



108

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CM-2354-C-2024 in/and  
RSA-627-2024 (O&M)  
Date of decision : 13.12.2024

GURMAIL SINGH THROUGH HIS LRS AND ANR. ....Appellants  
Versus

JOGINDER SINGH AND AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Nishant Hooda, Advocate and  
Mr. Ivan Khosa, Advocate  
for the appellants.

PANKAJ JAIN, J. (ORAL)

CM-2354-C-2024

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 1 day in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicants/appellants have made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 1 day in filing the instant appeal is hereby condoned.

RSA-627-2024 (O&M)

Defendants are in second appeal aggrieved of the judgment and decreed passed by the Courts below whereby the suit filed by the plaintiff seeking decree of possession by way of partition of the suit property and



further prayer for grant of decree of permanent injunction seeking restrain against defendants from cutting and removing trees and changing the nature of the suit property till final partition, has been allowed.

2. For convenience and to avoid the confusion, parties hereinafter are referred to by their original position in the suit i.e. the appellants as the defendants and the respondent No.1 as the plaintiff.

3. Plaintiff filed suit claiming that the suit property was jointly purchased by predessesor-in-interest of the plaintiff and that of defendants. They decided to start business of flour mill and sawmill and installed flour mill, sawmill, and cotton machine etc. It was thus, claimed that the plaintiff is owner to the extent of 104/603 share in the land beneath the suit property and defendant No.9 Nachhattar Kaur, wife of the plaintiff, is co-owner to the extent of 81/603 share and the plaintiff is co-sharer to the extent of 1/2 share in the building and the shops as well as the machinery fitted therein.

4. Defendants filed written statement contesting the claim of the plaintiff setting up a plea of adverse possession. Though joint purchase of the suit property was admitted, however, it was denied that the plaintiff ever came in possession along with the defendants or that the parties were joint in business.

5. On the basis of the pleading of the parties, Trial Court framed the following issues:

- “1. Whether plaintiff is entitled to the relief of separate possession of his share by way of partition of the suit land? OPP



2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
3. Whether suit is not maintainable in the present form? OPD
4. Whether plaintiff has no locus standi and cause of action to file the present suit? OPD
5. Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD
6. Whether plaintiff has not come to the Court with clean hands and he has suppressed the true and material facts from this Court? OPD
7. Whether site plan filed by the plaintiff is incorrect? OPD
8. Whether suit is bad for non-joinder and mis-joinder of necessary parties? OPD
9. Whether suit is not properly valued for the purpose of Court fee and jurisdiction? OPD.
10. Relief.”

6. While taking up issues No.1 & 2 together, Trial Court relied upon Revenue Record, *Jamabandi* for the year 2007-2008, Exhibit P-5, pertaining to the suit property and *Jamabandi* Exhibit P-6 and returned the findings that the parties are co-owners in the suit property. Defendants having failed to prove their title having been perfected on the basis of description, both issues were decided in favour of the plaintiff and the suit was decreed.

7. Appellate Court has affirmed the findings recorded by the Trial Court.

8. Mr. Khosa counsel for the appellant has assailed the judgments and decrees passed by the Courts below submitting that the suit in question being a title suit, plaintiff had to stand on his own legs and cannot be



declared to be a co-owner to the extent of 1/2 share merely for the reason that the defendants failed to prove the plea of adverse possession. In support of his contention, he relies upon ratio of law laid down by Supreme Court in the case of **Union of India vs. Vasavi Co-operative Housing Society Limited, (2014)2 SCC 269** and that in **P. Kishore Kumar vs. Vittal K. Patkar, 2023(15) Scale 406**.

9. I have heard Mr. Khosa and have carefully gone through records of the case.

10. There can't be any dispute w.r.t. the proposition of law as canvassed by Supreme Court in *Vasavi Co-operative Housing Society Limited's* case (supra) and reiterated in *P. Kishore Kumar's* case (supra) that in suit for declaration of title the burden always lies on the plaintiff to make out and establish a clear case for granting such declaration and the weakness, if any, of the case set up by the defendants, cannot enure benefit to the plaintiff. However, the same is not applicable to the present case, more so, in the light of the pleadings raised by the parties.

