IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 4451 of 2011(O&M)
Date of decision :February 13, 2015

Surat Singh and another

.... Appellants

Versus

Smt. Bhagwati and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. N. D. Achint, Advocate
for the appellants-defendants.

Mr. Sudhir Aggarwal, Advocate
for respondent Nos. 1 to 13.

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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?

<u>Amit Rawal, J (oral).</u>

This Regular Second Appeal at the instance of the appellant-defendant Nos. 5 and 6 is directed against the judgment and decree dated 25.1.2011 passed by the Civil Judge (Jr.Division), Gurgaon whereby the suit of the respondents-plaintiffs for claiming declaration that the plaintiffs and defendants are owners in possession of land as per the judgment rendered in civil suit No.199/87/90 decided on 1.10.1994 as per the details given in paragraph 5 of the plaint and the cancellation of Mutation No. 1502 based on judgment be declared illegal and void, has been decreed and appeal filed by the appellants-defendants has been dismissed.

Mr. N. D. Achint, learned counsel for the appellants-defendants in support of his grounds of appeal submits that the suit of the respondent-plaintiff exfacie was not maintainable as from the pith and substance of the pleadings, the respondents-plaintiffs had only challenged the mutation No.1502 which was sanctioned on 27.1.1995 and was set aside by the Assistant Collector suo motu. He further submits that the civil court had no jurisdiction to set aside the order passed by the Assistant Collector under the provisions of Section 158 of The Punjab Land Revenue Act, 1887 (hereinafter called 'the Act'). He further submits that decree dated 1.10.1994 had already been passed in favour of the predecessor-in-interest of the respondents-plaintiffs, therefore, the remedy, if any for the respondents-plaintiffs was to challenge the order of cancellation mutation before Revenue Authorities and not by way of suit.

Mr. Sudhir Aggarwal, learned counsel appearing on behalf of the respondents-plaintiffs in support of his contentions submits that since the appellant-defendant No.3 denied the title and ownership, much less possession of the respondents-plaintiffs, therefore the cause of action accrued in favour of respondents-plaintiffs to file the suit as well as challenge the mutation which was cancelled suo motu and not at the instance of the appellants, therefore, the suit of the respondents-plaintiffs was maintainable and the trial court had jurisdiction to try and decide the same.

Mr. N. D. Achint, learned counsel for the appellants-defendants in rebuttal urged that since the trial court had failed and erred in not deciding issue No.3 which was framed qua maintainability of the suit, by holding that it was not pressed. Even the said judgment of the trial court was challenged by taking a specific ground in the grounds of appeal and thus has urged that following substantial questions of law arise for adjudication by this Court:-

> *"1.Whether the parties to the suit are owners in possession of land detailed in para No.5 of the plaint as per judgment of civil suit No.199/97/90 decided on 1.10.1994 on the grounds as alleged?OPP*
>
> *2. Whether the cancellation of mutation No.1502 entered on the basis of compromise settled in aforesaid civil suit is illegal and is liable to be set aside on the grounds as alleged?OPP*
>
> *3. Whether suit is not maintainable in the present form?OPD*
>
> *4. Whether the plaintiff has no locus standi to file the present suit?OPD*
>
> *5. Whether the plaintiff has no cause of action to file the present suit?OPD*
>
> *6. Whether the suit of the plaintiff is time barred.?OPD*
>
> *7. Relief."*

I have heard learned counsel for the parties, appraised the impugned judgments and decrees of both the courts below and also appraised the record with their able assistance and is of the view that the appeal is liable to be allowed for the following reasons.

Before adverting to the aforementioned submissions of the learned counsel for the parties, it would be relevant to extract para 1 to 7, prayer made in the plaint and as well as preliminary objections taken by defendant No.5:-

“:*Sir,*

The plaintiffs respectfully submits as under:

