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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3250-2019 (O&M)
Date of Decision:29.08.2022

Gurmail Singh

.. Appellant

Vs.

Nahar Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Sham Lal Bhalla, Advocate for the appellant.

...

Manoj Bajaj, J. (Oral)

CM-8728-C-2019

This application under Section 151 CPC has been filed for condonation of delay of 284 days in re-filing the appeal.

Heard.

For the reasons mentioned in the application, the same is allowed and delay of 284 days in re-filing the appeal is condoned.

RSA-3250-2019 (O&M)

The appellant-defendant No.2 has preferred this appeal against the judgment and decree dated 17.03.2018 passed by appellate Court in Civil Appeal No.6 of 08.02.2016, thereby affirming the judgment and decree dated 04.01.2016 passed by Civil Judge, (Junior Division), Ludhiana in Civil Suit No.116 dated 27.04.2012, whereby suit for preliminary decree for partition filed by plaintiffs was decreed.

Briefly, the facts of the case are that the respondents No.1 and 2 filed a suit for preliminary decree for partition through metes and bounds to

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claim separate possession of their one half share in the land measuring 3K-10M (*Gair Mumkin Abadi*) comprised in khewat No.194, khatoni No.180 and 224 and khasra Nos.115, 130 and 185 in Village Chhandran, Tehsil and District Ludhiana. As per pleadings, the suit property jointly owned by the plaintiffs with defendants remains unpartitioned and though the plots in dispute are located in the khasra No.194, but the suit property falls in G*air Mumkin Abadi,* which is neither under cultivation nor being used for agricultural purposes. The parties are having dispute relating to the partition, who are not able to enjoy the fruits of the property, as the request made by plaintiffs for amicable partition of the suit property has not been accepted by the defendants, therefore, the plaintiffs filed the suit seeking a preliminary decree for partition.

The suit was contested by defendants No.2 and 3, who filed their written statement raising preliminary objections regarding maintainability of the suit, which amounts to partial partition, as the land measuring 1K-4M comprised in khasra No.194, which is part of the khewat is not included. Further, it was pleaded that Plaintiff-Nahar Singh had sold his share to Harpreet Singh s/o Mohinder Singh and Amarjit Singh, but as the said purchasers have not been impleaded, the suit is bad for non-joinder of necessary parties. On merits, it was pleaded that the plaintiffs had given their share in the land to the grandfather of defendant No.2-Mohinder Singh for construction of house, and similarly grandfather of defendant No.2 had also given his share in the plot to the plaintiffs, by way of oral transaction which took place in 1972. Thereafter, the parties constructed their respective houses in the plot, and after the death of Mohinder Singh, defendant No.2 inherited his share. Now, when the prices of the land have

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increased, the plaintiffs have become dishonest and in order to extort money from defendant No.2, they have filed the present suit. It is further averred that the agricultural land was already partitioned between the parties, but no partition of the suit land was made because the said land was given to the grandfather of defendant No.2 in exchange of his plot situated within the *lal lakir*. All other material averments were also denied, and in the end, it was prayed that the suit be dismissed.

After completion of the pleadings of the parties, the trial Court framed in all, two issues and thereafter, parties adduced their respective evidence. The trial Court upon considering the pleadings, evidence and material on record, decreed the suit of plaintiffs vide judgment and decree dated 04.01.2016.

Dissatisfied with the judgment and decree passed by the trial Court, defendant No.2 preferred appeal bearing No.6 of 08.02.2016 before the first appellate Court and the same was dismissed through impugned judgment and decree dated 17.03.2018. Hence, this regular second appeal.

Learned counsel for the appellant has argued that the land jointly owned by the parties was orally partitioned long back in the year 1972 and since then, they are in continuous possession over their respective pieces of the property and the claim raised by the plaintiffs for partition of land is not maintainable. Learned counsel has further argued that the plaintiffs have not sought partition of the entire joint land owned by the parties and have claimed partition of only 3K 10M by excluding the land measuring 1K 4M comprised in khasra No.194 and the suit claiming partial partition would not be maintainable. He submits that the trial Court as well as the Appellate Court have not properly appreciated the evidence while

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decreeing the suit in favour of the plaintiffs**,** therefore, the impugned judgment and decree deserves to be set aside.

After hearing the learned counsel and considering the material on record, this Court finds that the stand of the defendant No.2 (appellant) that as the parties had long back exchanged their plots to settle their shares is not proved by any convincing evidence. The alleged previous partition is admittedly oral, but nothing was brought in evidence to show that actually the said oral agreement was acted upon and the relevant entries were reflected in revenue record. On the other hand, the plaintiffs have relied upon (Ex.P-3) jamabandi for the year 2009-10 to show the joint ownership of the parties in the suit land. Even during the course of hearing, learned counsel is unable to produce anything to substantiate his argument regarding previous oral partition between the parties.

The other argument by the learned counsel that since the land measuring 1K 4M comprised in khasra No.194 is not included in the suit property, therefore, the claim by the plaintiffs amounts to partial partition, is also without any merit, because as per the appellant-defendant No.2 himself, the said property was sold prior to the filing of the suit and since, on the date of filing of the suit, plaintiffs were not shown owner of the said property, it cannot be said that the suit is not maintainable. Further, a perusal of the impugned judgment and decree passed by the appellate Court shows that it has considered the pleadings as well as evidence on record carefully before deciding the material issues in favour of the plaintiffs, particularly by holding that the document Mark A relied upon by the defendants relating to the previous partition is not enough to establish their stand, because the said document is a photocopy, and it does not at all refer

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to the suit property.

No other argument was raised.

Resultantly, this Court finds that the appeal does not involve any substantial question of law, therefore, the same is dismissed. No costs.

(MANOJ BAJAJ)
JUDGE

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Whether speaking/reasoned Yes No
Whether reportable Yes No

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