

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****116****RSA-5957-2019(O&M)****Date of decision: 02.04.2025****Kewal Krishan & Another****...Appellant(s)****Vs.****Kasturi Lal & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Narinder Kumar Vadehra, Advocate
for the appellants.

*********NIDHI GUPTA, J.****CM-16980-C-2019**

This is an application under Section 151 CPC for condonation of delay of 55 days in re-filing the appeal.

After going through the contents of the application, which is supported by affidavit of Hardeep Singh, Clerk to Narinder Kumar Vadehra, Advocate, Punjab and Haryana High Court, Chandigarh, the same is allowed subject to all just exceptions and delay of 55 days in re-filing the present appeal is condoned.

MAIN CASE

Plaintiffs are in second appeal against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the appellants for separate possession of 24/42 share of plaintiff by way



of partition by metes and bounds out of residential plot measuring 2 kanal 2 marlas; along with consequential relief of permanent injunction, has been dismissed with costs by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants as “plaintiffs” and respondents as “defendants”.

3. The dispute is inter se family. The plaintiffs are the sons of Harbans Lal son of Bhagat Ram son of Damodar Dass. Defendant No.1 Kasturi Lal is son of Bhagat Ram; defendants No.2 to 4 are sons of Kasturi Lal son of Bhagat Ram; and defendants No.5 and 6 are the grandchildren of Milkhi Ram son of Bhagat Ram.

4. Brief facts of the case as stated in the plaint are that the appellants/plaintiffs had filed a suit for separate possession of share of the plaintiffs by way of partition by metes and bounds out of residential plot measuring 2 kanal 2 marlas comprised in khewat No.42/39 khatauni No.88 khasra No.70/suit property as entered in the Jamabandi for the year 2008-09 situated in the Revenue Estate of village Keshopur, H.B. No.249, Tehsil and District Gurdaspur. It was the pleaded case of the plaintiffs that plaintiff No.1 Kewal Krishan along with Harbans Lal had purchased land measuring 14 kanal 4 marla comprised in khatauni No.91 Rect No.10 Killa No.23/1 (1-12) Rect No.20 Killa No.3/1/1 (1-10), 3/1/2(3-12), 8/1(6-1), 8/2 (1-19) from Milkhi Ram. After the death of Harbans Lal, his share in joint holding was



inherited equally by the plaintiffs being successors of Harbans Lal. It has been alleged that plaintiffs are co-sharer to the extent of 2089/3571 share in the entire joint holding measuring 178 kanals 13 marlas. The residential plot in dispute is measuring 17 kanals north and south side and 22 karams on eastern and western side and same has been left for the purpose of construction of residential houses. It has been further alleged that plaintiffs have constructed their houses adjacent to the eastern side of the plot in question and they are using the plot in dispute as the part of their courtyard and haveli jointly with Kasturi Lal defendant No. 1 who has constructed three rooms and one small room. After the demise of their father, the plaintiffs being co-sharers to the extent of 24/42 share in the residential plot in question measuring 2 kanals 2 marlas are not deriving full benefits according to their share in the residential plot in question. They do not want to keep their share joint anymore with the defendants and want to get it separated by way of partition by metes and bounds. Further it has been alleged that defendants no. 1 to 4 have started taking illegal steps to grab the property in dispute. They have illegally got entries of Khasra girdawaries in connivance with the revenue officials in the name of defendant no. 1 showing him in exclusive possession and after that they have started passing illegal threats to dispossess the plaintiffs illegally, forcibly and to raise construction on the entire plot in dispute without getting the same partitioned by metes and bounds. Their threats are



continuously causing stress and strain to plaintiffs and plaintiffs want to get their share separated by partition by metes and bounds. The plaintiffs have requested the defendants to effect partition by metes and bounds with mutual consent by separating the 24/42 share of plaintiff and the construction already raised be evaluated and the same be assessed according to the share of the parties and also requested to deposit from making any alteration in the existing position and not to raise any construction without getting the plot in dispute partitioned but defendants flatly refused. Hence, the present suit was filed on 06.08.2012.

5. Upon notice, the defendants had appeared and filed written statement resisting the suit of the plaintiffs. Besides formal objections, the defendants stated that the land in question is being used for residential houses; but there are other killa numbers which are being used for other non-agriculture purposes which have not been incorporated by plaintiffs. Those killa numbers have been concealed and plaintiffs have intentionally filed the present suit only regarding the suit land which is in exclusive possession of the defendants as they have raised their residential houses in suit land. It was admitted that the plot in dispute is being used for residential purpose. It has been submitted that the plaintiffs have themselves constructed their residential houses in the abadi deh area of the joint holding which has not been included in the present suit by the



plaintiffs intentionally. Denying all other averments made in the plaint, a prayer for dismissal of the suit with costs has been made.

6. Replication was filed whereby the assertions made in the written statement were denied and those made in the plaint were reiterated.

7. From the pleadings of the parties, following issues were framed by the learned trial Court:-

“i. Whether the plaintiff is entitled to get the separate possession of 24/42 share of the residential plot in question by way of metes and bounds? OPP

ii. Whether plaintiff is entitled to get the consequential relief of permanent injunction as prayed for? OPP

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

iv. Whether plaintiff has not come to the court with clean hands? OPD

v. Whether partition has already taken place between all the co-sharers and they are there in his exclusive possession over the plot in question? OPD

vi. Relief.”

