



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

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RSA-1661-2022 (O&M)
Date of Decision: 23.01.2025

Hoshiyar Singh

...Appellant

V/s

Ramesh Kumar

...Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Vinay Kumar Pandey, Advocate, for the appellant.

VIKRAM AGGARWAL, J (ORAL)

CM-5359-C-2022

Prayer in the present application preferred under Section 151 CPC is for condonation of delay of 1322 days in re-filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed. The delay of 1322 days in re-filing the appeal is condoned.

CM-5360-C-2022

Prayer in the present application preferred under Section 151 CPC is for condonation of delay of 416 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed. The delay of 416 days in filing the appeal is condoned.

RSA-1661-2022

Defendant-Hoshiyar Singh is in appeal against the judgment and decree dated 07.04.2017 passed by the Court of learned District Judge, Narnaul, dismissing the appeal filed by the defendant against the judgment and decree dated 09.09.2016 passed by the Court of learned Civil Judge (Jr. Divn.), Mohindergarh, vide which the suit filed by the respondent-plaintiff for permanent injunction was allowed.

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

3. Respondent-plaintiff (Ramesh Kumar) filed a suit for permanent injunction restraining the appellant-defendant (Hoshiyar Singh) from interfering in the possession of the plaintiff over land measuring 4 *kanals* 12 *marlas* (fully described in the plaint), situated within the revenue estate of Village Khayra, Tehsil and District Mohindergarh (for short the “suit land”). The case set up by the plaintiff was that the agricultural land had been partitioned by the revenue Court vide order dated 02.07.2012 passed in partition proceedings. Pursuant to the same, *Sanad Taksim* was prepared and the plaintiff was put in separate possession of land measuring 14 *marlas*. The other co-sharers were also put in possession of the respective shares of land received by them in the partition proceedings. It was averred that since the defendant was a powerful person, he wanted to take forcible possession of the suit land after raising construction. Under the circumstances, the suit was filed.

4. The suit was resisted by the defendant. In the written statement, certain preliminary objections as regards maintainability, limitation, *locus standi* etc. were raised. On merits, it was admitted that the revenue Court had



passed the order dated 02.07.2012 in a partition suit but an appeal against the same was pending. The case set up, was, therefore that the partition was yet to be finalized. It was averred that the defendant had only raised a boundary wall in his own share and all other co-sharers were also in possession of their respective shares. It was averred that the order dated 02.07.2012 had been obtained by giving wrong facts and without notice to the defendant as a result of which, the same was not binding upon him.

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

- “1. Whether the plaintiff is entitled for relief of injunction as prayed for?***
- 2. Whether the suit of plaintiff is not maintainable?OPD***
- 3. Whether present suit is time barred?OPD***
- 4. Relief.”***

6. Parties let their respective evidence after which the trial Court allowed the suit filed by the respondent-plaintiff. The appeal filed by the appellant-defendant against the said judgment and decree was also dismissed by the first Appellate Court, leading to the filing of the present second appeal.

7. I have heard learned counsel for the parties and have perused the record.

8. Learned counsel for the appellant contends that both the Courts erred in decreeing the suit filed by the respondent-plaintiff for permanent injunction. He submits that the Courts lost sight of the fact that the partition proceedings are still pending. He submits that though appeal filed by the defendant has been dismissed but the revision petition is still pending. He submits that in case his revision petition is accepted and the order of partition is set aside, the findings of the Civil Courts will prejudice his rights.



9. I have considered the submissions made by learned counsel for the petitioner.

10. Both the Courts found that Ex.P1 which was the *Jamabandi*, showed that the plaintiff had 1/6th share in land measuring 4 *kanals* 12 *marlas*. The defendant-Hoshiyar Singh while appearing in the witness-box as DW3 had admitted in his cross-examination that Mahender and Radhey Shyam had sold their shares to the plaintiff and his name was appearing in the *Jamabandi* Ex.P1 as co-sharer. He also admitted that the suit land had come to the share of the plaintiff after partition proceedings had been finalized and *Sanad Taksim* Mark 'PA' had been prepared. The plaintiff also stepped into the witness-box and deposed about the partition proceedings and that mutation Ex.P2 had been sanctioned in his favour pursuant to the decision dated 02.07.2012 (Ex.P3) passed by the revenue Courts. The mere pendency of an appeal or now a revision petition would not help the defendant. In any case, the order finalizing the partition proceedings has been passed and shares of the respective co-sharers were determined and they are in possession of their respective shares of land. As to whether the defendant had been properly served in the partition proceedings or not is yet to be determined by the revenue Courts. His appeal has now been dismissed and the revision is pending. If he succeeds in the revision petition or even subsequently, of course, the findings in the injunction suit would have no bearing on his rights. However, till the time, the order is in operation, the same has to be honoured and accordingly, the injunction was issued in favour of the plaintiff. I do not find any illegality in the said concurrent findings of facts recorded by both the Courts warranting interference in second appeal.



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

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

January 23, 2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No