11. Plaintiff in Para 2 of the plaint asserted as under :

“2. That the plaintiff was working as carpenter. He had been settled at Delhi with his family in 1960. The defendant No.1 also accompanied with him to Delhi for learning the work of carpentry. Thereafter, the plaintiff and defendant No.1 jointly purchased land in their names and decided to start a joint business of floor mill and the saw mill and ancillary work. Thus they have installed a floor mill, saw mill, cotton machine and three mixer grinders. They have also constructed five shops and residential building as shown in the site plan with joint expenditure. The



electric connection was obtained by defendant No.1 in his name with the consent of the plaintiff and the defendant No.1 agreed to run the business on behalf of the plaintiff also. The plaintiff and defendant No.1 used to settle the accounts of income and expenditure of business of floor mill and the rent of shops every year. Thus the entire building and the shops and fitted machineries is joint of the plaintiff and defendant No.1. The plaintiff is owner cosharer to the extent of 104/603 share in the land beneath the suit property and the defendant No.9 Nachhattar Kaur wife of the plaintiff is owner cosharer of 81/603 share in the land beneath the suit property. The plaintiff is cosharer to the extent of 1/2 share in the building and the shops and fitted machinery shown yellow in colour in the site plan annexed with plaint.”

12. The same was replied to by the defendants admitting the sale deed jointly in the name of the parties as under :

“2. In reply to para no.2 of the plaint it is submitted that the native place of the plaintiff and answering defendant is village Dadyal, Tehsil Garhshankar. The parents of the plaintiff and answering defendant were residing at village Dadyal in the ancestral house. The plaintiff and answering defendant had gone to Delhi, to earn and they settled with their families at Delhi. The plaintiff and answering defendant were living jointly at Delhi. Both the plaintiff and answering defendants purchased the site beneath house (not legible) 188, Vishnu Garden, New Delhi-18, about 36 years ago. After purchasing the said plot, the plaintiff and answering defendant constructed triple storey building in the said plot, with their joint income. Previous to that both, plaintiff and defendant No.1 and their families were living in a rented house. After constructing the above said house they shifted to their own house and started living there. The parents of the plaintiff and answering defendants were residing at village Dadyal. They became old so at their instance the answering defendant had to shift village Dadyal in order to look after them in the year 1970.



Thereafter the plaintiff started a business of a flour mill etc. at village Saila Khurd while taking a site on rent from Shounka Singh Numbardar. Thereafter the answering defendant purchased 2 kanals-7 marlas, of land out of 3 kanals-7 marlas, bearing Khasra no.45//18/1, situated in the area of village Saila Khurd, while spending from his own pocket, but in order to give respect to the plaintiff and defendant no.9 the answering defendant No.1 got mentioned the name of plaintiff and defendant no.9 in the sale deed through which they purchased the above said land. Thereafter the defendant no.1 raised construction of the building as shown in the site plan of the plaintiff in the above said purchased site from his own pocket. The plaintiff or defendant no.9 never spent even a single penny in raising these constructions. The plaintiff and defendant no.9 remained living at Delhi, whereas the answering defendants shifted to their house at Saila Khurd, just after construction. The middle portion of the building is double storey. The answering defendants are residing at the first floor, whereas the defendant no.1 is running a flour mill, cotton mill and saw mill on the ground floor. The vacant site in possession of the answering defendants is being used by them for the work sub servient to the said business. He also obtained a domestic connection from PSEB while spending from his own pocket. The defendant no.1 constructed five shops in the said land in his possession and rented out the same to different tenants. The plaintiff or defendant no.9 have no concern even with the building constructed by the answering defendants and the machinery installed by them in the property in dispute. The plaintiff never spent even a single penny in the above said constructions and the machinery. The plaintiff had never a joint business in the property in dispute with the defendant no.1. So question of settling the accounts every year does not arise. The plaintiff and defendant No.9 have no concern with the suit property.

13. Thus, admittedly the sale deed was jointly in the name of the predecessor-in-interest of the plaintiff as well as defendants. The same was



well incorporated in the Revenue Record and was reflected in the *Jamabandis* Exhibit P-5 and P-6. Defendants having admitted joint sale in the name of the plaintiff and defendants and the same having been corroborated fully by the Revenue record, this Court does not find that the Courts below erred in decreeing the suit filed by the plaintiff.

14. Mr. Khosa fairly admits that so far as the plea of adverse possession is concerned, apart from raising bald plea, appellant failed to lead any cogent evidence to prove the same.

15. In view of above, this Court does not find any reason to interfere in the instant Second Appeal. Resultantly, the same is dismissed.

15. Pending application, if any, shall also stand disposed off.

December 13, 2024

Dpr

(Pankaj Jain)  
Judge

Whether speaking/reasoned : Yes  
Whether reportable : Yes