



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-2698-2010(O&M)

Date of decision: 05.02.2026

Avtar Singh

...Appellant(s)

Vs.

Kashmir Kaur & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. N.K. Verma, Advocate
for the appellant.

Mr. Gaurav Kalsi, Advocate
for the respondents.

NIDHI GUPTA, J.
CM-8176-C-2010

This is an application under Order 41 Rule 27 with Section 151
CPC for leading additional evidence in the form of Annexure A1.

By way of present application, the applicant/appellant is
seeking to bring on record the Allotment Letter dated 19.03.1965
(Annexure A1) whereby the appellant is stated to have been allotted the
suit property.

Learned counsel for the applicant/appellant submits that the
said letter is being sought to be placed on record by way of additional
evidence before this Court as the appellant got knowledge of this letter only



during pendency of the present appeal and because the said letter was not with the applicant before the learned Courts below. It is accordingly prayed that the present application be allowed, and letter dated 19.3.1965, be taken on record.

The said submissions of the applicant are vehemently opposed by learned counsel for the respondents/non-applicants who submits that applicant cannot be permitted to lead additional evidence at this belated stage without demonstrating due diligence. Moreover, the applicant has failed to examine any official from the concerned Department to prove the authenticity of the alleged Allotment Letter dated 19.03.1965. Accordingly, dismissal of the application is prayed for.

Heard.

A perusal of the application shows that the only ground on which the applicant is seeking to produce Annexure A1 by way of additional evidence is in Para 2, which reads as follows: -

“2. That for the proper adjudication of the controversy involved in the matter it is necessary to place on record copy of the allotment letter in regard to the property in dispute issued to the appellant, which could not be produced before the Ld. Trial Court as Annexure A-1. This document changes the nature of the property in dispute.”

From the above, it is clear that applicant has given no reasons as to why the letter dated 19.3.1965 was not produced before the learned



Courts below. The contradictory submissions of the applicant that: a) applicant got knowledge of the said letter only during the pendency of the present Appeal; and b) that said letter was not in his possession, constitute no ground for producing additional evidence at this belated stage before this Court. The above averments do not satisfy the requirement of the provision of Order 41 Rule 27 CPC, inasmuch as does not constitute 'due diligence' within the meaning of Rule 27(1)(aa). The Hon'ble Supreme Court in **CA 16899 of 1996 "Karnataka Board of Wakf Vs. Government of India"** Law Finder Doc ID # 71670, has categorically held that parties to an appeal shall not be entitled to produce additional evidence, unless they have shown that despite due diligence, they were unable to produce such evidence. In the present case, applicant has not shown due diligence.

Reference is also made to judgment of the Hon'ble Supreme Court in **C.A. No.10195 of 2013 titled as "Govt. of Karnataka and Another Vs. K.C. Subramanya & Others"** Law Finder Doc ID # 495411, wherein Their Lordships have held as follows:-

"6. On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

7. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in



spite of due diligence could not produce the evidence and the same cannot be allowed to be done at his leisure or sweet will.”

Clearly, the applicant failed to exercise due diligence. Present application accordingly stands **dismissed**.

MAIN CASE

Present appeal has been filed by the defendant No.1 against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the plaintiffs/respondents No.1 to 3 herein, for mandatory and permanent injunction, has been partly decreed by both the Courts below.

2. The facts as pleaded in the plaint are that the parties to the suit are real brothers and the plot marked ABCDEF belongs to the plaintiff and the defendants No.1 and 2. It was averred in the plaint that on 03.07.1970 Private Family Partition had taken place amongst the brothers which was duly scribed and signed and thumb marked. Vide the said Family Settlement, the total property was got partitioned and it was decided that: (i) portion of eastern side is given to defendant No.1; (ii) portion of western side was given to defendant No.2; and (iii) central property in between was given to plaintiff – which is the suit property. It was stated that accordingly since 03.07.1970, the plaintiff is in exclusive possession of the suit property. It was alleged that the defendant No.1 is threatening to interfere and dispossess the plaintiff from his exclusive and peaceful possession and fixing a new iron door, which is liable to be removed. Accordingly, present suit was filed on 26.07.2004.



3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned Additional Civil Judge (Senior Division) Tarn Taran had partly decreed the suit of the plaintiff vide judgment and decree dated 19.11.2008 as follows:-

“16. In my overall discussion, the suit of the plaintiffs are partly decreed to the effect defendant No.1 is restrained not to interfere into peaceful possession over the property in dispute mark ABCDEF shown green as per site plan Ex. P1. The relief regarding mandatory injunction is declined...”

4. The Civil Appeal filed by the defendant No.1 was dismissed by the learned Additional District Judge, Tarn Taran vide judgment and decree dated 03.04.2010 as follows:-

“21. So, from the above said discussion and findings, Id. Trial court has rightly come to the conclusion that plaintiff has been able to prove his possession over the suit property, at the time of filing of this suit and this conclusion is based on proper appreciation of evidence of civil nature and hence, does not call for any interference of this court and the same are hereby confirmed. So, there is no merit in this appeal and hence, the same is hereby dismissed.”

5. Hence, present Second Appeal by the defendant No.1.

6. Learned counsel for the appellant submits that the appellant is the owner in possession of the suit property since the land was allotted to the appellant in the year 1965 in lieu of Rs. 900/- by the Tehsildar (Sales)



Amritsar, Rehabilitation Department under The Displaced Persons (Compensation and Rehabilitation) Act, 1954. It is submitted that after the allotment appellant constructed the residential house over the said land and this specific plea was taken by the appellant respondent in his reply, but the Ld. Court below did not consider the plea of the appellant. Ld. Courts below also ignored that the appellant is residing in the property in dispute for the last about 45 years. Moreover to show its possession appellant produced the Bill of electricity meter installed in the property in dispute in the name of appellant along with ration card and also examined independent witness Sh. Sukhdev Singh (DW-1) who is inhabitant of the village, who specifically stated on oath that the appellant is in the possession of the disputed property. But the Ld. Courts below have brushed aside all the evidence and have wrongly observed the possession of the respondent/plaintiffs on the property in dispute without any documentary proof on the record.

