

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.2276 of 1988 (O & M)

Date of Decision: *September 23, 2015*

Karam Singh (since deceased) through LRs & others

..... PETITIONER(S)

VERSUS

Ujagar Singh (since deceased) through LRs & others

..... RESPONDENT(S)

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CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. G.N. Malik, Advocate, appellant Nos.1 and 3.

Mr. R.L. Batta, Senior Advocate, with
Mr. Nikhil Batta, Advocate, for appellant No.2.

Mr. N.S. Dandiwal, Advocate, for respondent
No.2.

Mr. Ashish Gupta, Advocate, for respondent No.4.

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Jaspal Singh, J

1. The instant appeal has been preferred against judgment & decree dated June 4, 1988 passed by the lower

appellate court whereby judgment & decree dated October 3, 1986 rendered by the lower court, dismissing the suit of plaintiffs, has been upheld.

2. Brief facts of the case, giving rise to the instant appeal, are that plaintiffs filed the suit seeking declaration to the effect that they have become owners of suit land measuring 20 kanals, as fully described in the head note of the plaint, situated in the area of village Galoti, Tehsil Zira, with consequential relief of permanent injunction against the defendants. Plaintiffs pleaded that their father Narain Singh was owner in possession of the land through consolidation proceedings in lieu of old khasra Numbers. Defendants, however, got wrong entries recorded in the record of rights and relevant revenue papers, on the basis of an exparte order, alleged to have been passed by Assistant Director of Consolidation, Punjab. This said order was passed contrary to the scheme of consolidation and, that too, at the back of Narain Singh. Earlier, the Assistant Director Consolidation, Punjab had already dismissed the appeal on behalf of Milkha Singh against various persons of village including the parties to the suit. After dismissal of the appeal, the same could not be restored, reheard or reopened. After the death of Narain Singh, plaintiffs are in continuous possession of

the suit land. It was further alleged that subsequent order of A.D-II.C making changes in the quarrels of plaintiffs & others is null, void and illegal being beyond jurisdiction. The consequent mutation which followed the order of Additional Director, Consolidation does not confer any right of the defendants regarding the suit land. So, mutation No.2003 is also void. It was next pleaded that in a suit previously filed in the year 1982 by the defendants against Bara Singh & others including the plaintiffs, defendants had admitted that an appeal was filed by them in the court of Additional Director Consolidation under Section 42 of the Consolidation Act and there was a compromise dated January 13, 1966 to the effect that parties will keep the quarrels intact. The Assistant Director dismissed their appeal directing the parties to have the mutation of exchange effected at their own level. The defendants are bound by their own admission in the previous suit. It was pleaded that the suit land was *Banjar Kadim* and *Barani*, as such was unproductive. Plaintiffs have improved the land by spending more than ₹ 15,000/- and made it cultivable. Plaintiffs, since consolidation, have been cultivating the land in dispute as owners for more than 12 years or from the date the mutation was wrongly sanctioned in favour of defendants. They never

gave the share of produce to the defendants. The plaintiffs have come to know about these entries during the suit brought by defendants in 1982. It was also pleaded that defendants have filed a regular suit for ejectment of the plaintiffs claiming themselves to be land lords and plaintiffs as their tenants under them.

3. The suit was contested by the defendants by filing written statement by taking preliminary objections; that civil court's jurisdiction is barred in respect of any order or proceedings held by the consolidation of holding authorities; that suit is barred by limitation; that defendants are the owners of suit land and plaintiffs are tenants under them; and that plaintiffs are paying 1/3rd share as rent to the defendants and some decrees of recovery have been passed against the plaintiffs. Defendants have recovered ₹ 328.62/- from the plaintiffs as per decree. Lastly, that plaintiffs are estopped by their act, conduct and acquiescence.

4. On merits, defendants had alleged that civil court has no jurisdiction to challenge the adjudication of Assistant Director Consolidation, Punjab. They also alleged that plaintiffs have filed a false suit against them only to delay the proceedings

on Form 'L' pending in the court of A.C.I. Zira against the plaintiffs.

