

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

**Regular Second Appeal No.2668 of 2008 (O&M)
Date of Decision: August 31, 2015.**

Jai Lal

.....APPELLANT(s).

VERSUS

Johri (deceased) through his LRs and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vikramjeet, Advocate for
Mr. Aman Pal, Advocate
for the appellant (s).

Mr. Suvineet Sharma, Advocate with
Mr. Gaurav Goel, Advocate
for the respondents.

SURINDER GUPTA, J.

This regular second appeal has been filed by the appellant-plaintiff against the concurrent finding of the Courts below whereby the suit filed by the appellant-plaintiff, was dismissed.

(In the later part of this judgment, the parties will be referred as plaintiff and defendants as mentioned in the plaint.)

The plaintiff filed suit seeking the relief as follows:-

“Suit for declaration to the effect that the plaintiff is owner in joint possession of land measuring 36 kanals 13 marlas which is 75/116 share of land measuring 56 kanals 13 marlas comprised in khewat No.170/159, khatoni

No.211, rect. No.63, killa No.12/10(0-2), rect. No.68 killa No.10/2 (2-0), 11(8-0), 13(8-0), 14(8-0), 17(7-11), 18(7-11), rect. No.69 killa No.6(7-17) 15(7-12) situated in the area of village Nanhera, Tehsil Panipat vide jamabandi for the year 1990-91 and the entries in the jamabandi for the year 1980-81 and subsequent thereto showing the ownership otherwise are null and void, inoperative, ineffective and are not binding upon the rights of the plaintiff and need correction with a consequential relief of permanent injunction restraining the defendants from alienating the said land by way of sale, mortgage or otherwise in favour of any other person.”

The case of the plaintiff, in brief, is that earlier, he had filed a suit for joint possession of land measuring 34 kanals 16 marlas comprised in khewat No.103/98, khata No.219, khasra No.1218(1-10), khata No.219/1, khasra No.1204(1-16), 1221(2-5), 1727/1235(0-15), 1728/1235(0-15), khewat No.102/96/97 khata No.217 khasra No.1225(3-0), 1229 (3-6), 1236 (0-18) 1239(3-3) 1240(1-13), 1241(0-18), 1242(1-16), 1243(3-6), khata No.218 khasra No.1205(3-3), 1217(1-7), 1219(2-11), situated in the area of village Nanhera, Tehsil Panipat to the extent of the land left by Chawli widow of Shri Bakshi, last holder of the suit land. The suit was dismissed by the then Sub Judge 1st Class, Panipat vide judgment dated 11.12.1972 and the appeal filed by him was allowed by the then Senior Sub Judge with enhanced Appellate Powers, Karnal vide judgment and decree dated 20.08.1977 which has become final. The plaintiff then filed execution, wherein joint possession of the property was delivered to the plaintiff on 16.06.1978. The defendants have no right, title or interest over the suit land but in the

jamabandi for the year 1980-81 and the subsequent jamabandies, they have been recorded as owners. The above entries in the revenue record needs correction. The defendants were taking undue advantage of the revenue entries in their favour and were threatening to alienate the suit land.

In the written statement, the defendants did not deny the judgment and decree passed in favour of the plaintiff in the civil suit filed in the year 1970 but had taken the plea that they were not party to that suit. They alleged their possession over the suit land and denied that Smt. Chawli was its last holder. It was also denied that the possession of the suit land was delivered to plaintiff on 16.06.1978 in the execution proceedings. All other averments in the plaint were denied.

Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the plaintiff is owner in joint possession of the land, as detailed in the head-note of the plaint? OPP
- (2) Whether the entries in the Jamabandi for the year 1980-81 and subsequent thereto showing the ownership otherwise are null and void, inoperative, ineffective and are not binding upon the rights of the plaintiff, as alleged? OPP
- (3) Whether the plaintiff is entitled for the relief of permanent injunction, as prayed for? OPP
- (4) Whether the suit of plaintiff is not maintainable in the present form? OPD
- (5) Whether plaintiff has no locus standi to file the present suit? OPD
- (6) Whether the plaintiff has no cause of action to file the present suit? OPD
- (7) Relief.

The suit was dismissed by Civil Judge (Senior Division),

Panipat, finding certain deficiencies in the case as pleaded in the plaint by the plaintiff and evidence on record, which were noticed as follows:-

- (i) Vide warrant of joint possession issued vide order dated 05.08.1978 (Ex.P6) during the execution proceedings only possessory rights were given to the plaintiff at the spot.
- (ii) Plaintiff has wrongly pleaded that execution was dismissed as fully satisfied, rather the execution filed by the plaintiff was dismissed in default on 21.10.1978 vide order (Ex.P8).
- (iii) The mutation No.1443 was also rejected and no appeal was filed by the plaintiff.
- (iv) The suit of the plaintiff seeking declaration was barred by limitation from the date of mutation mark-Z which was rejected on 30.08.1984 as the suit was filed by the plaintiff in the year 2004.
- (v) Plaintiff was not proved to be in possession of the suit land, as such, was not entitled to the relief of injunction as well.

