

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

111 RSA No.6098 of 2018(O&M)
Date of Decision: 16.11.2023

Rajinder SinghAppellant

Versus

Sadhu Singh Through his Lrs and othersRespondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sunil Agnihotri, Advocate
for the appellant.

SANJAY VASHISTH, J.(Oral)

CM-17016-2018

(i) Present application has been filed under Section 151 CPC
for seeking condonation of delay of 20 days in re-filing the appeal.

(ii) For the reasons enumerated in the application, the same
is allowed and the delay of 20 days in re-filing the present appeal is
hereby condoned.

(iii) Application stands disposed of.

RSA No.6098 of 2018(O&M)

1. Present regular second appeal has been filed by
appellant/defendant No.2 against the concurrent findings of decreetal
of civil suit in favour of plaintiff(s).

2. Plaintiff-Sadhu Singh filed a civil suit for seeking
possession by way of partition of the property situated in Village
Munak Kalan, Had Bast No.505, Tehsil Dasuya, District Hoshiarpur,

comprised in Khewat No.220, 447, 512, 279, Khatoni No.287, 641, 678, 360, Khasra No.16963/1221 (1-0), 16935/1193(0-4), 16934/1192(0-4), 18268/16936/1194/1 (0-6), 18269/16936/1194/2(0-6), 16964/1222(1-0), as per jamabandi for the year 2008-2009, shown in site plan within letters A.B.C.D.E.F.G.H.

3. Plaintiff(s) pleaded that he is joint owner to the extent of 9 Marlas of land, whereas defendants No.1 to 3 are joint owners to the extent of 9 Marlas each. Defendants No. 4 to 6 are pleaded to be joint owner to the extent of 12-1/2 Marlas. Similarly, defendant No.7 is pleaded to be joint owner to the extent of 11 Marlas. Thus, property is being jointly owned by the plaintiff(s) and the defendants and partition of the same is sought by way of a civil suit.

3. In the written statement, defendants pleaded that material facts have been conceded by the plaintiff(s) and thus, has not approached to the Court with clean hands and there being no cause of action, suit is not maintainable. It is also pleaded that the property in question has already been partitioned. Learned Courts below examined the Jamabandi's for the year 2008-09 (Ex. P2), wherein plaintiff(s) is recorded as co-owner of the suit property. Learned trial Court also noticed that defendants own witness Kashmira Singh, who appeared as DW1, admitted in his cross-examination that suit property is in the joint ownership and no partition has ever been done by any Court. Even, Rajinder Singh-DW2 has also deposed in specific that plaintiff is in joint ownership to the extent of 9 Marlas out of the suit

land. Even, qua other defendants also same nature of admission has been made by Rajinder Singh-DW2.

The Court has also examined the revenue record and reached to the conclusion that there is no evidence to depict that the parties are residing in their separate share, because, admittedly, revenue record is also showing joint ownership of all the parties. Thus, relying upon the deposition made by the defendants-witnesses and the entries made in the revenue record, suit filed by the plaintiff was decreed by passing a preliminary decree.

4. The said finding has also been confirmed by the learned First Appellate Court. Learned First Appellate Court also examined other factors available on record i.e. entries in the mutation, wherein the sale of the share has been recorded.

For the sake of convenience, the relevant findings given by learned First Appellate Court in paragraph Nos.12, 13 and 14 are reproduced here under:

'12. Perusal of record would show that present seeking possession by way partition has filed on the basis jamabandi for the year 2008-09 has been on the record as ExP2 Perusal thereof show that therein Kirpal Singh son of Wazir Singh had been recorded co-owner in the entire suit property Mohinder Singh Bakhshish Singh and Singh had been shown and who have been arrayed sons as well.

13. ExD2 has jamaband for the year 1998-99 Perusal thereof would show the even therein Harwant Singh has been shown to co-owner alongwith brother Bakhshish Singh Mohinder Singh and Rajinder Singh, however in mutation entry of sale of his share has also been there recorded in said jamabandi qua mutation No. 5412, 5444 and said entry reveals that he sold the share to Sadhu Singh plaintiff. So, Sadhu Singh plaintiff stepped

into the shoes of Harwant Singh who have also been a party to the present suit.

14. It has been contended that khasra No. 16938, 16991 and 16992 have not been included in the suit which was also co-owned by the parties. Ex. D2 just shows the factum regarding khasra No. 16991 and that too there is a entry regarding sale of share by Harwant Singh. No record qua khasra No. 16989 and 16992 has been placed on record by the appellant-defendant. So, the arguments of learned counsel for appellant stands good to no reason. Both DW1 and DW2 have even admitted the joint account.'

5. This Court does not find any substantial reason to interfere with the concurrent findings of fact recorded by the Courts below. No question of law much less substantial question of law arises in the instant appeal for the consideration of this Court. Consequently, the impugned judgments and decree passed by both the Courts below are hereby maintained and the present appeal stands dismissed.

6. This order shall also dispose of all the pending miscellaneous application(s).

November 16, 2023
rashmi

[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no