

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5852 of 2017 (O&M)
Date of Decision: February 13, 2019

Municipal Council, Moga

...Appellant

Versus

Dr.Rajesh Gupta & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sartej Singh Narula, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.15442-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 128 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.5852 of 2017

The present Regular Second Appeal at the instance of appellant-defendant No.1-Municipal Council, Moga is directed against the judgment and decree of the Lower Appellate Court, whereby the suit of respondent No.1-plaintiff for partition of the suit land, had been decreed.

Plaintiff sought the partition and separate possession of land bearing Khasra Nos.531 to 534 measuring 10 kanals 3 marlas bearing different khewat numbers on the premise that the parties to the lis, including the Municipal Council, were co-sharers. Defendant No.11 Swaran Singh

was also arrayed on the ground that he was a co-sharer. A legal notice under Section 49 of the Punjab Municipal Act, 1911 was issued before filing of the suit. Amendment was also sought, wherein defendant Nos. 3 to 10 and 12 to 16 allegedly encroached upon the area of the plaintiff. During the pendency of the suit, defendant Nos.9 and 8 were proceeded ex-parte in 2010 and 2011, whereas in view of the statement made by the plaintiff, suit against defendant Nos.3 to 16 was dismissed. Defendant Nos.7 and 12 were proceeded ex-parte in 2015. Defendant Nos.4, 5, 10, 13, 14, 15 and 16 were proceeded ex-parte on 13.08.2015. Defendant Nos.4 to 7, 10 and 12 to 16 were were ordered to be made party on the application of the plaintiff, but the trial Court dismissed the suit on the premise that the suit was not maintainable owing to non-impleadment of all the co-sharers. The Lower Appellate Court, as noticed above, has decreed the suit by passing a preliminary decree.

Mr. Sartej Singh Narula, learned counsel for the appellant-defendant submitted that once the suit against certain defendants was dismissed, it could not have been revived by impleadment of the parties. The remedy was to withdraw the suit and file the suit afresh.

I am afraid, the aforementioned argument is not sustainable as defendant No.11 was not a co-sharer and other co-sharers were also not impleaded as defendant No.11, according to the record and the findings of the Lower Appellate Court, concededly was not a co-sharer. On the basis of the statement suffered by the plaintiff, the suit was dismissed against the defendants but again impleaded by separate application under Order 10(2) Rule 1 CPC in a suit for partition. No prejudice would be caused to the co-sharers as their rights are decided to be determined by the share holders. The

question of separate possession would arise at the time of final decree, thus, the argument of the learned counsel is hereby repealed.

For the reasons aforementioned, I do not subscribe to the argument of the learned counsel to form a different opinion than the one arrived. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

February 13, 2019
ramesh
(AMIT RAWAL)
JUDGE

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