The first appellate Court while dismissing the appeal filed by the plaintiff observed in para 10 of the judgment as follows:-

“The learned trial court has rightly observed that mutation No.1443 was rejected on 30-8-1984 and the plaintiff could challenge the rejection of the mutation in his favour within the period of three years from the date of accrual of cause of action but the plaintiff has not challenged the same till the year 2004. It was only in the month of March, 2004 that the plaintiff has claimed himself to be owner in joint possession of the suit land and has sought permanent injunction restraining the defendants-respondents from interfering in peaceful possession of the plaintiff. The

learned trial court has rightly observed that the plaintiff has failed to prove his possession over the land in dispute. There is no document of either title or of possession in favour of the plaintiff. Hence learned counsel for the plaintiff-appellant has failed to prove that the plaintiff is owner in joint possession of the suit land and the entries in the Jamabandi for the year 1980-81 and subsequent thereto showing the ownership of the defendants are illegal and are not binding upon the rights of the plaintiff. Hence the findings of the learned trial court on issues No.1 and 2 are hereby affirmed.”

Learned counsel for the appellant has argued that both the Courts below have gone astray while dismissing the suit of the plaintiff because there was no dispute regarding the decree dated 11.12.1972, pertaining to suit land in favour of plaintiff. Both the Courts below have misread the evidence while reaching the conclusion that the suit of the plaintiff is barred by limitation. The plaintiff proved on record that he was given possession of the suit land by kanoongo vide report dated 16.06.1978, copy of which was placed on record as Ex.P4. A suit filed by the owner seeking declaration of his title is not barred by limitation until or unless the party in possession claims and succeeded in proving its title over the suit property by way of adverse possession. In this case, it is nowhere the case of the defendants that they have become owner of the suit land by way of adverse possession.

Learned for the defendant has argued that for seeking the relief of declaration the limitation is three years as per article 158 of the Limitation Act. The averments of the plaintiff that he was delivered actual possession

of the suit land at the spot and his execution was dismissed as fully satisfied and the sanction of mutation of suit land in his favour, were found to be false and the Courts below have committed no error of law while declining the relief claimed by the plaintiff.

Following substantial questions of law requiring determination arises in this appeal:-

- (1) *Whether the suit for declaration filed by a person having title and symbolic possession of the land is barred by limitation under Article 158 of Limitation Act?*
- (2) *Whether a person who is owner of the land can be declined the relief of injunction restraining the other party just on the plea that the suit was barred by limitation?*
- (3) *Whether there is misreading of evidence by both the Courts below?*

The matter in controversy has been narrowed down during the course of arguments. This fact is not disputed that the suit was filed by the plaintiff for joint possession of the land measuring 34 kanals 16 marlas which was dismissed by Sub Judge 1st Class, Panipat vide judgment dated 11.12.1972. In appeal, the judgment of the lower Court was set aside and the suit of the plaintiff was decreed for joint possession in respect of the suit land.

The identity of the suit land is also not disputed as vide order dated 09.06.1978 passed by the Executing Court, it was observed as follows:-

“Documents on the filed perused. After perusing these

documents I am satisfied that the numbers of suit land have since been changed during consolidation holdings. Warrant of joint possession of 75/116 share of the land in question be now issued for 5.8.78 on payment of process fee and munadi.”

Symbolic possession of the suit land was delivered to the plaintiff vide report of Kanoongo dated 16.06.1978 and in that report, khasra numbers of land of which possession was delivered to the extent of 75/116 share were mentioned which are the same as mentioned in the plaint of this suit. Admittedly, the execution filed by the plaintiff was dismissed in default on 21.10.1978 but this fact is immaterial. Once the plaintiff had been allowed the symbolic possession under the order of the Court and the mutation had also been entered in this regard and there were no objections to the execution of the decree, it was irrelevant as to whether the execution was dismissed in default or as fully satisfied.

Irresistible and conclusive outcome of the earlier litigation decided in favour of plaintiff Jai Lal vide judgment (Ex.P2) in the appeal (CA No.303/13 of 1974) is that the plaintiff is owner of 75/116 share in the land in dispute and is also in joint possession of the same after the delivery of possession vide report dated 16.06.1978. Both the Courts below have failed to look into this aspect and have pondered over other irrelevant facts of the case while dismissing the suit filed by Jai Lal. The relief sought by the plaintiff in this case is that the entries in the jamabandies, wrongly reflecting the defendants as owners of the suit land, are incorrect. These entries are having no basis. While delivering the symbolic possession to the plaintiff, mutation No.1443 was entered in the revenue record. It is very

strange that this mutation is stated to have been rejected on the ground that the execution was dismissed in default. The revenue Court was required to look into the judgment passed in favour of the plaintiff to reach the conclusion about his title over the suit land. Perusal of the mutation (Ex.P7) shows that it was dismissed due to non-appearance of the parties and not on merits. Even otherwise, mutation is entered only for the purpose of correction of the revenue record. This fact as to whether the mutation was sanctioned in favour of plaintiff or was dismissed, in no manner, affects the title of the plaintiff over the suit land. The plaintiff has also alleged that the defendants on the basis of entries in the revenue record, are bent upon to alienate the suit land and has sought the relief of permanent injunction to this effect. Both the Courts below have disallowed this relief without any sufficient or valid reason. The suit is not barred by limitation under Article 158 of Limitation Act. The plaintiff is owner in joint possession of land and only relief sought is to get rectification of revenue record. The title over immovable property never gets extinguished except by valid alienation or when it is lost because of adverse possession of party in possession, which is not the case in this suit.

In view of my discussion above, the findings on all the substantial questions of law framed in this case are recorded in favour of the appellant-plaintiff. This appeal has merits and the same is allowed. Judgment and decree passed by both the Courts below are set aside and the suit of the plaintiff is decreed with costs throughout for declaration that being the owner in joint possession of the suit land, he is entitled to seek the rectification of the revenue record. The defendants are also restrained from

alienating the suit land i.e. 75/116 share in the land measuring 56 kanals 13 marlas, as fully described in the plaint.

August 31, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE