

RSA No.6481 of 2017 (O&M)

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(110)

RSA No.6481 of 2017 (O&M)

Date of Decision: 25.09.2023.

Randhir Singh

....Appellant

Versus

Dhari and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWALPresent: Mr. Wazir Singh, Advocate
for the appellant.

VIKRAM AGGARWAL, J. (ORAL)**CM-16715-C-2017**

Prayer in the present application filed under Section 151 CPC is for condonation of delay of 03 days in re-filing the appeal.

Heard.

For the reasons, mentioned in the application, the same is allowed.

Delay of 03 days in re-filing the appeal is condoned.

RSA No.6481 of 2017

1. This is plaintiff's second appeal against concurrent findings recorded by the Courts below. Challenge is to the judgment and decree dated 23.01.2017 passed by the Court of Additional District Judge, Panipat, vide which the appeal filed by the appellant-plaintiff against the judgment and decree dated 29.01.2014 passed by the Court of Civil Judge (Junior Division), Panipat was dismissed. The Court of Civil Judge (Junior Division), Panipat had dismissed the suit for declaration filed by the appellant-plaintiff.

2. Parties to the lis are once again closely related to each other. The appellant-plaintiff is the son of respondents-defendants No.1 and 2 and the brother of respondents-defendants No.3 to 6. He filed a suit for declaration that he along with respondents-defendants No.3 to 6 were owners in possession in equal shares of the land standing in the name of respondents-defendants No.1 and 2 (fully described in the plaint) situated within the Revenue Estate of Village Chhichhrana, Tehsil Israna, District Panipat. Consequential relief permanent injunction restraining respondents-defendants No.1 and 2 from selling or alienating the suit land through any other mode to anyone else was also sought.

3. The case set up by the appellant-plaintiff was that parties to the lis were governed by Hindu Law and constituted a Joint Hindu Family. The suit land was Joint Hindu Family Property. The land in the name of respondent-defendant No.1 was ancestral property whereas the land in the name of respondent-defendant No.2 had been purchased by joint funds of the joint family. It was averred that the suit land was being cultivated by the appellant-plaintiff and respondents-defendants No.3 to 6 jointly. A family dispute arose after which a family settlement took place in January 1990. As per the same, respondent-defendant No.1 agreed to transfer his land in the name of the appellant-plaintiff and respondents-defendants No.3 to 6. Subsequently land was purchased in the name of respondent-defendant No.2 vide sale deed dated 05.10.2006. This land was also added in the joint family in November 2006 and yet another family settlement took place in January 2008. As per the family settlement, the appellant-plaintiff and respondents-defendants No.3 to 6 became owners in possession in equal shares. The request of the appellant-plaintiff to get mutation effected in the name of the appellant-plaintiff and respondents-defendants No.3 to 6 was not acceded to as a result of which the suit was filed.

4. All respondents-defendants filed a joint written statement rebutting the claim of the appellant-plaintiff. Preliminary objections with regard to maintainability, estoppel, *locus standi*, cause of action, the appellant-plaintiff not having approach the Court with clean hands etc., were raised. On merits the relationship between the parties was admitted. It was however denied that the suit land was joint Hindu family property. It was averred that the respondents-defendants No.1 and 2 were owners in possession of their respective land as their self acquired property. It was averred that the appellant-plaintiff had been residing separately from the respondents-defendants for the last many years and his behaviour towards them was also not proper. He had moved many applications to the police against them. The land owned by respondents-defendants No.1 and 2 respectively was stated to have been purchased with their own funds. A stand was also taken that respondents-defendants No.1 and 2 had already given sufficient property and amount to the appellant-plaintiff and he had purchased sufficient property out of the said amount. Any family settlement having been arrived at was denied.

5. From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP
2. In case issue no.1 is proved in affirmative, then whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP
3. Whether the suit is not maintainable in the present form?
4. Whether the plaintiff has not come to the court with clean hands?OPP
5. Whether the suit is not properly valued? OPP
6. Relief.

6. Parties led their respective evidence.
7. The trial Court dismissed the suit by holding that the appellant-plaintiff had not been able to prove that the land in the name of respondent-defendant No.1 was ancestral property or that the land in the name of respondent-defendant No.2 had been purchased out of joint funds.
8. The appeal against the said decision was also dismissed by the First Appellate Court leading to the filing of the present second appeal.
9. I have heard learned counsel for the appellant-plaintiff and have also perused the case file.
10. Learned counsel for the appellant-plaintiff has contended that both the Courts below did not consider the matter from the correct perspective and erroneously non-suited the appellant-plaintiff. Learned counsel referred to the judgments passed by the trial Court as also by the First Appellate Court and made efforts to convince this Court that the judgments are not sustainable.
11. I have considered the submissions made by learned counsel for the appellant-plaintiff.
12. Before advertng to the merits of the appeal, it would be essential to observe that that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including **Hero Vinoth (minor) versus Seshammal 2006 (5) SCC 545**, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing substantial question of law in second appeal. With regard to the States of Punjab

and Haryana, it was so held in Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil) and Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92 respectively.

13. Coming to the facts of the case, the onus to prove his case was on the appellant-plaintiff. The relationship between the parties is admitted. It is also admitted that there is some land which is in the name of respondent-defendant No.1-Dhari Singh, which the appellant-plaintiff claimed to be ancestral property and the remaining land was in the name of respondent-defendant No.2-Nimbo Devi which, as per the appellant-plaintiff, had been purchased out of the income of the Joint Hindu Family. However, both the Courts concurrently found that the appellant-plaintiff had not been able to prove either of the two things.

14. To prove that the property in the name of respondent-defendant No.1 was ancestral, no evidence worth its name was produced. This fact could have been proved by leading documentary evidence and in accordance with the procedure laid down in the High Court Rules and Orders. Merely producing few witnesses who orally deposed that the property was ancestral in nature would not be sufficient evidence to prove this fact.

15. In so far as the second aspect is concerned, the land in the name of respondent-defendant No.2 had been purchased by her by way of sale deed dated 05.02.2006. Again, no evidence was led to prove that this land had been purchased out of Joint Hindu Family Funds. Some witnesses did state that this property had been purchased by the appellant-plaintiff after borrowing money from them but no documentary evidence was again produced to prove these facts. In fact, all witnesses admitted that the appellant-plaintiff had been residing separately for the last 15-20 years. Under the circumstances, it would be hard to accept that land in the name of respondent-defendant No.2 would have been

appearing as PW-1 also admitted that his father Dhari Singh had given 2 acres of land to him out of the total land and that he had purchased more land from the funds given by his father. In fact, he went to the extent of admitting that no family partition or settlement had taken place between him and his brothers and that he was not in possession of any part of the suit land. This essentially names that the case had simply been set up by him most likely on legal advice without there being any evidence to prove the same.

16. Last but not the least, the appellant-plaintiff filed a simplicitor suit for declaration despite the fact that he was not in possession of the land in dispute. He so admitted while appearing as PW-1 also. It is well settled that a simplicitor suit for declaration without seeking the consequential relief of possession would not be maintainable.

17. This Court finds no reason to interfere in the current findings of facts recorded by the Courts below. The judgments passed by the Courts below are well reasoned and do not call for any interference.

In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

September 25th, 2023

Rekha

**(VIKRAM AGGARWAL)
JUDGE**

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.