

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

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**CMs No. 7581-82-C of 2018 in/and
RSA No. 2974 of 2018
Date of decision : 22.1.2020**

Surender Singh and others

.....Appellants

Vs.

Gopi Chand and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Jagjyot Singh, Advocate, for
Mr. Kunal Dawar, Advocate, for the applicant/appellants

Rajbir Sehrawat, J. (Oral)

CM No. 7581-C of 2018 :

This is an application for condonation of 139 days delay in re-filing the accompanying appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 139 days in re-filing the present appeal is condoned subject to all just exceptions.

CM No. 7582-C of 2018 :

This is an application for condonation of 12 days delay in filing the accompanying appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 12 days in filing the present appeal is condoned subject to all just exceptions.

CM No. 7583-C of 2018 :

Allowed as prayed for.

RSA No. 2974 of 2018 :

It is the second appeal filed by the plaintiffs/appellants challenging the concurrent findings recorded by both the Courts below, whereby the suit filed by the plaintiffs was dismissed. For convenience, the parties hereinafter are referred to as the plaintiffs and the defendants, as they were mentioned in the original suit.

Brief facts involved in the case are that the plaintiffs had filed a suit for declaration to the effect that they were the co-sharer in the suit land. The partition proceedings and the orders passed by the revenue authorities in partition proceedings against them were illegal because they were wrongly proceeded ex parte. Still further, it was the grievance of the plaintiffs; in substance, that they have not been provided 'Rasta' to the plot, which has been allotted to them in those partition proceedings in their absence.

After considering the case of respective parties, the trial Court did not find any substance in the argument of the plaintiffs. Accordingly, the suit was dismissed. Feeling aggrieved against the judgment and decree passed by the trial Court, the plaintiffs had preferred the appeal. However, the said appeal was also dismissed by the lower Appellate Court. Hence, the present appeal has been filed by the unsuccessful plaintiffs.

While arguing the case, learned counsel for the plaintiffs has reiterated the pleadings of the plaintiffs and has submitted that the plaintiffs were wrongly proceeded ex parte. The plaintiffs had been put to disadvantage by allotting them the land at disadvantageous location. Still further, it is submitted that the land allotted to the plaintiffs has not been provided any specified passage. So far as the judgment and decree passed by both the Courts

are concerned, it is submitted by learned counsel for the plaintiffs that the findings recorded by the Courts below are perverse. The Courts below have gone wrong in law as the civil Courts had not got jurisdiction. Hence, it is prayed that the appeal be allowed and the orders passed by the statutory authorities be set aside.

Having heard learned counsel for the plaintiffs and having perused the case file, this Court does not find any substance in the argument of learned counsel for the plaintiffs. It has been proved on record; and has successively been found by the statutory authorities; that the plaintiffs were duly served during the partition proceedings. The plaintiffs were even represented at one stage by their counsel. However, thereafter, neither the counsel for the plaintiffs appeared before the statutory authorities; nor did the plaintiffs themselves appear there. Therefore, it was the option of the plaintiffs not to continue appearance in the partition proceedings. In such a situation, taken strictly, it cannot even be said that the plaintiffs were proceeded ex parte. In fact, it is a case where the revenue authorities had no other option but to declare them ex parte for absence of the plaintiffs despite having been duly served. Hence, no fault can be found on that count. The Courts below have rightly recorded the findings in this regard.

So far as the substantial grievance of the plaintiffs is concerned, it is not even disputed by the plaintiffs even now that the *aks-shijra*; showing the parcels of the land allotted to different parties; does show a passage of the parcel of the land, allotted to the plaintiffs. It is not even the case of the plaintiffs that the said passage has not been provided at the spot. Hence, this grievance of the plaintiffs also does not have any substance. So far as the other

grievance; qua allotment of disadvantageous land to the plaintiffs is concerned, this Court does not find any substance in this argument as well. The statutory authorities have taken into consideration all the aspects; including the shares of the parties, compulsions of the partition and the location of the land in the partition. Therefore, it would not be appropriate for the Court to interfere with the concurrent findings of the facts recorded by the statutory authorities, which have been duly upheld by the two Courts below as well.

No other point was argued by learned counsel for the plaintiffs.

In view of the above, finding no merit in the appeal, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

22.1.2020

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No