

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****110****RSA-1825-2023 (O&M)****Date of Decision : 22.10.2024**

Shadi Singh

....Appellant

VERSUS

Bholi alias Kuldeep Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. H.S. Dhindsa, Advocate for the appellant.

ALKA SARIN, J. (Oral)**CM-6548-C-2023**

1. This is an application for condonation of delay of 158 days in filing the present appeal.

2. For the reasons stated in the application, the same is allowed. The delay of 158 days in filing the present appeal is condoned.

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3. Present appeal has been filed by the defendant No.1-appellant challenging the judgments and decrees dated 30.08.2016 and 25.07.2022 passed by the Trial Court and the First Appellate Court, respectively.

4. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit for separate possession of the property measuring 03 Kanals 06 Marlas comprised in Khewat No.866, Khatauni No.905, Killa Nos.544, 545, 765 and 771 as per Jamabandi for the year 2006-07 situated in village Khatra Chauhram, Tehsil and District Ludhiana by metes and bounds in which the plaintiff-respondent No.1 claimed 1/6th

share as also for permanent injunction restraining the defendants from alienating or disposing off any specific portion of the suit property. It was averred in the plaint that plaintiff-respondent No.1 and defendant No.1-appellant are real brothers. Kehar Singh is also one of the brothers who died leaving behind the defendant-respondent Nos.2 to 6 as his legal heirs. It was further averred that plaintiff-respondent No.1 and his brothers had jointly purchased land measuring 03 Kanals 06 Marlas and jointly raised construction over the suit property and that they were co-owners in joint possession. It was further averred that the suit property had not been partitioned and that the defendant No.1-appellant and the defendant-respondent Nos.2 to 8 were threatening to alienate specific portions of the suit property and raise construction over specific portions of the suit property. Hence, the present suit. On notice, the defendants appeared and contested the suit by filing the written statement. Various preliminary objections were raised. It was averred that Kuldeep Singh had sold one of the houses, which was given to him in a settlement by the mother, which is now in possession of Tarsem Singh and this fact had been concealed by the plaintiff-respondent No.1. It was further averred that they were all co-sharers. However, there had been a partition of the property by way of a family settlement in the year 1989 and that the parties have constructed their residential houses with their own funds without any objection from anyone. It was further averred that the plaintiff-respondent No.1 had entered into a memorandum of partition dated 08.11.1990 vide which he had acknowledged the previous partition of 1989. However, the said document

has been concealed. From the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
- 1A. Whether the plaintiff is entitled to the relief of separate possession as prayed for ? OPP
2. Whether the suit is not maintainable in present form ? OPD
3. Whether the plaintiff has locus standi to file the present suit ? OPD
4. Whether the plaintiff has not approached the court with clean hand ? OPD
5. Whether plaintiff has concealed the true and material facts from the court ? OPD
6. Whether no cause of action arises in favour of the plaintiff ? OPD
7. Whether the property in question is already partitioned between the plaintiff and the defendant and they also entered into memorandum dated 18.11.1990 in this regard ?
8. Whether the plaintiff is estopped by his own act and conduct ? OPD
9. Whether the suit of the plaintiff is barred by limitation ? OPD
10. Whether the suit of the plaintiff is not properly valued for the purpose of court fees ? OPD
11. Relief

5. The Trial Court vide judgment and decree dated 30.08.2016 decreed the suit holding the plaintiff-respondent No.1 entitled to separate possession to the extent of 1/6th share. Aggrieved by the same, an appeal was

preferred by the defendant No.1-appellant herein and by Dilbagh Singh. The other defendants chose not to challenge the judgment and decree passed by the Trial Court. The said appeal was dismissed by the First Appellate Court vide judgment and decree dated 25.07.2022. Aggrieved by the same now only the present defendant No.1-appellant has filed the instant regular second appeal.

6. Learned counsel for the defendant No.1-appellant would contend that there had been a partition which had been duly acknowledged by the plaintiff-respondent No.1. It is further the contention that there was a settlement which was proved by way of secondary evidence and that the same has been rejected by the Court only on the ground that the loss of the document had not been duly proved inasmuch as in the DDR it only reflects the loss of document and does not give the detail of the document. It has further been contended that the plaintiff-respondent No.1 has admitted that all the parties have raised construction with their own funds.

7. Heard.

8. In the present case both the Courts concurrently found that there was no memorandum of settlement as alleged by the defendant No.1-appellant since the same was not proved. It was held by the Courts that there were two marginal witnesses to the said agreement. However, both the said witnesses were not examined. The memorandum (Ex.D1) itself was signed by only three of the co-sharers i.e. Shadi Singh, Kehar Singh and Kuldeep Singh. However, as per Jamabandi (Ex.P2) there were other two co-sharers. Further still, the DDR which has been lodged regarding the loss of the

original memorandum of settlement dated 08.11.1990 was held to be not proved as the DDR only reflected the loss of document and does not mention any details. The Trial Court has further noticed that DW3 Shadi Singh i.e. the present defendant No.1-appellant in his cross-examination had deposed that the earlier settlement was lost, however, later it was traced and was placed on the Court file. That fact was also found to be incorrect as no original was placed on the file. Seen from any angle, the execution of the family settlement was not proved. Learned counsel for the defendant No.1-appellant has not been able to convince this Court that there was a family settlement which was duly acted upon. In the absence of any cogent evidence proving the family settlement, no fault can be found with the judgments and decrees passed by both the Courts.

9. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

22.10.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO