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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 175/2019 and CM APPL. 38548/2019**

KRISHAN

.....Appellant

Through: Ms. Suman Chaudhary, Advocate.

versus

GAON SABHA MUNDELA KALAN & ANR

.....Respondents

Through: Mr. Anubhav Gupta, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **12.11.2024**

CM APPL. 38547/2019

1. This application has been filed by learned counsel for appellant for condonation of delay of 225 days in filing the appeal.
2. For the reasons stated in the application, the same is allowed and delay of 225 days in filing the appeal stands condoned.
3. The application is disposed of.

RSA 175/2019 and CM APPL. 38548/2019

4. Heard learned counsel for the appellant.
5. Learned counsel for appellant submits that the Courts below have gravely erred in rendering the findings, which according to her, do not consider the entries in *khata khatauni*, which were relied upon by the petitioner as Ex.PW-1/1 and Ex.PW-1/3. She therefore, submits that the same is sufficient to establish the title and there is no need of any further document to establish the title over the property in question.



6. Having considered the aforesaid submissions, the Court is of the considered opinion that *khata khatauni* cannot be considered as a document which conclusively establishes the title/ownership of the property in question. The Supreme Court in ***Prem Nath Khanna v. Narinder Nath Kapoor***², while placing reliance on a catena of decisions, including ***Sawarni v. Inder Kaur***³, has held that the mere entry in the revenue records does not create or extinguish title nor does have any presumptive value on title. The relevant portion of the said decision reads as under:-

*“20. In addition to the abovementioned reason, the contention advanced by the learned counsel appearing on behalf of the respondents that the appellants failed to get the mutation of entries of the suit land incorporated in record shows that there was no intention on their part to act upon the contents of the two sale deeds, cannot be accepted as mere mutation of entries does not confer title upon the deceased Respondent 1 in the immovable property. In *Sawarni v. Inder Kaur* [*Sawarni v. Inder Kaur*, (1996) 6 SCC 223] , this Court held as under: (SCC p. 227, para 7)*

“7. ... Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment.”

*21. In *Guru Amarjit Singh v. Rattan Chand* [*Guru Amarjit Singh v. Rattan Chand*, (1993) 4 SCC 349] , this Court held that the entries in jamabandi are not proof of title in respect of an immovable property. In *Jattu Ram v. Hakam Singh* [*Jattu Ram v. Hakam Singh*, (1993) 4 SCC 403] , this Court observed that entries made by patwari in official record are only for the purpose of records and do not by itself prove the correctness of the same nor can statutory presumption be drawn on the same, particularly, in the absence of corroborative evidence. The respondent cannot claim to have acquired title over the suit property by*

² (2016) 12 SCC 235

³ (1996) 6 SCC 223



pleading adverse possession only in the absence of the name of the appellants in the revenue records. In Kishan Singh v. Arvind Kumar [Kishan Singh v. Arvind Kumar, (1994) 6 SCC 591] and P.T. Munichikkanna Reddy v. Revamma [P.T. Munichikkanna Reddy v. Revamma, (2007) 6 SCC 59] , this Court held that in cases where the possession was initially permissive, the burden lies heavily on that person alleging adverse possession to prove that the possession has become adverse. Mere possession for long time does not convert permissive possession into adverse possession.”

7. The learned Trial Court, in paragraph No.11, has considered the aforesaid aspect, which reads as under:-

“In his plaint, in paras 2, 3 &4, plaintiff had stated the manner in which he had constructed a house in khasra no.106/71 and based on said construction, he had obtained right over 4 1/2 feet rasta on the eastern side of said plot in khasra no. 106/71. He talked about allotment of said khasra number in favour of Bhagwan Singh and Tarif Singh, its devolvement to legal heirs of Bhagwan Singh and Tarif Singh and partition of the said plot by LRs of the said Bhagwan Singh and Tarif Singh. All the said chain of events were bald assertions only as plaintiff did not specify certain relevant facts based on said assertions viz. the person / authority which had allotted suit land in question in favour of Bhagwan Singh and Tarif Singh,, the date when said khasra number was allotted to Bhagwan Singh and Tarif Singh, the terms and conditions of said allotment, the basis on which Bhagwan Singh and Tarif Singh had become joint owners in equal shares in said khasra numbers, the legal procedure adopted by LRs of Bhagwan Singh and Tarif Singh in partitioning the said land and the recognition of 4 1/2 feet wide rasta by any government department. In the absence of any such details, I find that plaintiff failed to plead the legal procedure in which he had obtained his right over said suit land and rasta. He failed to prove the same in his evidence also. The net result is that plaintiff failed to prove himself as co-owner of residential plot-in khasra no.106/71. In fact, documents viz khatoni Ex. PW-1/1 and Ex. PW-1/3 relied by the plaintiff did not help his cause as those documents are a statement of proprietors and tenants holding with a detail of fields and a note of the rent paid by each of them. Those documents did not indicate or prove plaintiff as co-owner of suit land in question. Besides that, demarcation report Ex. PW-1/4 only talked about the location of khasra no.106/72 having no relevance to khasra no. 106/71. The complaint Ex. PW-1/8 and photographs Ex. PW-1/5 to Ex. P'W-1/7 also did not prove plaintiff as co-owner of suit land in question or the rasta in question. It was incumbent on plaintiff to have proved his ownership



over suit land in question as his right to the rasta in question, depended upon his right to occupy suit land in question. Plaintiff failed to do so, much to his own disadvantage”

8. The first Appellate Court, therefore, in paragraph No. 20, has considered the findings rendered by the learned Trial Court with respect to the arguments advanced by the appellant on the aspect of *khata khatauni* and has upheld the findings of the learned Trial Court.

9. In view of the aforesaid, the Court is of the considered opinion that no substantial question of law has arisen in the instant appeal. Accordingly, the same fails and is hereby dismissed.

10. All pending applications are also disposed of.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 12, 2024/DPA