

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

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RSA No. 358 of 2020 (O & M)

Date of decision : 17.11.2022

Raj Kaur and others.....*Appellants**Vs.**Ram Kaur and others*.....*Respondents***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Vikas Saroha, Advocate, for the appellants

TRIBHUVAN DAHIYA, J. (Oral)**CM No. 934-C of 2020:**

This is an application for condonation of 58 days delay in filing the present appeal.

Notice in the application was issued on 23.1.2020. But no reply has been filed to date.

For the reasons stated in the application, the same is allowed. Delay of 58 days in filing the present appeal is condoned.

RSA No. 358 of 2020 (O & M):

1. This is plaintiffs' second appeal against the concurrent findings of both the Courts below.

2. The facts of the case in brief are, the appellants/plaintiffs (hereinafter referred to as 'the plaintiffs') filed a suit for declaration and permanent injunction by pleading that they are absolute owners in possession of the suit land, which is agricultural land situated in the revenue estate of Village

Juan, Sonapat, as per *jamabandi* for the year 2006-07. It was further pleaded

that the plaintiffs and defendants were members of a Joint Hindu Family and as per family settlement, they were in cultivating possession of the suit land as per their respective shares. As the plaintiffs' possession is being threatened by the defendants, a direction has also been sought not to dispossess them from the suit land.

3. The suit was contested by the defendants by admitting details of the suit land, as also the fact that the parties are in cultivating possession of their respective shares as detailed in para no.1 of the plaint. However, plaintiff's possession over a part of the suit land was denied. It was further stated that parties to the suit were members of the Hindu Undivided Family and plaintiffs' possession was not threatened, as alleged

4. On the pleadings of the parties, following issues were framed by the trial Court:

1. Whether the plaintiffs are entitled to a decree for declaration to the effect that they are absolute owners in possession of the suit land? OPP
2. Whether the plaintiffs are entitled to a decree for permanent injunction for restraining the defendants from dispossessing the plaintiffs of the suit land forcibly and illegally? OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
4. Whether the plaintiffs have no locus standi or cause of action to file the present suit? OPD
5. Whether the plaintiffs have not come to the Court with clean hands and suppressed the material facts from the Court? OPD
6. Whether the plaintiffs have dragged the defendants into an unnecessary and unwarranted litigation and defendants are entitled for special cost u/s 35A CPC? OPD
7. Relief.

5. While recording findings on Issue no.1, the Courts below have held that there was no evidence on record that the suit land was partitioned between the parties, and in such a situation, the relief of declaration that the plaintiffs had become absolute owners in possession of the suit land cannot be granted. PW-1 Harpal Singh has admitted that their *khewat* is joint wherein both the parties are co-sharers. The plaintiff, as PW-2, has also admitted the suit property to be in joint *khewat*. The revenue record does not show that joint *khewat* of the parties was ever partitioned. Since parties to the suit were proved to be co-sharers of the entire suit land and there was no evidence of their exclusive possession, the relief of declaration and permanent injunction was held to be not maintainable. Accordingly, Issue no.2 was also decided against the plaintiffs. Issues no.3 to 6 were not pressed, and, therefore, the same were decided against the defendants.

6. Learned counsel for the plaintiffs by referring to the written statement states that it is admitted by the defendants that *killa* no. 73//5 was sold to Jagbir and Ranbir Singh vide sale deed dated 5.7.1996. This would establish that partition of the suit land, in fact, had taken place; otherwise, sale of specific *khasra* number could not have been effected. The argument has no merit since individual sale of any specific *khasra* number in an unpartitioned land would at best amount to sale of the vendor's share. Any such sale cannot be a basis to conclude that the joint *khewat* between the parties stood partitioned. As per settled proposition of law, partition of land by metes and bounds has to be proved on record to establish partition. Whereas, in the instant case the claim partition is not supported by any revenue record. Further, it has not even been pleaded by the plaintiffs that partition of the joint *khewat* by the revenue

authorities ever took place. The plaintiffs’ witnesses have themselves admitted that the suit property is joint.

7. In view of the aforesaid, there is no error of law in the concurrent findings recorded by both the Courts below while dismissing the suit as well as the first appeal. No substantial question of law arises for consideration either.

8. Dismissed.

9. Pending miscellaneous application(s), if any, stands disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

17.11.2022
Ashwani

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