

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1231 of 1987 (O&M)
Date of Decision: 10.07.2015

Smt. Ram Kaur alias Rama

... Appellant

Versus

Shiv Singh alias Shiba through
his heirs and legal representatives
and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. G.S. Jaswal, Advocate,
for the appellant.

Mr. Kabir Sarin, Advocate,
for R-1 to 4.

Mr. Ashok Kumar Chauhan, Advocate,
for Mr. Arvind Singh, Advocate,
for the applicant in CM No.1943-C of 2014.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The substantial questions of law framed by the appellant for the consideration of this court are as follows. They are to be tested in this second appeal whether they are substantial in nature within the meaning of section 100 of the CPC:-

"1. Whether the Civil Court has jurisdiction to try the suit which relates to the error committed by consolidation authorities during consolidation of holdings proceedings?"

2. Whether the Civil Court can reopen the matter to correct the error which otherwise barred under the law of Consolidation?"

3. Whether the valuable right once accrued in favour of appellant can be set at naught on flimsy and erroneous

grounds by recording finding without appreciating evidence on record?

4. Whether the respondents-plaintiffs were not duly bound to take possession of land in execution of decree?

5. Whether the findings of courts below ignoring Ex.D4 can be said to be finding of fact and are not perverse and illegal?

6. What will be the effect of judgment passed by the court of Sh. S.S. Hundal, Sub Judge Ist Class Gurdaspur in Civil Suit No.171 of 1980 wherein the plaintiffs are held not to be in possession of the land?"

2. The defendant is in second appeal. The joint suit was filed by four plaintiffs on July 29, 1983 against appellant-defendant-1 and three others. The suit was for declaration to the effect that plaintiffs are owners and in possession of suit land described in the plaint and for recovery of possession of half share of the land in dispute measuring 14 Kanals 04 Marlas comprised in land described in head note 'B' to the plaint. The parties are related to each other.

3. Of the 16 issues framed including two at serial # 1,3, 5, 15-A and 15-B are the spinal issues in this appeal of which firstly is issue-5 as to whether the civil court has no jurisdiction to try the suit as the mutation of the disputed property has been sanctioned in the name of the defendants by the consolidation department. The onus to discharge the burden of proof was placed on defendant-1 to substantiate proof of the issue. The plaintiffs raised dispute that there was an error committed by the consolidation authorities during consolidation proceedings when the suit property was entered in the name of defendant Ram Kaur alias Rama daughter of Budha. The property was inherited from their ancestor Ganga Ram. Budha who was one of many brothers all sons of Ganga Ram. The trial court decided all the

issues and inter alia returned its findings on moot issue # 5 as follows:-

"Issue No.5

23. *The counsel for defendant no.1 has argued that admittedly the consolidation proceedings took place in village Deeda where the land is situated. In 1960 and during the consolidation proceedings defendant Ram Kaur has been shown to be owner of the suit land and now this civil court has no jurisdiction to change the ownership of defendant no.1 Ram Kaur because the jurisdiction of the civil court is barred in this connection.*

24. *On the other hand, the counsel for the plaintiffs has argued that where there question of ownership is involved the civil court has jurisdiction to discuss the question of title. In the present case, the plaintiffs were declared to be owner of the suit land vide compromise deed Ex.P.8 dated 19.9.1960, but the entry of that effect has not been made in the revenue record and in this way, the question of title is involved in the present case and the entry in the revenue record can be corrected by the civil court. For this he has drawn my attention to "1977 Punjab Law Journal, page 390, Tara Chand and others vs. Rattan and another," where it has been held by Hon'ble Mr. Justice O. Chinnappa Reddy of our own High Court that u/ss 44 of the East Punjab Holdings (Consolidation) and Prevention of Fragmentation Act) determination of title of parties of land in dispute can be determined only by the Civil Court and not by the Consolidation Authorities and for this only the Civil Court has jurisdiction and Consolidation Authority has no jurisdiction.*