7. Ld. Counsel for the appellant further submits that the appellant has never made any settlement in regard to the property in dispute allotted to him. It is contended that EX-P2 is false and fabricated document prepared by the respondent and the existence of the said document was denied by the appellant. Moreover, Ex-P2 even does not say about the area of the land in dispute. It is pointed out that the appellant always sign in Punjabi language, which can be seen on the allotment letter issued on 19.03.1965 Annexure A-1, but on the Ex-P2 the sign of the appellant are shown in the Urdu language,



which is false one. Yet Id. courts below wrongly taken a view that the EX-P2 has been proved on the file. It is argued that the family settlement is always executed between all the family members/co-sharer, but in the present case the forged partition EX-P2 was prepared only between 3 brothers out of the 4 brothers and 3 sisters of the family, which it self shows that the partition EX-P2 is forged document and it does not create any title or right in favour of the respondent.

8. Learned counsel for the appellant simultaneously contradictorily submits that the document Ex P-2 was a Family Settlement as per which some immovable property was to be transferred. Moreover money consideration was also involved in it, which required mandatory registration as per the Registration Act 1908, but the said document was unregistered one, thus as per the law of Evidence this document is not admissible.

9. It is accordingly prayed that the present appeal be allowed and the judgment and decree dated 03.04.2010 passed by the Ld. Addl. District Judge, Tarn Taran, Punjab may be set aside.

10. Per contra, learned counsel for the respondents/plaintiffs vehemently opposes the submissions on behalf of the appellant and submits that the Family Partition dated 03.07.1970 (Ex.P2) was duly proved on record by examining witnesses. It is submitted that in any event, the appellant cannot assail the said Family Settlement as he has never filed any suit to challenge the same. It is further submitted that the defendant No.2 has



deposed as PW2 and has admitted the possession of the plaintiff. It is submitted that as the possession of the plaintiffs over the suit property is not disputed, permanent injunction has been rightly granted to the plaintiffs. Learned counsel contends that this Court in Second Appeal cannot interfere in the findings of fact returned by the Courts below. It is pointed out that even as per the Site Plan (Ex.D1), submitted by the appellant, the same boundaries as propounded by the plaintiffs have been admitted by the appellant. It is accordingly prayed that the present appeal be dismissed.

11. No other argument is made on behalf of the parties.

12. I have heard learned counsel and perused the case file in detail.

I find merit in the submissions advanced on behalf of learned counsel for the plaintiffs/respondents.

13. Private Partition dated 03.07.1970 (Ex.P2) was duly proved from the evidence of the plaintiff himself, and defendant No.2 who appeared as PW2, who is real brother of the plaintiff and defendant No.1. Plaintiff had brought on record the Original Partition Deed as Ex.P2. Moreover, PW2, in his evidence had come in support of the plaintiff and had stated that all the three brothers were in possession of the property as per the Family Partition (Ex.P2). PW2 categorically deposed that on eastern side, defendant No.1 is owner in possession; on western side, defendant No.2 is in possession; and the central portion which is the disputed property belongs to the plaintiff. It is also to be noted that the appellant in his cross-



examination has not specifically denied Ex.P2. Thus, the Family Settlement stood proved.

14. The contention of the appellant that the said document cannot be relied upon as it is not registered, is liable to be rejected as the said document has been relied upon by the Courts below for the limited purpose of determining the nature of possession; and not for determining title. Accordingly, the Partition Deed was admissible and relevant for determining possession over the suit property; whereafter permanent injunction was granted in favour of the plaintiff.

15. It is also to be noted that on the other hand, the appellant has failed to prove his ownership over the disputed property. The appellant has sought to produce Allotment Letter (Annexure A1) to prove his ownership. However, additional evidence cannot be permitted at this stage as no valid reasons have been given by the appellant for failing to produce the said Allotment Letter, which is of the year 1965, before the learned Courts below. Even otherwise, authenticity of the said Allotment Letter is dubious and not established as per law. The learned trial Court has categorically noted in the judgment dated 19.11.2008 that: -

“9. The defendant No.1 has taken specific stand in his written statement that he is owner of the disputed property. His stand was that earlier Punjab Govt. was owner of the suit property who has allotted to him and he deposited Rs.900/- to the government. But he has not brought any record on the file



to prove his ownership of the disputed property. On the other hand, he has not even asked to defendant No.2, regarding receipts although defendant No.2 came into the witness box in support of the plaintiff.

10. The defendant No.1 has not bring any record that he alone is owner and in possession of the entire property, he has not examined any respectable of the village suchlike lambardar, panch and sarpanch etc. to prove this fact.”

16. Thus, it would appear that the letter dated 19.3.1965 was in the knowledge of the appellant but was not brought on record for unknown reasons. Appellant therefore clearly failed to exercise due diligence.

17. Even otherwise, this Court in second appeal has limited jurisdiction to interfere in the concurrent findings of fact rendered by the Courts below; as held by the Hon’ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC) : Law Finder Doc ID # 2034559**, wherein it is held as under:-

*“14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of



documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."

15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force."

18. In the present case, appellant has been unable to demonstrate any error in law or procedure. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings, or legal position.

19. In view of the above, present appeal stands **dismissed**.

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

05.02.2026
Sunena

(Nidhi Gupta)
Judge

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