1. *That plaintiffs and defendants were joint owners of land Compromised in Khewat No. 102, 103, 105, 106, 107, 108, Rect. No. 50 killa No. 10 (8-0), 11/1(5-10), 27(0-10) Rect. No. 51 killa No. 6/1 (1-7) measuring 15 kanals 7 marlas situated within revenue estate of mauza Daultabad tehsil and Distt. Gurgaon.*
2. *That two suits for Pre-Emption were filed. One titled “Ram Chander vs Indrawati” bearing no. 199/87/90 (old no. 640/8) and other titled “Rameshwar vs. Indrawati” bearing no. 640/87. Both the suits were tied together and both were consolidated in suit no. 199/87/90 titled “Ram Chander vs. Indrawati by the court of the then Sub Judge 1st class Gurgaon. Copy of plaint is attached.*
3. *That parties to suit entered into compromise and the suits were Decided on 01.10.1994 in terms of written compromise which was made part of Decree-Sheet. That as per Judgment of court dated 01.10.1994, the mutation was sanctioned by the Tehsildar/AC II G Gurgaon on 27.01.1995 as mutation no. 1502 (photocopy attached). The Suit land was partitioned as per Judgment/compromise which was reflected in Tatima of mutation no. 1502 shown on back of mutation no. 1502. That the parties are cultivating their share as per compromise which is reflected in mutation no. 1502.*
4. *That all of a sudden the revenue authorities canceled mutation No. 1502 at their own without any cogent reason. No notice for change of mutation no. 1502 was ever served upon plaintiffs. That change in revenue record was made at the back of plaintiffs secretly without intimating the plaintiffs. The revenue authorities*

had no right to cancel the mutation without notice and knowledge of plaintiffs. The revenue authorities further illegally and without any right sanctioned further mutations. That mutation subsequent to mutation no. 1502 affecting rights of plaintiff are illegal and void and are not binding upon the plaintiffs.

5. That as per Judgment of C.S. no. 199/87/90;

a) Ram Kishan (predecessor of plaintiffs no. 1 to 7) and plaintiff no. 2 are owners of Rect. No. 50 killa no. 10/1 (6-13) Rect. No. 51 killa no. 6(1-7) area 8-0 m.

b) Smt. Bharto (mother of defendant no. 4 to 6) defendant no. 4 and Jeeta S/o Amarawati were owners of land comprised in Rect. No. 50 killa no. 10/2 (1-5) 11/1/1(1-6) 27/2(0-8) area 3-9 M.

c) That defendant no.1 Rameshwar Dayal was given land comprised in Rect. No. 50 killa no. 11/1/3 (3-10).

d) That a rasta for all the co-sharers was left compromised in Rect. No. 50 killa no. 10/3 (0-1) 11/1/3 (0-4) 27/1(0-2) area 0-7 M.

That compromise/partition was signed by all the co-sharers in the land fully detailed in para no. I of the plaint. Copies of plaint, Decree-sheet, compromise, alongwith consent of all co-sharers are attached with the plaint.

6. That parties are cultivating their land as per compromise referred above. The Revenue Officer canceled mutation no. 1502 in most illegal manner. That by cancellation of mutation no. 1502 defendants no. 1 to 3 got more than their share. The defendants no. 2 and 3 are shown as owners of 4-10 M. against their share measuring 3-10 M. Thus defendants 2 to 3 are shown incorrectly owners of one kanal excess area as individual. That further mutation no. 1657 is also incorrect whereby defendant no. 1 transferred land measuring 2-6 M. in favour of defendants no. 2 and 3.

That share of defendants no. 2 and 3 must be 3k-10m only and name of defendant no.1 Rameshwar Dayal as owner of land Rect. No. 50 killa no. 10/4 (0-7) 11/1/1(0-7) area 0-14 incorrect. Sh. Rameshwar Dayal defendant no.1 is not the owner of these killas nos.

7. *That plaintiffs requested defendants several times to admit their claim but in vain. They had been putting off the matter on one or the other pretext. They have finally refused to do so on or about a week ago which is final date of cause of action. Hence this suit.*

XX XX XX

It is, therefore, prayed that a Decree for declaration that plaintiffs and defendants are owners in possession of the land fully detailed and described in para no.5 of the plaint as per judgment of C.S. No. 199/87/90 decided on 01.10.1994 and cancellation of mutation no. 1502 based on the judgment is illegal, void and nonest and that further changes of mutation in contravention of mutation no. 1502 i.e. ignoring of compromise in C.S. No. 199/87/90 are also illegal and nonest, may kindly be passed in favour of plaintiffs and against the defendants 1 to 3 with costs.

Any other relief which the Hon'ble Court deems fit and proper in the present circumstances of the case may also be granted.

<u>PRELIMINARY OBJECTIONS</u>

1. *That the present suit of the plaintiffs is neither maintainable nor tenable in the eyes of law. The same is totally false, frivolous, bogus, manipulated, concocted and has been filed in collusion with the remaining defendants just to harass the answering defendants illegally and unauthorisedly and to grab their property by misusing the process of law.*
2. *That the plaintiffs have no locus standi to file the*

present suit.

