



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

117

RSA-193-2022 (O&M)

Date of Decision : 21.01.2025

BATERI DEVI

.... Appellant

VERSUS

MOHINDER SINGH AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. D.S. Nain, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

CM-369-C-2022

1. This is an application for condonation of delay of 858 days in refiling the main appeal.

2. For the reasons stated in the application, the same is allowed and the delay of 858 days in refiling the main appeal is condoned.

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3. The present regular second appeal has been preferred by the plaintiff-appellant challenging the concurrent findings returned vide judgments and decrees dated 13.02.2019 and 23.05.2019 passed by the Trial Court passed by the First Appellate Court, respectively.

4. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein averred in the plaint that proceedings had been initiated for partition qua 222 Kanals of land which were decided by the Assistant Collector 1st Grade, Kaithal on 10.05.2011 and *Sanat Takseem* was prepared

and accordingly Mutation No.3048 was entered and attested on 24.02.2012. The challenge in the suit was to the partition proceedings as being illegal, null and void and liable to be set aside. Suffice it to note, for the purpose of deciding the present appeal, that the said order was challenged on various grounds on merits also.

5. Written statement was filed denying the allegations made in the plaint and stating that the partition proceedings had rightly been carried out.

6. From the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to the suit for declaration and permanent injunction as consequential relief ? OPP

2. Whether the suit of the plaintiff is estopped from filing the present suit ? OPD

3. Whether the plaintiff has no *locus standi* to file the present suit ? OPD

4. Whether the suit of the plaintiff is not maintainable ? OPD

5. Whether the suit of the plaintiff has got no jurisdiction to entertain and try the present suit ?
OPD

6. Relief.

7. Vide judgment and decree dated 13.02.2019 the Trial Court dismissed the suit with costs. Aggrieved by the same an appeal was

preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 23.05.2019. Hence, the present regular second appeal by the plaintiff-appellant.

8. Learned counsel for the plaintiff-appellant would contend that as per the finding on issue No.5 it was held by both the Courts that the jurisdiction of the Civil Court was barred as per Section 158 of the Punjab Land Revenue Act, 1887. It is further the contention that once it was held that the Civil Court had no jurisdiction, no finding could have been given on merits.

9. Notice of motion.

10. Mr. Raj Kapoor Malik, Advocate has put in appearance on behalf of caveator-respondent No.2(ii). Learned counsel would contend that the findings have rightly been returned qua jurisdiction. Learned counsel would further contend that he would have no objection if the findings on merits are set aside upholding the finding on jurisdiction.

11. In view of the stand taken by learned counsel for caveator-respondent No.2(ii), the present appeal is allowed to the extent that the finding on issue No.5 returned by both the Courts is affirmed. However, the findings of both the Trial Court and the First Appellate Court on merits are set aside.

12. In view of the judgment of the Hon'ble Supreme Court in the case of **Pankajakshi (Dead) through LRs & Ors. vs. Chandrika & Ors. [2016 (2) RCR (C) 245]** there would be no requirement to frame substantial questions of law.

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13. Disposed off. Pending applications, if any, also stand disposed off.

21.01.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No