8. On the basis of pleadings and oral & documentary evidence adduced before it, the learned trial Court decided issues No.1 and 2 against the plaintiffs and in favour of the defendants; issues No.3 to 5 against the defendants being not pressed as “*...defendants has not brought on file any evidence in support of these issues nor learned counsel for the defendants have addressed any arguments on these issues...*”. Accordingly,



vide judgment and decree dated 04.10.2016, suit of the plaintiffs was dismissed with costs. The appeal filed by the plaintiffs was dismissed with costs by the learned Additional District Judge, Gurdaspur vide judgment and decree dated 18.12.2018. Hence, present second appeal.

9. Learned counsel for the plaintiffs submits that the learned Courts below have incorrectly held that the plaintiffs have not approached the Court with clean hands. It is submitted that in fact, the learned Courts below have not considered the evidence brought on record by the plaintiffs in correct perspective. It is contended that the suit property is comprised in khasra No.70; and the plaintiffs have categorically stated that khasra No.70 pertains to gairmumkin abadi and that there is no other such land which is described as gairmumkin abadi in the Jamabandi. It is submitted that however, despite the categorical assertion of the plaintiffs, the learned Courts below have held that the land comprised in other rectangles and killas is also gairmumkin; and as such, the same should have been subject matter of the suit. Accordingly, the learned Courts below have held that the plaintiffs had concealed material facts and consequentially, suit of the plaintiffs was dismissed for partial partition. Learned counsel contends that part of the said land is gairmumkin area and is part of agricultural land and therefore, it could not have been considered as gairmumkin abadi. Only khasra No.70 is the joint property which is gairmumkin abadi; and the same cannot be equated with the gairmumkin agricultural land. As such, the



finding of the learned Courts below on issues No.1 and 2 is wholly erroneous and liable to be set aside. It is stated that sufficient evidence was led by the plaintiffs from the relevant Revenue Record that the other properties are not gairmumkin abadi. Thus, the observations of the learned Courts below regarding non-joining of all co-sharers are also wrong. Moreover, the learned Courts below have misread and misconstrued evidence as also the testimonies of the plaintiff witnesses. There is nothing on record to show that the property in dispute has been partitioned. It is accordingly prayed that the impugned judgments and decrees be set aside.

10. No other argument is made on behalf of the appellants.

11. I have heard learned counsel for the appellants and perused the case file in great detail.

12. I find no merit whatsoever in the submissions made on behalf of the appellants/plaintiffs. Perusal of the record of the case shows that it has been established on record that the plaintiffs and defendants are co-sharers of Joint Khata including khasra No.70 as evident from Jamabandi (Ex.P1). It is the case of the plaintiffs that khasra No.70 was left for co-sharers for residential purposes and that both parties have constructed their houses thereupon. However, the plaintiffs had failed to disclose the existence of other gairmumkin/non-agricultural land in Joint Khata apart from khasra No.70. Whereas, in fact, the Joint Khata of khasra No.70 includes other gairmumkin areas (khata No.42/39 khatoni No.87), which



plaintiffs had failed to include in the suit land. The plaintiffs had selectively sought partition only of khasra No.70 to serve their own interests. This is established from the unequivocal testimony of the defendant witnesses which has not been rebutted by the plaintiffs by cross-examining the said witnesses. DW1 had clearly testified that plaintiffs' houses are located in other gairmumkin areas. Admittedly, the learned counsel for the plaintiffs had not cross-examined DW1 on this point, thus, making his statement legally acceptable.

13. Further, there were deficiencies even in the plaintiffs' evidence. The site plan (Ex.P3) produced by the plaintiffs was not proved in accordance with law as Draftsman of the said site plan was not produced as a witness. Moreover, even the said site plan does not depict the plaintiffs as owners or occupants of the disputed property. The said fact supports the claim of DW1 that plaintiffs are not residing in the disputed area. The plaintiffs even failed to provide any photographs or evidence to prove that defendants were raising new constructions. DW1 testified that their houses were built long before the suit was filed. Even this assertion of DW1 remained unchallenged in cross-examination. Moreover, PW1 in his affidavit in examination-in-chief did not mention that defendants were trying to raise new construction. Even further, the plaintiffs did not demonstrate how the proposed construction would harm their rights. They did not provide any details of what steps defendants took to construct or how it would



affect them. Plaintiffs also did not provide any evidence that other gairmumkin numbers were not part of gairmumkin abadi.

14. It has also come on record that the disputed land (khasra No.70) had already been partitioned among the co-sharers in 1980 whereafter respective houses were built. In actual fact by way of present suit, the plaintiffs had sought correction of Revenue Record, and not a fresh partition. However, the plaintiffs were not able to provide proper calculation of their claimed share (24/42) and were therefore, found guilty of concealing material facts. It was in this background that it was held by both the Courts below that partial partition cannot be permitted as the plaintiffs had sought partition of only khasra No.70 while excluding the other joint properties.

Ld. Counsel for the appellants is unable to dispute or controvert the above said facts and findings.

15. In view of the above, present appeal is **dismissed**.

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

02.04.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No