



RSA-1777-2019 (O&M)

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

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RSA-1777-2019 (O&M)
Date of decision: 23.01.2025

Jasvir Singh Dhaliwal

... Appellant

Vs.

Baljit Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sherry K. Singla, Advocate
for the appellant.

SUVIR SEHGAL J.

1. Appellant-plaintiff is in second appeal before this Court assailing the concurrent findings recorded by two courts, whereby suit for separate possession of plot along with relief of permanent injunction restraining the respondents from alienating the suit property has been dismissed. Appeal is accompanied with an application for condonation of delay of 245 days in its filing.

2. Pleaded case of plaintiff is that he is the co-owner of the suit property along with defendant No.1 and defendant No. 2 has no concern with the suit property, although he claims to be a co-sharer.

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Claiming that the suit property does not bear any revenue number, plaintiff asserts that he is entitled to the benefits of the property, even though, there is a dispute regarding its being joint. He claims that the defendants were asked to partition the property but have refused to do so and are threatening to alienate their share.

3. Upon notice, separate written statements were filed by defendants No.1 and 2. In his response, defendant No.1, besides raising various preliminary objections, has taken a stand that a private partition took place on 08.01.1958 and land measuring 93 marlas 03 sarsahi was partitioned. In memorandum of partition, it was categorically mentioned that passage with width of 3 ½ karam would be exclusively used by Satpal, Pritpal and Dalip Singh and that Ranjit Singh and Malkit Singh will have no right on passage. Defendant No. 1 claims to be the son of Dalip Singh and asserts that the plaintiff being the grandson Malkit Singh has no right on the passage. Defendant No.2 filed a separate written statement wherein besides taking various preliminary objections, he submitted that a Local Commissioner visited the spot and submitted his report which shows that the answering defendant is in possession of the property. It has been mentioned that another suit regarding a portion of the property is pending wherein a site plan has been attached by the plaintiff admitting the possession of the answering defendant over the suit

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property. It has been claimed that the previous owner Gurjitpal Kaur sold the property to the answering respondent on 29.07.1996 and the possession was delivered to him. Plaintiff filed a replication to the written statements filed by the defendants. Issues were framed on the basis of the pleadings of the parties and after contest, by judgment and decree dated 17.01.2017, suit was dismissed. Plaintiff remained unsuccessful in the first appeal, which was rejected by the learned Additional District Judge, Moga, vide judgment dated 30.03.2018. Plaintiff is in second appeal in the above backdrop.

4. I have heard counsel for the appellant and considered his submissions besides examining the requisitioned record from the trial Court.

5. Plaintiff has claimed possession of the suit plot but he did not lead any evidence in support of the claim. Plaintiff did not step into the witness box and his power of attorney holder could not depose about the facts of the dispute. Although, it has been asserted by the plaintiff that the suit property is joint, but no evidence has been led to support this assertion. Appellant therefore, failed to discharge the onus placed upon him regarding his claim for possession and relief for permanent injunction. On the other hand, by way of documentary evidence, the respondents have established that a partition proceedings took place and a memorandum of partition Ex.R-8 was



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executed. In the absence of any evidence regarding the jointness of the disputed suit property, this Court is of the view that no fault can be found with the findings recorded by both the courts, which are affirmed.

6. Appeal being devoid of merits, is dismissed with no order as to costs.

7. As the appeal has been found to be meritless, application seeking condonation of delay in its filing will stand disposed off.

23.01.2025
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No