



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

**CM-1091-C-2019 in/and
RSA-497-2019**

Date of Decision: July 22, 2024

Baldev Singh and another

... Appellants

Versus

Ranjit Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Raj Kumar, Advocate for the appellants.

DEEPAK GUPTA, J.(Oral)

CM-1091-C-2019

This is an application under Section 5 of the Limitation Act to condone the delay of 04 days in filing the appeal.

Heard.

For the reasons as mentioned in the application, supported by an affidavit of appellant – Baldev Singh, the delay of 04 days in filing the appeal is hereby condoned.

The application stands disposed of.

RSA-497-2019

The suit for declaration and permanent injunction filed by the plaintiffs – Baldev Singh and others (appellants herein) was dismissed by the Trial Court on 14.08.2017. The appeal filed by them was dismissed by the First Appellate Court on 07.09.2018. Against this concurrent findings, the plaintiffs-appellants have approached this Court.

2. The sole contention raised by learned counsel for the appellants-plaintiffs is that a family settlement had taken place way back on 02.08.1985 and that property in dispute should be decided as per settlement.

3. After hearing learned counsel for the appellants, this Court does not find any merit in this appeal. The entire controversy, the issue involved in the matter, the evidence produced in support thereof and the findings thereon, are crystallized by First Appellate Court in para Nos.15 and 16 of the judgment, which are as under:-

*“ 15. Admittedly, Kishan Singh, grand father of plaintiffs no.2 and 3, father-in-law of plaintiff no.1, was the original owner and remained in possession of suit land. It is not disputed that after death of Kishan Singh, his estate was inherited by his sons Inder Singh and Kala Singh, in equal share. Interse relationship, being successors of Inder Singh and Kala Singh, between the parties, is not disputed. By way of instant suit, plaintiffs set up their claim, on the basis of one agreement to partition/ family partition, took placed between Inder Singh and Kala Singh, executed by them, in order to compensate each other, as land was of two (02) qualities. It is stated by plaintiffs that due to that agreement to partition/family partition, Inder Singh became owner in possession of 45 kanals 04 marlas, whereas Kala Singh remained in possession of 41 kanals 08 marlas. Meaning thereby, the entire matter in controversy revolves around the agreement to partition/family partition, as averred by plaintiffs, in para no.2 of the plaint. Thereafter, in para no.7 and 8 of the plaint, it is averred that “**family partition agreement dated 2.8.1985**”. Meaning thereby, plaintiffs knocked the door of court, on the basis of family partition agreement dated 2.8.1985. Admittedly, such family partition/agreement to partition, has never been incorporated in the revenue record. It is stated by plaintiffs that due to illiteracy, said family partition/agreement to partition, could not be produced before revenue authorities, so, mutation could not be sanctioned, nor it could be incorporated in the revenue record. It is pertinent to*

mention here that, such family partition/agreement to partition dated 2.8.1985 (**Ex.P3**), was placed on record, which is strongly objected by the defendants. It is also evident from record that, civil suit no.RT298 dated 10.7.2015/10.7.2013, titled as “Baldev Singh Vs. Ranjit Singh and others”, for permanent injunction (**Ex.D2**), was filed by plaintiff Baldev Singh, by alleging that khata of suit land is still joint between the parties and no partition, by meets and bounds, has taken place. Property, elucidated in the head note of plaint of civil suit “Baldev Singh Vs. Ranjit Singh and others” (**Ex.D2**), is the same property, as mentioned in the instant suit. That suit was filed by plaintiff Baldev Singh himself, through an other counsel and attested copy of power of attorney is **Ex.D3**. Application for grant of injunction order, was dismissed by the then learned Addl. Civil Judge (Sr.Divn.), Faridkot, vide order dated 21.6.2013. Plaintiff Baldev Singh, preferred appeal, by reiterating that suit land is still joint between the parties, and no complete and legal partition ever taken place between them, as is evidence from **Ex.D4**. **Ex.D5** is copy of power of attorney in favour of counsel. An application for partition of suit land filed by Ranjit Singh and Joga Singh sons of Kala Singh (present defendants) before Assistant Collector Ist Grade (**Ex.D6**) and respondents (present plaintiffs), appeared before revenue court, filed written reply (**Ex.D7**), through counsel that they are ready for the partition proceedings. **Ex.D8** warrants of possession issued on the basis of Sanad of partition. Application under section 111 of Land Revenue Act, titled as 'Sukhdev Kaur vs. Baldev Singh etc.' was filed, wherein the order for preparation of Sanad proceedings was prepared (**Ex.D9**), and the partition proceedings were sanctioned vide **Ex.D10**. Plaintiffs filed appeal against the order passed by Assistant Collector Ist Grade dated 30.4.2013 (**Ex.D16**), which was dismissed by the Commissioner, vide order dated 30.10.2013(**Ex.D11**). Suit for permanent injunction titled as “Baldev Singh Versus Ranjit Singh and others”, was dismissed in default for want of prosecution, vide order dated 7.9.2016, passed by learned Civil Judge(Sr.Division) Faridkot(**Ex.D12**). On the basis of Sanad Taqsim, revenue record i.e. Khasra girdawari (**Ex.D13**) was prepared. Meaning thereby, he is plaintiff, who himself at the time of

