

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

**CR No.1782 of 2012 (O&M)
Date of decision: 19.01.2015**

Yogesh Kumar

....Petitioner

Versus

The State of Haryana and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajesh Sethi, Advocate for the petitioner.

Mr. Vishal Garg, Addl.A.G. Haryana.

Rakesh Kumar Jain, J. (Oral)

The petitioner filed suit for declaration and permanent injunction which was decreed on 16.03.2010 in the following manner:-

"It is ordered that the plaintiff succeeds and his suit for declaration to the effect that the width of killa No.11/2/2 in the eastern side of square No.16 in 14 karms, mutation No.3664 sanctioned on 27.05.2005, mutation No.2025 sanctioned on 13.09.1990 by defendant No.2 and the subsequent revenue record

are liable to be corrected in his favour on the basis of sale deed No.2064 dated 6.08.1970, in respect of his land situated in village Shamshabad, Tehsil and District Sirsa is wrong and liable to be set aside alongwith the subsequent revenue record”.

The petitioner had filed the execution application in which one Mulakh Raj Patwari Halqa Shamshabad Patti made a statement on 26.11.2011 which reads as follows:-

“Stated that as per the Court order passed in pursuant to the judgment and decree dated 16.03.2010 passed by the Court of Sh.Gopal Krishan the then Civil Judge (S.D.) Sirsa in Civil Suit No.187 of 2006, the Mutation No.3664 and Mutation No.2025 have been corrected and I produce a corrected copy of above mutations, the number of which is 5204. I have corrected the mutation No.5204. The Court has passed an order for correction of mutation No.3664 and Mutation No.2025, on the basis of sale deed, so taking into consideration the same, Revenue Authority Sirsa has entered and sanctioned the Mutation No.5204 and in pursuance of the judgment and decree dated 16.03.2010 revenue entry has been corrected. I present the certified copy of the

mutation No.5204 and Tatima”.

The petitioner also recorded a statement on the same day which reads as under:-

“Stated that the compliance of the decree has not been correctly done in an intentional manner. The land of D.H. Has been divided into many parts and different khasra numbers have been given thereto. Nor the entire revenue record has been corrected as per order of the Court. As per order of the Court till such time the mutations No.3664 and 2025 and subsequent mutations are not prepared, afresh while basing upon the position of Mutation No.851 to be correct, the land of D.H. cannot form a block nor the same can fall in one khasra number. J.D. i.e. revenue authorities while acting intentionally has not corrected the record in compliance of decree, which may be got done”.

Thereafter, the executing Court, on the same day disposed of the execution application in terms of the statement of Mulakh Raj, Halqa Patwari, Shamshabad Patti. The relevant portion of the order is as under:-

“As per the statement of Milakh Raj, Halqa Patwari, Shamshabad Patti, the revenue entries have been

corrected and mutation No.5204 has been entered and sanctioned. Accordingly, the execution petition is disposed of. File be consigned to the record room".

The case of the respondent is that fresh mutation No.5204 has been sanctioned in terms of the decree and the deficiency of the petitioner in the land, 14 karams towards the eastern side has been made good and has been given khasra No.16/11/2 as gair mumkin.

Counsel for the petitioner has submitted that on the spot, as per *tatima*, the land which has been mentioned in the mutation No.851 khasra No.11/2/3/1/1 is on the western side, whereas his case was that he has been given one karam of land towards the eastern side. It is also submitted that the executing Court has just passed the order without appreciating the statement made by the petitioner as well as the statement made by Mulakh Raj Patwari Halqa Shamshabad Patti, therefore, it is prayed that the order of the Court below may be set aside and the case may be remanded back to the Executing Court to decide it afresh by giving reasons for disposal of the execution application.

Learned counsel for the respondent has raised no objection in case the matter is remanded back to the Executing Court. In view of the above said facts and circumstances, the present petition is allowed and the order dated 26.11.2011, passed by the Executing Court is hereby set aside. The case is remanded back to the Executing

Court with the direction to decide it afresh after taking into consideration the facts and material on record with a speaking order. The parties are directed to appear before the trial Court on 27.03.2015.

January 19, 2015
Manoj Bhutani

(Rakesh Kumar Jain)
Judge