

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

RSA-1820-2022 (O&M)

Date of decision : 19.09.2022

Chand Singh and another

...Appellants

Vs.

Gurcharan Singh through LRs

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Hitesh Verma, Advocate for the appellants.

MANOJ BAJAJ, J.

Appellants (defendants) have filed this regular second appeal to challenge the judgment and decree dated 01.08.2017 passed by First Appellate Court in civil appeal No.172 dated 04.05.2017, whereby the judgment and decree dated 12.01.2017 passed by Civil Judge (Junior Division), Bathinda, decreeing the suit by plaintiff for possession, was upheld.

Briefly, the facts of the case are that the plaintiff filed suit for possession in respect of the agricultural land measuring 6 kanals 3 marlas comprised in khewat No.344, khatauni No.707-722, khasra Nos.1259/2/3 situated within the revenue limits of village Behman Dewana, Tehsil and District Bathinda. As per the pleadings, the plaintiff is owner of total land measuring 85 kanals 12 marlas (including the suit land), which forms part of the total land holding measuring 315 kanals 12 marlas, as mutation No.9954 dated 27.09.2011 was entered into the revenue records on the basis of the partition sanctioned by revenue authorities in favour of all the co-sharers, which is also reflected in the jamabandi for the year 2008-09. By virtue of this partition, the plaintiff became exclusive owner of land measuring 85 kanals 19 marlas and the said piece of land is situated adjacent to the land of the

defendants, who had illegally and forcibly encroached upon the land measuring 6 kanals 3 marlas and the defendants have no right, title or interest in the said piece of land, therefore, the plaintiff moved an application dated 03.06.2013 before the Tehsildar, Bathinda for demarcation, and the same was conducted on 08.06.2013. As per the said demarcation report, the land measuring 6 kanals 3 marlas bearing khasra No.1259/2/3 is unauthorizedly occupied by the defendants. On this cause of action, the suit for possession was filed.

The suit was contested by defendants, who filed their written statement raising preliminary objections regarding the cause of action, *locus standi*, maintainability etc. and on merits, it was pleaded that plaintiff is not sole/exclusive owner of the suit property. As per the averments in the written statement, the property is still jointly shared with other co-sharers and the alleged partition relied upon by the plaintiff is already under challenge in the civil Court by the defendants. The other averments in the plaint were also denied, and it was prayed that the suit be dismissed.

To controvert the stand of the defendants, plaintiff filed replication and reiterated his claim as contained in the plaint.

The trial Court after considering the pleadings, framed in all five issues and thereafter, the parties adduced their respective evidence. Upon considering the pleadings and evidence on record, the trial Court vide judgment and decree dated 12.01.2017 decreed the suit of the plaintiff.

Defendants being dissatisfied with the judgment and decree dated 12.01.2017 filed an appeal bearing No.172 of 2017, and the same was dismissed through the impugned judgment and decree dated 01.08.2017. Hence this regular second appeal.

Learned counsel for the appellants has argued that the appeal carries delay of 1149 days and he has filed a separate application for condoning the delay. According to him, since the defendants were pursuing their attempt to compromise the dispute with the plaintiff, therefore, the appeal was not filed in time and it has resulted in delay of 1149 days. He prays that the said delay is not intentional, therefore, the same be condoned.

On merits, learned counsel for the appellants has argued that as the plaintiff, claimed 1/4th share in the total land holding measuring 315 kanals and 12 marlas, and same comes out to be 79 kanals, whereas the jamabandi for the year 2008-2009 relied upon by the plaintiff shows him to be the owner of the land measuring 85 kanals 12 marlas, therefore, this 06 kanal of land is beyond his share. According to learned counsel, the suit by plaintiff, particularly in the absence of his brother, namely, Karam Singh, who is also a co-owner with the plaintiff, was not maintainable. He further submits that the plaintiff has failed to prove the partition of the land, muchless his exclusive possession, as no warrant of possession was issued by the Assistant Collector. According to him, the impugned judgment and decree passed by the appellate Court be set aside and the suit be dismissed.

After hearing the learned counsel and considering the above submissions, this Court finds that the case of the plaintiff is founded upon documentary evidence and the defendants have not disputed his share in the total land. The mutation No.9954 dated 27.09.2011 clearly shows that the land measuring 85 kanals 12 marlas came to the share of the plaintiff.

During the course of hearing, learned counsel for the appellants has produced the deposition of DW-1-Chand Singh, who in his cross

examination, categorically admitted the correctness of mutation No.9954 dated 27.09.2011, and unambiguously deposed that the said mutation was sanctioned on the basis of the partition proceedings. Further, the demarcation report (Ex.P-3) proved by PW-3-Darshan Singh Kanungo, D.C.Office, Bathinda, establishes that the land measuring 6 kanals 3 marlas falling in khasra No.1259/2/3 is encroached by the defendants.

A perusal of the impugned judgments and decrees shows that the findings returned on material issues by both the Courts are based upon proper appreciation of the evidence on record. Apart from above, the explanation given for delay of 1149 days in filing the appeal being insufficient is also rejected.

No other argument was raised.

Resultantly, this Court does not find any merit in the appeal, much less involvement of any substantial question of law, therefore, the appeal is dismissed on delay, and on merits as well.

(MANOJ BAJAJ)
JUDGE

19.09.2022

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No