



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

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RSA No.1255 of 2025 (O&M)

Reserved on : 22.04.2025

Date of Decision: 20.05.2025

Rakesh Singh

....Appellant

VERSUS

Dhirender Singh & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Varun Sharma, Advocate for the appellant.

ALKA SARIN, J.

1. This regular second appeal is by the defendant No.1 (defendant-appellant) challenging the judgement and decree dated 02.12.2024 passed by the First Appellate Court whereby the suit filed by the plaintiff-respondent No.1 has been decreed. The Trial Court had dismissed the suit vide judgement and decree dated 08.04.2019.

2. Briefly stated, the parties are co-sharers in the suit property, which is a gair mumkin plot, situated in Village Pawti, Tehsil Bawal, District Rewari. According to the plaintiff-respondent No.1, as per an oral family arrangement, he is in possession of the portion marked 'ABCD' shown in red colour and is having 3/32 share in the suit property and so the partition be made respecting the possession of the plaintiff-respondent No.1. It was submitted that the remaining land of the khewat has already been partitioned by the revenue authority but the suit property could not be partitioned due to it being within Abadi and being a gair mumkin plot. Hence, the suit for

possession by way of partition by metes and bounds. The suit was contested only by the defendant-appellant while the other defendants filed admitting written statements. In his written statement the defendant-appellant denied that plaintiff-respondent No.1 is a co-sharer in the suit property. An oral family settlement executed on Makkar Sakranti 14 January 2004 was set-up whereunder all the parties were given their respective shares and that since then the parties were owners in possession of their own respective shares and had constructed their pucca houses on their shares. It was denied that the plaintiff-respondent No.1 was in possession and using the portion in red colour and that this portion was never given to him in the family settlement. It was submitted that his appeal regarding partition of the agricultural land was pending and that there was collusion between the plaintiff-respondent No.1 and the other defendants. No replication was filed by the plaintiff-respondent No.1

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

1. Whether the plaintiff is entitled to a decree for possession by way of partition of the property in dispute ? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
3. Whether the plaintiff has no locus standi and cause of action to file the present suit ? OPD
4. Relief.

4. Vide judgement and decree dated 08.04.2019 the Trial Court dismissed the suit of the plaintiff-respondent No.1. Aggrieved by the decision

of the Trial Court the plaintiff-respondent No.1 preferred an appeal which appeal was accepted by the First Appellate Court vide judgement and decree dated 02.12.2024 and the suit of the plaintiff-respondent No.1 was decreed. Hence, the present regular second appeal by the defendant-appellant which is accompanied with an application [CM-4384-C-2025] seeking condonation of 30 days delay in filing the appeal.

5. Learned counsel for the defendant-appellant has contended that the impugned judgement and decree of the First Appellate Court are illegal and erroneous and based upon conjectures and surmises. It is argued that the plaintiff-respondent No.1 is not a co-sharer in the suit property and in any case in the oral family settlement effected between Sumitra (grandmother of the plaintiff-respondent No.1) and the defendants on 14.01.2024 the parties were put in possession of their respective shares and that the plaintiff-respondent No.1 has never been in possession and usage of the portion in red colour and this portion was never given to him in the family settlement.

6. Heard learned counsel for the defendant-appellant and perused the paperbook.

7. The First Appellate Court found as a matter of fact that the alleged oral partition of 2014 was not proved by the defendant-appellant. There is no revenue record produced by the defendant-appellant to even remotely suggest the existence of any oral family settlement/partition. Though learned counsel for the defendant-appellant has drawn the attention of the Court to the photographs produced by the defendant-appellant, the photographs by themselves would not prove any family settlement. The alleged oral family settlement qua the suit property has not been incorporated in any revenue record produced in evidence. The sole jamabandi on the record

(Ex.PW1/B) shows that the suit property is joint between the parties. That being so, the First Appellate Court rightly decreed the suit and passed a preliminary decree for partition. The defendant-appellant did not produce any cogent and reliable evidence to substantiate the stand taken by him. There is no material available on the record to make out a case for dismissing the suit of the plaintiff-respondent No.1. No other point has been argued.

8. In view of the above, the findings of fact returned by the First Appellate Court do not warrant any interference by this Court. There is no ground to interfere in the present regular second appeal. 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. Consequently, the application [CM-4384-C-2025] seeking condonation of 30 days delay in filing the appeal is also dismissed. Other pending applications, if any, also stand disposed off.

20.05.2025
Ankur

(ALKA SARIN)
JUDGE

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