

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 225 of 2021 (O&M)

Date of Decision: 28.04.2021

Lakhbir Singh

... Appellant(s)

Versus

Dharam Kaur (now deceased) through her LR's and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Inderjit Sharma, Advocate
for the appellant.

Anil Kshetarpal, J.

The plaintiff/appellant has filed an appeal assailing the correctness of the judgments & decrees passed by both the Courts below. Along with the appeal, an application seeking condonation of delay of 1136 days has also been filed.

2. This Bench has heard learned counsel for the appellant on merits.

3. The plaintiff claims a decree of joint possession to the extent of 1/5th share in the land left by his mother- Late Smt. Ishar Kaur situated in village Dorangla. It is undisputed that originally the property in dispute was owned by late Sh. Jaswant Singh, predecessor-in-interest of the parties owned the properties in Dorangla, Tajpur and Dharamshala. It is also not in dispute that after the death of late Sh. Jaswant Singh six Class-I legal heirs including his widow and 5 children (including the plaintiff) inherited the properties. The suit was filed by impleading four defendants but it was

dismissed against the defendant No.1 to 3, namely Dharam Kaur, Daljit Singh and Jagjit Singh on 26.07.2002.

4. The defendant No.4 has defended the suit by asserting that the dispute between the parties was settled by an Arbitrator on 25.09.1976. It is further asserted that the parties once again settled their remaining disputes vide agreement dated 07.02.1980. There was a written agreement which was thumb marked by the mother, namely late Smt. Ishar Kaur and the plaintiff also sworn an affidavit on 07.02.1980 admitting settlement. Certain joint properties were also exchanged between the parties. It was further pleaded that the plaintiff as well as the legal heirs of defendant No.3 have already sold their share of the property located in Dorangla.

5. When the plaintiff appeared in evidence, he made certain significant statement in the cross-examination virtually admitting the case of the defendant. The learned trial Court, after reading the cross-examination, has recorded as under:

“I have gone through cross-examination of PW1 Lakhbir Singh. During cross-examination he has stated that there were two kothies in Dharamshala and land in village Tazpur and Dorangla. He admitted during cross-examination that partition has taken place on 25.09.1976 and his mother has got 1/5th share in the property of Tazpur and Dorangla. He stated that as per decision of parties, Bahadur Singh was having no share in the Kothies belonging to Dharam Kaur. He stated that it is correct that as per decision/partition dated 25.09.1976, exchange has taken place. He admitted that Kothi at

Dharamshala has been sold by him and legal heirs of Jagjit Singh to Doctor Jaswant Rai. He admitted during cross-examination that he has sold his entire share in land in Tazpur and Dorangla. He admitted that mutation has taken place as per his affidavit dated 07.02.1980. As such, during cross-examination the plaintiff has admitted that partition has taken place on 25.09.1976 and he has not brought on record any Partition Deed. The plaintiff has also admitted regarding exchange taken place according to partition”.

6. It would be noted here that the correctness of the aforesaid observations is not in dispute.

7. Learned counsel representing the appellant contends that once it is not in dispute that late Smt. Ishar Kaur had succeeded to the property from late Sh. Jaswant Singh, therefore, the plaintiff was entitled to 1/5th share in the property left by late Smt. Ishar Kaur. He, hence, contends that both the Courts below have erred.

8. This Bench has considered the submissions, however, finds no substance in the same. Once the plaintiff has admitted that a partition had taken place on 25.09.1976 and Smt. Ishar Kaur got 1/5th share in the property situated in village Tajpur and Dorangla. Still further, he has admitted that the residential property situated at Dharamshala has been sold by him along with the legal heirs of Jagjit Singh. He further admitted that he has already sold his entire share in the land located in villages Tajpur and Dorangla. He further admitted that he sworn an affidavit dated 07.02.1980

and the mutation of the land was sanctioned on that basis.

9. Keeping in view the aforesaid facts, now the plaintiff cannot turn around and claim the property on the basis of natural succession. Still further, the suit of the plaintiff already stands dismissed qua defendant No.1 to 3 on 26.07.2002. The correctness of the aforesaid order has not been challenged. In these circumstances, there is no ground to interfere with the concurrent finding of fact arrived at by both the Courts below. Hence, the appeal is dismissed.

10. Since the appeal has been heard on merits, therefore, no further order in the application for seeking condonation of delay is required to be passed.

11. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

April 28, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No