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*filing of civil suit titled as Baldev Singh Vs. Ranjit Singh etc., specifically averred that suit land is joint and no partition proceedings have taken place. Parties remained litigated, from 2012 till date of filing of instant suit i.e. on 7.11.2013. In previous litigation, neither before civil court nor before revenue court any such plea of family partition/ agreement to partition has been raised by plaintiff. Partition deed dated 2.8.1985 was produced first time in the court, alongwith suit, when presented on 7.11.2013. First of all document dated 2.5.1985, does not seen the light of day till 2013 for so many years and secondly same has not been produced by plaintiffs prior to that. Had this document was in possession of plaintiffs, then why they had not produced the same before revenue authorities and why they had not taken such plea that the partition proceedings have already been effected and they are in exclusive possession to the extent of their share, as per partition deed dated 2.8.1985. So in such like circumstances, oral testimony of **PW1** Baldev Singh (Plaintiff) as well as of Roor Singh (**PW3**) is not sufficient to dispel the suspicious circumstances surrounding partition deed dated 2.8.1985, which make the genuineness of partition deed **Ex.P3** doubtful. Now by way of application under order 41 rule 27 CPC, plaintiffs want to produce additional evidence, to place on record document dated 28.6.1985. It is pertinent to mention here that the application with prayer for additional evidence, to prove document dated 28.6.1985, was filed on 5.2.2018. Till 5.7.2018, the date of filing of reply, the plaintiffs have failed to produce on file document i.e. partition deed dated 28.6.1985, on file, despite of the direction issued by the court. There is no averment to prove due diligence and to prove that such application has been filed within the four corners of law, by fulfilling all the ingredients of order 41 Rule 27 CPC. So, at this stage, plaintiffs cannot take advantage of their own wrongs and no such permission can be granted to the plaintiffs to fill up lacuna left by them, specially in those circumstances, when these are the plaintiffs, who have knocked the door of court, so the burden to prove lies on them, to substantiate their contention, by leading cogent and clinching evidence. Hence application under order 41 Rule 27 CPC*

is found to be without merits.

16. As discussed above the partition proceedings have already been finalized by the revenue authorities. These are the plaintiffs, who were parties to the partition proceedings, before the revenue authorities, as is evident from the revenue record i.e. application for partition (Ex.D6), reply(Ex.D7), revision petition under section 16 of the Punjab Land Revenue Act, against the order dated 30.4.2013 passed by Collector/SDM Faridkot(Ex.D11), but they have intentionally concealed these facts from the court. Warrants of possession Ex.D8 already issued, partition proceedings by meets and bounds has been effected, Sanad Taqsim was prepared accordingly. Plaintiffs have failed to established their possession over 45 Kanals 4 Marlas of land, as mentioned in the head note of plaint, so learned lower court has rightly appreciated the evidence and dismissed the suit.”

4. It is thus clear that the family partition agreement dated 02.08.1985 relied by the plaintiff was never reflected in the revenue record. Besides, in the earlier suit filed by plaintiff- Baldev Singh in 2013, it was claimed that khata of the suit land was joint amongst the parties and no partition had taken place. The application for temporary injunction moved in that case by the plaintiff was dismissed. Not only this, the application moved for partition of the suit land by the defendants of the case before Assistant Collector First Grade against the plaintiffs- appellants was allowed and warrants of possession were issued on the basis of *sanad taksim* (instrument of partition). It is on the basis of this instrument of partition that khasra girdawari of the later period was prepared.

5. In the face of afore-said facts and circumstances, this Court does not find any merit in the present appeal. After going through the judgments of the Courts below, it is found that the concurrent findings of

facts returned by the trial Court are well-reasoned and based upon proper appreciation of evidence, with no illegality or ambiguity therein. As such, there is no reason to interfere therein. No substantial question of law is found to be involved.

Dismissed.

July 22, 2024
sarita

(DEEPAK GUPTA)
JUDGE

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