03.2001 rendered in Civil Suit No.1062 dated 04.04.1995 titled as “Bhuria Versus Sahi Ram” and subsequent records to be incorrect and illegal.

It was alleged that plaintiffs were members of the Joint Hindu Family property being daughters of Bhuria, who had inherited the property from Labhu alias Budhu, whose father was Fauja, thus, had 1/5th share out of land measuring 92 kanals 12 marlas. Defendant Nos.1 to 3, brothers of the plaintiffs and sons of Bhuria, obtained a decree in respect of the aforementioned property by playing fraud and misrepresentation.

The defendants opposed the suit and raised the preliminary objections qua maintainability, locus standi, *res judicata*, jurisdiction, but admitted the relationship between the parties and denied the property to be coparcenary. It was clarified that defendants acquired the occupancy rights by way of declaration accorded by the court in suit of 1995, decided on 13.03.2001, wherein the defendants along with Sham Lal were declared owners in possession, wherein plaintiffs and proforma defendants were parties.

Defendant Nos.5 and 6 were proceeded ex-parte. However, defendant No.7 filed a separate written statement and claimed ownership of the land to the extent of 1/5th share being joint owner.

In support of the pleadings, plaintiffs examined four witnesses

and tendered into evidence certain documents, whereas the defendants examined two witnesses.

Mr. G.S.Kaura, learned counsel for the appellant-plaintiff submitted that the plaintiffs had a right in the property even if the defendants had acquired the right by way of decree. The previous suit was pertaining to different cause of action and, therefore, could not have been non-suited by application of doctrine akin to *res judicata* as the civil court did not have the jurisdiction to accord the occupancy rights, for, jurisdiction vested with the revenue court.

I am afraid, the aforementioned argument is not sustainable in view of the law laid down by Hon'ble the Supreme Court in **Shyam Lal Versus Deepa Dass Chela Ram Chela Garib Dass**, 2016(3) R.C.R. (Civil) 812, wherein it was held that the civil court has jurisdiction to accord the declaration as occupant tenant. There is no denial to the fact that the plaintiffs were also party in the previous suit. The previous decree is of 2001, whereas the present suit was filed in 2009. No explanation has come forth in not challenging the same with promptitude. There was no cause of action as the plaintiffs were party nor raised any finger for eight years.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings of fact, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

March 07, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No