25. *I have given thoughtful consideration to the submissions made by the counsel for both the parties. Admittedly, in the present case the question of title is involved and to decide that question only civil court has jurisdiction as per the arguments led by the counsel for the plaintiffs and thus the jurisdiction of the Civil Court is not barred to decide the suit and the issue is accordingly decided against defendant no.1."*

4. The trial court allowed the suit and passed a decree for declaration

to the effect that plaintiffs are owners in possession of suit land in the shares

held as described in the relief paragraph. Unsuccessful Defendant-1 appealed to the court of the learned Additional District Judge, Gurdaspur. In appeal, the defendant confined his argument in the narrow compass of issues 1 and 3. The court has recorded the statement in para.6 of the judgment in appeal as follows:-

"The ld. counsel for defendant no.1 has confined his arguments only on issues no.1 and 3."

5. It may be mentioned that defendant-1 Ram Kaur was the only defendant who filed appeal. Issue 1 was framed as follows:-

"(1) Whether defendant no.1 is in possession over the suit land as owner since consolidation, which took place 20 years back? OPD 1"

6. Issue 3 was struck thus:-

"(3) Whether the suit is barred by limitation? OPD 1"

7. When issue 5 was not pressed by defendant then it is sequitur that the civil suit was maintainable and the consolidation and revenue authorities had no jurisdiction to declare rights of ownership and possession over the suit property being agricultural land by virtue of defendant succumbing to jurisdiction. In the light of the statement made by the counsel for defendant-1 confining his arguments on issues 1 and 3, the remaining issues are to be read in favour of the plaintiffs and, therefore, the grounds of challenge in second appeal can only be confined to findings on issues 1 and 3, the rest having been given up.

8. The attempt of Mr. G.S. Jaswal, learned counsel for the appellant to re-open those issues cannot be accepted since, the courts have consistently taken the view that the court is bound to accept the statement of

the Judges recorded in their judgment as to what transpired in court. But the statement of the Judges recorded in judgments cannot be permitted to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. Such statements are conclusive of the facts so stated. If a party thinks that the happenings in court have been wrongly recorded in the judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily rest there. This is the view expressed by the Supreme Court in a catena of rulings including in **State of Maharashtra vs. Ramdas Shrinivas Nayak and another**, AIR 1982 Supreme Court 1249; **Central Bank of India vs. Vrajlal Kapurchand Gandhi and another**, 2003(2) RCR (Rent) 186 and two Single Judge decisions of this court applying the law in the aforesaid two cases in **Milkha Singh and others vs. Nirmal Singh and others**, 2007(4) RCR (Civil) 842 & **Hardevinder Singh and another vs. Smt. Nirmal Kaur and another**, VOL.CLIV-(2009-2) The Punjab Law Reporter 537.

9. In view of the above, this court has limited its examination to the findings on issues 1 & 3 and heard arguments of the learned counsel on both sides on those alone and none else.

10. On the question of possession, the learned trial court accepted the view that defendant Ram Kaur was not in possession of the suit land for the

last more than two decades. To the contrary the finding returned was that plaintiffs are in possession of the suit land since the year 1960. To come to this conclusion, the trial court believed the compromise entered between the plaintiff and defendant-1 Ram Kaur in a civil suit filed by her for possession of the same suit land in which she had relinquished her rights to the property in dispute vide a compromise entered in the court on which statement the decree was passed. On the basis of the compromise decree, the names of the plaintiffs were recorded in column 5 of the Jamabandies Exs. D-1, D-2 & P-5 where they were shown in possession of the suit land since 1960. Besides, column 9 of these Jamabandies would also reveal that plaintiffs have become owners of suit land vide sale deeds executed in their favour which forms the substratum of the compromise effected between the parties in 1960. There was corroborative evidence on record to support the finding which proved that Ram Kaur and her husband used to reside in village Channi Chinour which is at a distance of 12/13 miles from village Deeda where the suit land is situated. In the voter list of village Deeda both Ram Kaur and her husband were not mentioned nor was there proof they paid *chulla* tax to the Gram Panchayat. The court rightly thought it highly improbable that Ram Kaur or her husband were cultivating the land in dispute falling at such great agricultural distance as would appear to make it difficult if not impossible. The court below found as a matter of fact and without doubt that defendant Ram Kaur has been shown to be in possession of the suit land falling in rectangle No. 19, only in the stray Jamabandi Ex. P-5 for the revenue year 1981-82. The court relied on the decision of this court in **Megh Raj and others v. Raghubir Singh and others**, 1985 PLJ

