

2024:PHHC:123698



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

105-1

RSA-1928-2018 (O&M)

Date of Decision : 18.09.2024

Jagjit Singh

....Appellant

VERSUS

Bakhtawar Singh (since deceased) through LRs
and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.S. Mamli, Advocate for the appellant.

ALKA SARIN, J. (Oral)

CM-5316-C-2018

1. This is an application for condonation of delay of 40 days in filing the present appeal.

2. For the reasons stated in the application, the same is allowed.

The delay of 40 days in filing the present appeal is condoned.

RSA-1928-2018 (O&M)

3. Present appeal has been preferred by plaintiff No.1 challenging the judgment and decree dated 01.11.2011 passed by the Trial Court and the judgment and decree dated 17.07.2017 passed by the First Appellate Court.

4. The brief facts relevant to the present *lis* are that plaintiff No.1-appellant alongwith his brother Daljit Singh (respondent No.5 herein) filed a suit for declaration with consequential relief of mandatory injunction averring therein that they are owners in possession of *Gair Mumkin Bara* comprised in Khewat No.802 min 787, Khatauni No.1200, Khasra

No.269(0-5) situated in village Amin, Tehsil Thanesar, District Kurukshetra.

It was further averred that the plaintiffs are owners in possession of the suit land since the time of their forefathers and they were in possession of the suit land to the knowledge of the defendant-respondent Nos.1 to 4 herein and that their possession had ripened into ownership. The suit was contested by the defendant-respondent Nos.1 to 4. On the basis of the pleadings the following issues were framed :

1. Whether the plaintiffs are entitled to a decree of declaration as prayed for ? OPP
2. Whether the plaintiffs are entitled to a decree for mandatory injunction as prayed for ? OPP
3. Whether the suit of the plaintiffs is not maintainable ? OPD
4. Whether plaintiffs have concealed the true and material facts from the Court ? OPD
5. Whether the plaintiffs have no cause of action to file and maintain the present suit ? OPD
6. Whether the suit of the plaintiffs is liable to be rejected under Order 7 Rule 1, 11 and 14 CPC ? OPD
7. Whether the civil court has no jurisdiction to try the present suit ? OPD
8. Relief.

5. The Trial Court dismissed the suit under Order XVII Rule 3 of the Code of Civil Procedure, 1908 for want of evidence vide judgment and decree dated 01.11.2011. Aggrieved by the same an appeal was preferred which appeal was also dismissed vide judgment and decree dated 17.07.2017. Hence, the present regular second appeal.

6. Learned counsel for the plaintiff-appellant would contend that

only four opportunities were given for leading the evidence and thereafter the matter was decided. It is further the contention that the plaintiff-appellant ought to have been given another opportunity to lead his evidence.

7. Heard.

8. Before the First Appellate Court similar arguments were made. The First Appellate Court has observed that the explanation given that the plaintiffs could not lead their evidence since the counsel did not appear was not substantiated and no affidavit of the counsel was filed. The First Appellate Court further found that sufficient opportunities were given, however, the plaintiffs failed to lead their evidence. The argument of learned counsel for the plaintiff-appellant that sufficient opportunities were not given deserves to be rejected. Even in the suit filed by the defendant-respondents the plaintiff-appellant herein had failed to even lead an iota of evidence to show his possession. The regular second appeal challenging the judgments and decrees passed in the injunction suit being RSA-811-2018 has also been dismissed today by a separate order.

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

18.09.2024
jk

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