5. From the pleadings of the parties, the following issues were framed:-

1. Whether the civil court has no jurisdiction to hear the matter as alleged in para No.1 of the preliminary objection? OPC

2. Whether the suit is barred by limitation? OPD

3. Whether the plaintiffs are cultivating the suit land as tenants under the defendants? OPD

4. Whether the plaintiffs are estopped by their conduct and acquiescence? OPD

5. Whether the plaintiffs have acquired the ownership by way of adverse possession for more than 12 years? OPP

6. Whether the order of Assistant Director Consolidation and the subsequent mutation No.2003 sanctioned on its basis are nullity for the reason given in paras No.2 and 3 in the plaint? OPP

7. Whether there was a compromise dated 13.1.66 between various contestants including the parties in suit that they will keep the quarrels intact, if so, its effect? OPP

8. Whether the defendants had admitted in their suit against Bara Singh and others that the order of Assistant Director Consolidation was honest and a nullity, if so, its effects? OPP

9. Relief.

6. In order to substantiate their respective claims, parties led evidence. After hearing learned counsel for the

parties and on appraisal of record, the lower court, vide judgment & decree dated October 3, 1986, dismissed the suit of plaintiffs by holding that plaintiffs failed to convince as to how the order of Assistant Director Consolidation and subsequent mutation No.2003 sanctioned on the basis of the order are nullity. The order of Assistant Director Consolidation cannot be challenged in the civil court. The plaintiffs have not filed any appeal against the order of Assistant Director Consolidation and that order is binding on them. Aggrieved plaintiffs went up in appeal, however, the same as also dismissed by the lower appellate court vide judgment & decree dated June 4, 1988.

7. Now, the plaintiffs have challenged the judgments and decrees passed by the courts below, before this court.

8. At the very outset of arguments, it has been submitted by learned counsel for the appellants that though as many as eight issues were framed by learned trial court and judgment & decree as rendered on October 3, 1986 while dismissing the suit, however, when an appeal was filed before the lower appellate court, the appellants strongly challenged the findings recorded by the learned lower court on all the issues. But to the utter surprise, lower appellate court did not even touch the findings on issue Nos.3 to 8 which were impugned

during the course of arguments. It was obligatory upon the lower appellate court to have recorded the arguments addressed by learned counsel for the appellants and to deliver findings either affirming the findings recorded by the trial court or reversing the same.

9. Though, non-recording of findings by lower appellate court with regard to issue Nos.3 to 8 has also not been disputed by learned counsel for the respondents but it has been contended that infact the appellants – plaintiffs mainly sought the decree for declaration that they have become owners of the suit property by way of adverse possession. That suit is not legally maintainable and when the main relief cannot be granted to the appellants – plaintiffs on the basis of the suit filed by them, then, no consequential relief can also be granted.

10. This Court has gone through the impugned judgments and decrees rendered by both the courts below and finds that the lower appellate court has committed an illegality by not delivering the findings on issue Nos.3 to 8, either by confirming the findings recorded by the trial court or by reversal thereof. The lower appellate court simply decided the appeal while discussing issue Nos.1 and 2. The non-delivery of findings by the lower appellate court has resulted into great

prejudice to the rights of appellants. Maintainability or non maintainability of the suit cannot be considered at this stage.

11. In the given circumstances, the appeal is required to be dealt with and disposed of by the lower appellate court afresh. Accordingly, impugned judgment & decree dated June 4, 1988 passed by the lower appellate court are hereby set aside and lower appellate court is directed to decide the appeal afresh on the basis of evidence already available on file by giving findings on each and every issue involved in it. The appeal is, therefore, remanded to the District Judge, Ferozepur, who may either retain it for disposal in his court or may entrust to any other court of competent jurisdiction. However, the appeal shall be disposed of by the court concerned within a period of six months from the date of receipt of certified copy of this judgment.

12. Disposed of accordingly.

September 23, 2015

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(Jaspal Singh)
Judge