



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

**RSA-1250-2020 (O&M)
Date of Decision: 03.02.2025**

Balbir Singh @ Balvir Singh and OthersAppellants

Versus

Balwant Singh and OthersRespondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Ashish Gupta, Advocate for the appellants.

VIKRAM AGGARWAL, J.

CM-3768-C-2020

Prayer in the present application filed under Section 151 of the Code of Civil Procedure is for condonation of delay of 334 days in re-filing the present appeal.

Heard.

For the reasons mentioned in the application, which is duly supported by an affidavit, the delay of 334 days in re-filing the present appeal is condoned.

Application is accordingly disposed of.

RSA-1250-2020 (O&M)

This is defendants' appeal against the judgment and decree dated 20.09.2018 passed by the Court of learned Additional District Judge, Tarn Taran dismissing the appeal filed by the defendants against the judgment and decree dated 19.08.2017 passed by the Court of learned Additional Civil Judge (Senior Division), Tarn Taran vide which the suit filed by the plaintiffs for declaration and permanent injunction had been partly decreed. Mutation No.2116 was held to be illegal and defendants No.1



to 4 were restrained from interfering in the possession of the plaintiffs over Khasra Nos.27//22 and 31//14.

2. For the sake of convenience, the parties shall be referred as per their original status.

3. The plaintiffs filed a suit for declaration that they were the owners in exclusive and established possession as co-sharers of land measuring 16 Kanals (fully described in the plaint) situated at Village Kirrian, District Tarn Taran (hereinafter referred to as the 'suit property') and that the defendants had no right, title or interest in the same. A further declaration was sought that Mutation No.2116 on behalf of Pritam Kaur, widow of Ajaib Singh in favour of defendants No.1 to 4 was illegal, null and void. Consequential relief of permanent injunction restraining defendants No.1 to 4 from interfering into the possession of the plaintiffs and from alienating the suit property was also sought.

4. The case set up was that the suit property was joint between the plaintiffs. Originally Massa Singh, son of Chet Singh was the co-owner and after his death, his sons Mohinder Singh, Joginder Singh and Harbans Singh, widow Phino Kaur and daughters Piaro and Taro and Mukhtaro came into possession of the suit property. After the death of Phino Kaur, her estate was inherited by her sons and daughters. Mohinder Singh also expired and his estate was inherited by plaintiffs No.1 to 10. After that Joginder Singh died and his estate was inherited by plaintiff No.11 Swaran Kaur. Harbans Singh died issueless on 17.05.2012 and his wife and plaintiff No.12 inherited his estate. It was averred that accordingly plaintiffs No.1 to 12 were in exclusive possession of the suit property being co-sharers. Out of this, plaintiffs No.3



and 5 to 10 had sold their land measuring 04 Kanals vide sale deed dated 07.04.2004 to plaintiff No.13 and plaintiff No.11 Swaran Kaur and had sold her land measuring 04 Kanals vide sale deed dated 17.08.2012 to plaintiffs No.14 and 15.

5. It was averred that Khasra No.27/22 was under the exclusive possession of plaintiffs 01 to 12 as co-sharers. Defendants were asking the plaintiffs to vacate the suit property on the ground that they had purchased it from Ajaib Singh. Upon this, the plaintiffs came to know about Mutation No.2116 dated 08.10.2012 having been sanctioned on the basis of the sale of the suit property by Pritam Kaur, widow of Ajaib Singh in favour of plaintiffs No.1 to 4. Mutation of inheritance in favour of defendants No.5 to 9 had also been sanctioned. The plaintiffs came to know about the sale deed dated 11.04.1977 executed on behalf of Pritam Kaur in favour of defendants No.1 to 4 from the said mutation. Earlier Mohinder Singh, Joginder Singh, Harbans Singh and Phino Kaur had filed a Civil Suit against defendants No.1 to 4 restraining them from interfering into the possession of the plaintiffs which was decreed on 03.05.1977. A suit for possession was also filed but the same was dismissed on 21.12.1977.

6. The suit was resisted by the defendants. In the written statement, certain preliminary objections as regards maintainability, concealment etc. were raised. The basic stand taken was that the suit property was owned by one Ajaib Singh who had sold the same to the defendants vide sale deed dated 11.04.1977 and possession had also been delivered. However, mutation was sanctioned on 08.10.2012.



7. In the replication, averments made in the written statement were denied and those made in the plaint were reiterated.

8. From the pleadings of the parties, the following issues were framed:

- “1. Whether plaintiffs are entitled to relief of declaration as prayed in the head note of the plaint? OPP**
- 2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed in the head note of the plaint? OPP**
- 3. Whether the suit is not maintainable? OPD**
- 4. Whether the plaintiff has suppresses the material facts from the Court? OPD**
- 5. Relief.”**

9. Parties led their respective evidence.

10. The trial Court partly decreed the suit vide judgment and decree dated 19.04.2017. However, the appeal filed by the defendants was dismissed, leading to the filing of the present second appeal.

11. Learned counsel for the defendants has submitted that both the Courts had erred in partly decreeing the suit filed by the plaintiffs. It has been submitted that the sale deed dated 11.04.1977 was not challenged and only mutation entries were challenged meaning thereby that the execution of the sale deed had been admitted and under the circumstances, no injunction was granted. Learned counsel further submitted that the defendants had purchased specific Khasra Numbers out of the suit property and till the partition proceedings were not finalized, the co-sharers could be put in exclusive possession subject to partition. Learned counsel has submitted that the judgments of both the Courts are not sustainable and accordingly deserve to be set aside.



12. I have considered the submissions made by learned counsel for defendants and have perused the record which was duly summoned.

13. The plaintiffs were the legal heirs of Massa Singh who was a co-sharer in the suit property. He had filed a suit for permanent injunction against defendants No.1 to 4 which had been decreed in his favour in 1977. Similarly, defendants No.1 to 4 had filed a suit for possession with regard to the property mentioned in the sale deed dated 11.04.1977 which was dismissed. It, therefore, means that the initial litigation was decided in favour of the plaintiffs. The defendants No.1 to 4 claimed their right only on the basis of sale deed which did not prove the sale of specific Khasra Numbers to them. No doubt, Ajaib Singh was a co-sharer but being a co-sharer he was not entitled to alienate any specific Khasra Number. Accordingly, the Mutation dated 08.10.2012 was wrongly sanctioned and, therefore, rightly set aside by both the Courts. It has to be borne in mind that no mutation could have been sanctioned for any specific Khasra Number without partition.

12. DW-1 Balbir Singh duly admitted in his cross-examination that the plaintiffs were in possession of the suit property and that the defendants No.1 to 4 were not in possession of the same. He also admitted that they did not come into possession of the suit property even after the execution of the sale deed by Ajaib Singh. He further admitted that Ajaib Singh was not in possession of the suit property. In fact, he went to the extent of admitting that the plaintiffs were in possession of the suit property. Accordingly, the Courts were duly justified in granting a decree of permanent injunction



restraining the defendants from interfering in the possession of the plaintiffs over the suit property.

In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

03.02.2025
Prince Chawla

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