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

RSA-4129-2018 (O&M)

Reserved on : 25.07.2024

Date of Decision : 21.08.2024

Ranbir and Others

....Appellants

Versus

Ram Kishan & Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. M. S. Kathuria, Advocate for
Mr. Partap Singh, Advocate for the appellants.

ALKA SARIN, J.

CM-10900-C-2018

1. For the reasons mentioned therein, the application for condonation of 87 days delay in re-filing the appeal is allowed. The delay of 87 days delay in re-filing the present regular second appeal is condoned.

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2. The present appeal has been preferred by the plaintiff-appellants challenging the concurrent findings returned by the Trial Court and the First Appellate Court vide judgments and decrees dated 20.12.2016 and 02.11.2017 respectively.

3. The brief facts relevant to the present case are that the plaintiff-appellants filed a suit for mandatory injunction with consequential relief of

permanent injunction claiming that their father Jormal was co-owner/co-sharer to the extent of 1/2 share in the suit land and the remaining 1/2 share was owned and possessed by the contesting defendant-respondents and that the suit land was joint between the said Jormal and the contesting defendant-respondents and was not partitioned by metes and bounds by a court of competent jurisdiction and was being cultivated jointly according to their shares. It was averred that the name of the Jormal was wrongly recorded as Gair Kabij of 1/2 share in the suit land and the contesting defendant-respondents took undue advantage of the said wrong revenue entries and filed a petition for deleting the name of Jormal and the said petition was decided in favour of the contesting defendant-respondents on 17.05.1973. However, thereafter the contesting-defendants and Jormal reached a compromise and it was agreed that Jormal will be the owner in possession of 1/2 share of the suit land and the contesting defendant-respondents will be the owners in possession of the remaining 1/2 share of the suit land. It was also agreed that the order dated 17.05.1973 will not affect the said compromise and the revenue entries were to be got corrected/rectified as per the compromise. It was averred that the contesting defendant-respondents, by playing fraud and cheating, got entered a mutation of the order dated 17.05.1973 in the revenue record on 18.10.1995 which was sanctioned after 22 years of the passing of the order dated 17.05.1973 whereas the limitation for entering the mutation was 12 years. It was further the stand taken that after the expiry of 12 years the order dated 17.05.1973 became infructuous and the contesting defendant-respondents were liable to obtain a fresh declaration from the Court but they did not do

so and thus the impugned mutation dated 18.10.1995 was wrong, illegal, null and void, ineffective, inoperative and the same was liable to be set-aside/cancelled being barred by limitation. It was further the stand that on the basis of the wrong mutation, the contesting defendant-respondents were threatening to dispossess the plaintiff-appellants from the suit land and intending further alienate the suit land. Hence, the suit. In the written statements the contesting defendant-respondents raised preliminary objections regarding maintainability of the suit and contended that the plaintiff-appellants were neither owner nor in possession of the suit land as their predecessor-in-interest had already been held as an absentee vide order dated 17.05.1973 and the appeal filed against the said order was also dismissed on 21.01.1980. It was the stand taken that the contesting defendant-respondents are the exclusive owners in possession of the suit land.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for the decree of permanent injunction restraining the defendants from interfering in the peaceful possession and cultivation of the plaintiffs and also restrained from alienating the suit property ? OPP
2. Whether the present suit of the plaintiff is not maintainable ? OPD
3. Whether the plaintiff has no cause of action to file the present suit ? OPD

4. Whether the plaintiffs have suppressed true and material facts ? OPD

5. Relief

5. The Trial Court vide judgment and decree dated 20.12.2016 dismissed the suit. Aggrieved by the same, an appeal was preferred by the plaintiff-appellants which appeal was also dismissed vide judgment and decree dated 02.11.2017. Hence, the present regular second appeal.

6. Learned counsel for the plaintiff-appellants would contend that both the Courts have erred in dismissing the suit of the plaintiff-appellants. It is submitted that the suit land was joint and that the contesting defendant-respondents had wrongly got the mutation recorded on 18.10.1995 on the basis of an order passed on 17.05.1973. It is contended that a compromise had been arrived at between the parties after the order dated 17.05.1973 was passed whereby the contesting defendant-respondents accepted the ownership of Jormal over 1/2 share in the suit land.

7. I have heard the learned counsel for the plaintiff-appellants.

8. In the present case both the Courts have found that the plaintiff-appellants had not been able to prove that the suit land was jointly owned by the parties. Apart from the oral testimonies, the plaintiff-appellants could not establish from any documentary evidence that the suit land was jointly owned. The First Appellate Court held that *“Jormal had filed Civil Appeal No.84 of 1973/78 however, the same was dismissed vide Judgment and Decree dated 21.04.1980, copy of which has been placed on record as Ex.D10. Also, Jormal had challenged said Judgment and Decree dated 21.04.1980 by way of filing RSA 1134/1980 before Hon’ble Punjab &*

Haryana High Court, Chandigarh, which was also dismissed on 21.07.1980, as so mentioned in Ex.D5. It is pertinent to mention here that record pertaining to said RSA was restored in the Old Record Room, which had burnt in fire incident broken out in the year 1999 as so reported in Ex.D1. Filing of Civil Appeal No.84 of 1973/78 and RSA 1134/1980 by Jormal as well as their dismissal has not been disputed on behalf of appellants". The First Appellate Court further held that "It is worthwhile to mention here that factum of filing of Civil Appeal No.84 of 1973/78 and RSA 1134/1980 by Jormal as well as their dismissal was not disclosed by the appellants in their pleadings, which amounts to concealment of material facts. Appellants have sought equitable relief of Declaration and Permanent Injunction. It is basic principle of law that one who seeks equity must do equity. By not disclosing said two material facts in their plaint, appellants have disintitiled themselves for the discretionary reliefs sought by them".

9. Learned counsel for the plaintiff-appellants is unable to point to any cogent and reliable evidence on the record to show that the suit land was jointly owned. Moreover, the plaintiff-appellants have lost upto this Court in the earlier round of litigation and cannot reagitate the same issues. They have been found to have concealed material facts from the Court. In the absence of any reliable evidence in favour of the plaintiff-appellants the findings recorded by both the Courts cannot be faulted. No other point was argued.

10. In view of the above, no mistake or error of law or facts can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the

present case. The appeal being devoid of any merit is accordingly dismissed.

Pending applications, if any, also stand disposed off.

21.08.2024
Ankur

(ALKA SARIN)
JUDGE

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