316 to back the view that where there is a conflict between the earlier and the later entries in the revenue record, then the entries in subsequent revenue record changed without observing procedure prescribed and without issuing notice to the other party concerned are to be ignored and the entries before this change are to be preferred. The court also relied on the observations of Hon'ble M.R. Sharma, J. in **Jai Ram v. The Gram Panchayat Dehlaka and others**, 1978 PLR 43 that stray entries for one or two years against long standing possession established by proof of evidence led by opposite party should be ignored. On these principles, the learned trial Judge ignored the stray entry when it found no corroborative evidence adduced by the defendant to prove as to how she came into possession of the suit land after a gap of a long period of time. The court concluded that Ram Kaur was not in possession of the land and on the other hand the plaintiffs were.

11. On issue 3 the court returned findings in favour of plaintiffs and against the defendants since it was based on the compromise deed Ex.P-8 dated September 19, 1960 but an entry based on the compromise deed was not entered in the revenue record. If this was so then why did the plaintiffs keep sleeping over the matter for such a long time, and not having taken steps to get the revenue record and *fard jamabandi* corrected. Besides, a suit is not maintainable for correction of the revenue record because the limitation for the same is 3 years and that period has elapsed. This argument of the defendant-1 was considered by the learned trial Judge in the light of the version of the plaintiffs who argued that an owner in possession of land is not required to bring a suit to re-affirm their title to land. He is required to

initiate proceedings within six years from the time when his rights are being actually invaded. The plaintiffs were enjoying the suit land as owners till 1981 while defendants 2 to 4 alleged that they had purchased some portion of the suit land from defendant-1 Ram Kaur and they tried to forcibly dispossess the plaintiffs from that portion of the suit land purchased from Ram Kaur. Thus, the clouds were cast for the first time in the year 1981 and the present suit was filed in 1983 within the prescribed period of limitation and, therefore, the suit was within limitation governed by article 120 of the Indian Limitation Act, 1963.

12. The court of first appeal re-examined issues 1 & 3 on the basis of evidence on record and re-affirmed the findings on both the issues. It agreed with the view of the trial court that plaintiffs are in cultivating possession of the suit land and defendant-1 has no right, title or interest in the suit land nor was she in possession thereof. The probabilities were balanced on the evidence and the appeal court next below held that it was improbable that Ram Kaur and her husband would cultivate suit land when they were not residing within its proximity. The court of first appeal re-emphasized not only in para.6 but also in para.7 of the judgment in appeal and found at page 79 of the paper book that no other point has been canvassed in appeal.

13. I have absolutely no reason to embark on an misadventure to ferret out errors in the exercise of judicial discretion by the courts after they have properly evaluated and balanced the evidence on file in all their probabilities. There is hardly any scope for interference in the second appeal side of this court exercisable under section 100 of the Code in the present case on findings of fact recorded.

14. For the foregoing reasons and for the reasons recorded in the judgments of the courts *a quo*, I find no substance in this appeal and would, therefore, dismiss it as not presenting any substantial question of law or in any of the six questions proposed in the grounds of appeal reproduced in paragraph 1.

(RAJIV NARAIN RAINA)
JUDGE

10.07.2015
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