

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

ESA-216-2016 (O&M)
Date of decision: 19.04.2024

MEHAR CHAND

..Appellant

Versus

FATEH CHAND & ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manish Mehta, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

CM-13908-C-2016

1. For the reasons stated in the application for condonation of delay which is supported by an affidavit, the application is allowed.
2. The delay of 9 days in refiling the appeal is condoned.
3. CM stands disposed of.

Main case

4. This execution second appeal has been filed to challenge the correctness of the concurrent orders passed by the Executing Court while dismissing appellant's objection petition. This case has a chequered history. As many as five families were recorded as co-owners of the land comprised in Rectangle No.36, Khasra No.3/2 (4 kanal). Sh. Sohan Singh, Sh. Pappu and Smt. Kamla, co-sharers filed proceedings for partitioning the joint property, which was allowed, resulting in instrument of partition dated 10.07.1986. The aforesaid joint land was divided into two separate parcels. The land comprised in Khasra No.3/2/1 (1 kanal and 10 marlas) was allotted to Sh. Shaitan Singh, whereas, the land comprised in Khasra No.3/2/2 (2

kanal and 10 marlas) was allotted to Sh. Sohan Singh, Sh. Pappu and Smt. Kamla. Sh. Sohan Singh, Sh. Pappu and Smt. Kamla sold 2 kanal land, which was allotted to them in the partition to Siri Ram and Sh. Balbir on 09.06.1989, which was registered on 12.06.1989. Sh. Shaitan Singh filed suit for mandatory injunction directing the defendants to remove encroachment and deliver possession to them. In the aforesaid suit, Siri Ram and Sh. Balbir were defendant No.40 and 41. The suit was decreed on 26.10.1999, which was affirmed in appeal vide judgment and decree dated 21.11.1992. Subsequently, execution petition was filed in which the appellant filed objection. He claims to be transferee from Siri Ram and Sh. Balbir Singh vide release (transfer) deed dated 11.10.2000.

5. The learned counsel representing the appellant has been heard at length. He submits that the parties are not in possession of the property in accordance with the instrument of partition. He submits that as many as two local commissioners have reported to the Court in this regard.

6. This Court has considered the submissions.

7. It is not in dispute that the joint property was partitioned on 10.07.1986, thereafter, the appellant has no right to continue in possession of the parcel of land, which has fallen to the share of the decree holder namely Sh. Shaitan Singh. It is for this purpose the suit was filed, which was decreed on 26.10.1999. The purpose of the suit was to remove unauthorized possession. Moreover, the appellant has right to occupy only that parcel of land, which has fallen to his share in the partition proceedings.

8. Hence, no ground to interfere is made out.

9. Dismissed accordingly.

10. All the pending miscellaneous applications, if any, are also disposed of.

April 19th, 2024

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No