

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

**RSA No. 5158 of 2018 (O&M)
Date of decision: 18.02.2020.**

Balwant Singh

..... Appellant.

Versus

Suresh Kumar and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Arvind Thakur, Advocate, for the appellant.

ANUPINDER SINGH GREWAL, J. (ORAL)

CMs No. 14101-02-C of 2018

These applications are for condonation of delay of 182 days in re-filing the appeal and 33 days in filing the appeal.

Heard. For the reasons stated in the applications, the same are allowed and the delay of 182 days in re-filing the appeal and 33 days in filing the appeal is condoned.

RSA No. 5158 of 2018

The appellant/plaintiff has challenged the judgments and decrees of the Courts below whereby the suit preferred by him for separate possession by way of partition and for permanent injunction restraining respondent/defendant No.1 from raising further construction or in any manner changing the nature of the suit property has been dismissed.

Learned counsel for the appellant/plaintiff contends that the appellant/plaintiff had purchased a separate share from one Aggar Singh, he

was in ownership of the same and, therefore, his suit should have been decreed by the Courts below. He also contends that the report of the Kanungo Mark 'D' should have been accepted by the Courts below and the suit should have been decreed on the basis thereof.

Heard.

The appellant/plaintiff had filed a suit for separate possession by way of partition to the extent of 8.80 share out of the land measuring 4 bighas comprised in Khasra No. 115//22 situated at village Lalru, Tehsil Dera Bassi, District Mohali, and further restraining respondent/defendant No. 1 from raising further construction or in any manner changing the nature of the suit property.

The appellant/plaintiff had purchased the suit land from one Aggar Singh. Respondent/defendant No. 1 had also purchased the suit land from Aggar Singh. The appellant/plaintiff had earlier filed a suit for possession with regard to the suit land which had been dismissed on the ground that the suit land had not been partitioned between the co-sharers and, therefore, the suit for possession was held to be not maintainable against another co-sharer.

The instant suit filed by the appellant/plaintiff has been dismissed, as the appellant/plaintiff has included only a part of the land which had already been possessed by him and the respondents/defendants jointly. The appellant/plaintiff is seeking partition with regard to Khasra No. 115//22 while it is borne out from the evidence on record that the appellant/plaintiff is also a co-sharer in Khasra No. 115//23. The revenue record, especially jamabandies, i.e. Ex. P5 and Ex. P7, reflects that the

appellant/plaintiff is a co-sharer in both these khasra numbers. In his cross-examination as PW1, the appellant/plaintiff had admitted that he had purchased 8 biswas from Khasra No. 22 and 4 biswas from Khasra No. 23. He is in joint ownership and possession of both the khasra numbers, but in the suit he has included Khasra No. 115//22 and has not included Khasra No. 115//23. In the event the appellant/plaintiff being a co-sharer wants possession by partition, he has to seek partition of the entire land and cannot claim partial partition. Consequently, I do not find any illegality in the judgments passed by both the Courts below. The appeal stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

18.02.2020
Ramesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No