

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

266

RSA No.2776 of 2018 (O&M)

Reserved on : 27.05.2022

Date of Decision : 31.05.2022

Mahipal

.....Appellant

Versus

Ram Kanwar and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rahul Jaswal, Advocate for the appellant.

ALKA SARIN, J.

CM-7221-C-2018

This is an application for condonation of delay of 8 days in filing the appeal.

For the reasons stated in the application, the delay of 8 days in filing the appeal is condoned.

CM stands disposed off.

RSA-2776-2018 (O&M)

The present regular second appeal has been preferred by the plaintiff-appellant against the judgments and decrees passed by both the Courts below dismissing his suit for declaration and permanent injunction.

Brief facts as averred by the plaintiff-appellant are that he is owner in possession of land measuring 12 *Kanals* 18 *Marlas* i.e. 5/12 share out of total land measuring 31 *Kanals* 0 *Marla* situated in the revenue estate of village Kheri Gujjar, Tehsil Ganaur, District Sonapat. The plaintiff-appellant averred that the suit property is ancestral coparcenary property and

the plaintiff-appellant succeeded the same from his forefathers. According to the plaintiff-appellant the suit property was wrongly partitioned without taking possession of the parties and without verifying the affidavits and appearance of the parties and that the plaintiff-appellant is still in cultivating possession of Killa Nos.17/1, 18/1, 18/2 and 19 in the southern side and that the defendant-respondents are threatening to dispossess the plaintiff-appellant and alienate the suit property under the garb of impugned mutation bearing No.4648 of Khangi Taksim entered and sanctioned by the CRO.

On notice, written statement was filed by the defendant-respondent No.1 wherein it was stated that the suit property has already been partitioned by mutual consent of the parties and that the plaintiff-appellant was neither owner nor in possession of the suit property. On 10.01.2011, the parties to the suit had moved an application to the Tehsildar, Ganaur regarding partition of the suit property and filed affidavits and after partition the mutation was sanctioned and the parties are enjoying the same without any dispute. It was averred that the suit property was partitioned by mutual consent of the parties. Defendant-respondent No.2 filed a separate written statement pleading that the impugned mutation No.4648 of Khangi Taksim is wrong, illegal and not binding on the parties and prayed for decreeing the suit. Defendant-respondent No.3 did not contest the suit and was proceeded against *ex-parte*.

On the pleadings of the parties, the following issues were framed vide order dated 28.02.2013 :

1. Whether the plaintiff is entitled to declaration to the effect that the mutation No.4648 is illegal, null and void ? OPP

2. Whether the plaintiff is entitled to permanent injunction to restrain the defendant from dispossessing the plaintiff from the suit property forcibly and illegally? OPP
3. Whether the suit filed by plaintiff is not maintainable in the present form? OPP
4. Whether the plaintiff has no *locus standi* or cause of action to file the present suit? OPD
5. Relief.

The Trial Court, vide judgment and decree dated 26.05.2015, dismissed the suit of the plaintiff-appellant holding that the parties had appeared before the Tehsildar and got the partition effected and defendant-respondent No.1 is cultivating the suit property which came to his share by partition had also installed a tubewell there. The Trial Court also found that the defendant-respondent Nos.2 and 3 have alienated their share in the suit property with specific Killa number and have acted upon the partition which had taken place and that once defendant-respondent Nos.2 and 3 have acted upon the partition then it could not be argued that the partition proceedings were illegal, null and void. Aggrieved by the said judgment and decree passed by the Trial Court, an appeal was preferred by the plaintiff-appellant which was dismissed vide judgment and decree dated 22.11.2017. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant has contended that the impugned mutation is illegal and wrong and was entered into on the basis of false and fabricated documents and was a result of fraud. It has further been contended that in fact no partition of the suit property had ever

taken place and thus the dismissal of the suit of the plaintiff-appellant was illegal and erroneous.

I have heard learned counsel for the plaintiff-appellant and perused the paper book.

In the present case the plaintiff-appellant has approached the Court by contending that no partition of the suit property had ever taken place and the impugned mutation was a result of fraud. However, both the Courts below have referred to the several documents on the record which establish that the suit property was partitioned after a request was made by the parties. The Courts have also referred to the statements made by the parties in their affidavits before the revenue authorities and before the civil court in the present proceedings. The lower Appellate Court has also recorded that the plaintiff-appellant while appearing as PW-1 in his cross-examination had categorically admitted that partition took place on 10.01.2011 and that he got 1½ killa in partition and that after the partition the mutation was entered. The lower Appellate Court also recorded that as per the admission by the plaintiff-appellant the affidavit of partition was thumb marked/signed by all the parties and that all the parties had appeared before Tehsildar that the portion which was given to the defendant-respondent No.1 was in his possession and was being cultivated by him. Regarding the plea of fraud raised by the counsel for the plaintiff-appellant, it is to be noted that fraud is required to be pleaded and proved while in the present case the plaintiff-appellant could not substantiate the plea taken by him in plaint in this respect. Learned counsel for the plaintiff-appellant has simply reiterated the submissions that were advanced before the Courts

below and which submissions were rejected after due and comprehensive consideration.

No question of law, much less, any substantial question of law arises in the present case. Both the Courts below have recorded concurrent findings of fact warranting no interference by this Court.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

31.05.2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
 Whether reportable : Yes/No