



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2668-2023 (O&M)

Date of Decision:-**17.07.2024**

ASHOK KUMAR

... Appellant

Versus

GURWINDER SINGH AND OTHERS

... Respondents

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. Sunny Kumar Singla, Advocate
for the appellant.

RITU TAGORE, J. (Oral)

CM-9031-C-2023

1. Heard on the application, filed under Section 5 of Limitation Act, 1963, seeking condonation of delay of 16 days in filing the present appeal.

2. In view of the reasons mentioned in the application, delay of 16 days in filing the appeal is condoned.

3. The application stands disposed of.

Main Case

1. This appeal is against judgment and decree dated 31.03.2023, passed by learned Additional District Judge, Sangrur, affirming the judgment dated 13.11.2018, passed by learned Additional Civil Judge (Senior Division), Sangrur.



2. For easy reference, parties to the *lis* hereinafter shall be referred as per their status before the learned trial Court.

3. Brief facts of the present appeal are that, the plaintiffs instituted a civil suit for permanent prohibitory injunction against defendants, pleading that the parties to the suit and other persons are co-sharers in the suit land, total measuring 129 Kanal and 05 Marla, as detailed in the head note of plaint, as per their shares. No one is in the exclusive possession of any part of the suit land mentioned in the plaint. The suit land has not been partitioned by metes and bounds and is still a joint holdings of all the co-sharers.

4. It is asserted that defendants intend to change the nature of the suit land which is more valuable, by raising illegal construction on specific khasra/ portion of the suit land and are further bent upon to alienate the specific portion/khasra numbers out of the joint suit land and deliver the possession of specific portion/khasra number to some third persons illegally and forcibly, without getting the same partitioned by metes and bounds. The plaintiffs further pleaded that defendants have threatened to raise construction on the suit land and have refused to accede to the repeated requests of the plaintiffs, and desist from their evil designs, thereby, necessitating the plaintiffs to file present civil suit.

5. On notice being served, none appeared on behalf of defendants before the learned trial Court. Accordingly, defendants were proceeded against *ex-parte*.

6. To substantiate their case, plaintiff No.2 Rekha Rani herself stepped into the witness box as PW-I and reiterated the version of the plaint



and presented the *jamabandi* for the year 2013-14 (Ex.P-1) and copy of sale deed dated 21.02.2007 (Mark A) . Thereafter, plaintiffs closed the evidence.

7. On the assessment of the evidence, learned trial Court dismissed the suit of the plaintiffs, concluding that defendants are co-sharers with plaintiffs on the suit land. The suit of the plaintiffs against co-sharer is not maintainable. First appeal filed by the plaintiffs was also dismissed by the Learned First Appellate Court, affirming the findings of the learned Trial Court.

8. Dissatisfied with the findings of the learned Courts below, the appellant/plaintiff has preferred the present appeal.

9. I have heard the learned counsel for the appellant-plaintiff and have gone through the findings of the learned Courts below and the paper book and record with the valuable assistance of the learned counsel and finds no ground to interfere in the findings of the learned Courts below for the following reasons.

- (i) The plaintiffs have asked for two fold reliefs in the suit for permanent prohibitory injunction against the defendants; first; defendants be restrained from alienating specific portion/*khasra* number from the joint holdings. Second, defendants be restrained from raising construction & changing its nature on 22 kanals 17 marlas on the land falling in khewat No.1226/1158 khatouni No.1924 & 1930 comprised in Khasra Nos.97//12/1/3-16, 97//12/2/1/0-8, 97//12/3/1/1-3, 97//12/3/2/1-8, 97//13/2/2/0-16, 97//13/1/3-



0, 97//18/7-10, 97//19/1/2-2, 97//23/2-14, forming part of total land measuring 129 Kanal 05 marlas as per Jamabandi for the year 2013- 14 situated at Village Bhawanigarh, Tehsil Bhawanigarh, District Sangrur. To support the above material assertions, there is solitary statement of the plaintiff (PW-1) and Jamabandi for the year 2013-2014 Ex.P-1 indicating the suit land as a joint holdings of the parties and other co-sharers.

10. A perusal of statement of plaintiff No.2-Rekha Rani (PW-1) is not sufficient to grant the reliefs as prayed for; firstly, her statement is not specific as to the type/nature of construction, defendants have allegedly threatened to raise on the suit land prejudicing the rights of plaintiffs as co-sharers. Further, pleadings and testimonial account of plaintiff No.2-Rekha Rani (PW-1) is silent as to the overt acts allegedly committed by the defendants, for raising construction. The plaintiffs presented no cogent evidence to come to a finding that acts and conduct of defendants have been such that amounted to the ouster of plaintiffs from the joint land or tend to cause any irreparable loss to the plaintiffs in any manner. The learned Courts below have thus, rightly taken the aforesaid infirmities in the case of the plaintiffs, failing to make out a justifiable cause of action to maintain the suit against the defendants.

11. Furthermore, learned Courts below rightly concluded that a co-sharer has right to use every parcel of the land of a joint holding and has right to sell his share in the joint holdings. In umpteen number of authorities, it has been held that a co-sharer have equal right on every inch of joint land. It is



no more *res-integra* that sale of specific khasra numbers by any of the co-sharers without getting the joint land partitioned would amount to sale of his share only. In these circumstances, factually as well as legally, the plaintiffs failed to maintain the suit in present form against the defendants. It has been aptly observed by learned trial Court that as efficacious remedy of getting the land partitioned is available to appellant-plaintiff.

12. No other point urged.
13. All these factors taken together, makes no ground to form a different opinion to bring the findings of the learned Courts below within the realm of perversity.
14. For the reasons aforementioned, I do not find any illegality or perversity, in the concurrent findings, which are based on sound application of oral and documentary evidence. No ground for interference is made out much less involvement of any substantial question of law.
15. Resultantly, there is no merit in the appeal and is, hereby, dismissed.
16. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

17.07.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No