3. *That the plaintiffs are estopped from filing the present suit by their own acts, conduct, admission, commission, omission, acquiescence and latches.*
4. *That the plaintiffs have no cause of action to file the present suit.*
5. *That the suit of the plaintiffs is barred by limitation.*
6. *That the Hon'ble civil court has no jurisdiction to try and decide the present suit as the suit land has already been partitioned by metes and bounds with full notice and knowledge of the plaintiffs and remaining defendants vide mutation No.1471 sanctioned on the basis of judgment in partition suit passed by Shri D.C. Mittal, A.C. Iind Grade Gurgaon in case No.36/TH/1992 decided on 26.03.1992, which was duly incorporated in the revenue record and separate khewat were formed after carving out separate titammas and according to which the answering defendants and their mother Smt. Bharto were allotted land bearing Khewat No.100 Khata No.115 Killa No.22/20/1(1-8), Rect. No.50 Killa No.10/3(1-14) 11/1(1-3) total measuring 4K. 5M. Situated within the revenue estate of village Daultabad, Tehsil and Distt. Gurgaon after it the land bearing 1K. 8M. Killa No.22/20/1 was sold to defendant No.8 Nafe Singh son of Jai Bhagwan, who also filed a partition suit against the answering defendant in which the land of said Nafe Singh and the answering defendans was partitioned by metes and bounds and land bearing Rect.No.22 Killa No.20/1(1-8) was allotted to said Nafe Singh and the remaining land is in exclusive possession of the answering defendant. The alleged claim of the plaintiffs alleging the land detailed in para No.1 of the plaint to be joint ownership of plaintiffs and defendants is totally false, frivolous, bogus,*

misconceived and a concocted story. After passing of order of partition by the then Tehsildar/A.C. Ist Grade Gurgaon, the appeal titled as Ram Chander Versus Rameshwar Dayal was also filed in case No.74/SDO(c) which was dismissed on 30.03.1993 by the then collector Gurgaon, affirming the order of partition dated 26.03.1992. The partition proceedings cannot be challenged in the civil court and any suit filed in this regard is liable to be dismissed summarily on this ground alone.

7. *That the plaintiffs have not come to this Hon'ble court with clean hands and they have suppressed and concealed the true and material facts from the Hon'ble court. The plaintiffs had full notice and knowledge about the partition of the suit land much before and about the partition of the land of the answering defendant with their purchaser, defendant No.8. The plaintiffs are also well aware of facts that all the persons alleged as co-sharers are in separate possession of their respective share of the suit land after partition. So in these circumstances the suit of the plaintiff is liable to be dismissed with heavy costs and they plaintiffs are not entitled for any relief in the present suit.*

7-A. That suit of the plaintiffs is bad for mis-joinder and non-joinder of necessary parties.

8. *That the simplicitor suit for declaration filed by the plaintiffs is neither maintainable nor tenable as they are neither co-sharers nor in joint possession of the land detailed in para No.1 of the plaint and the answering defendants and their purchaser, defendant No.8 are in exclusive possession of the portion of the land fallen into the share of the answering defendants in partition as per mutation No.1471. The plaintiffs have no*

> *produced and mentioned the latest jamabandi showing the actual position on the spot, which carries the presumption of truth."*

It is an admitted fact on record that the predecessor-in-interest of the respondents-plaintiffs had instituted a suit for possession bearing No.199/87/90 by way of preemption in respect of the suit land and during the pendency of the said suit filed against Indrawati a compromise Ex. PC was entered into between the parties to the *lis* and accordingly the aforementioned judgment and decree dated 1.10.1994 was passed and a decree for possession by way of preemption in respect of the suit land was passed in favour of the predecessor-in-interest of the respondent-plaintiff and against the defendant-herein. On the basis of the aforementioned judgment and decree the records of the mutation were set right vide mutation Nos. 1 and 2 dated 27.1.1995.

From the pith and substance of the pleadings as culled out in the plaint the relief sought by the plaintiff in essence was only to challenge the mutation and in order to invoke the alleged cause of action much less jurisdiction of civil court a well guarded language had been averred in paragraph 7 of the plaint.

The suit was contested by defendant Nos. 4 and 7 by taking various preliminary objections, the trial court framed as many as seven issues including the issue of relief. Issue No.3 qua maintainability of the suit was also framed. For the sake of brevity the issues are extracted hereinbelow:-

i) Whether the parties to the suit are owners in *possession of land detailed in para no.5 of the plaint as per judgment of civil suit No.199/97/90 decided on 1.10.1994 on the grounds as alleged?OPP*

ii)Whether the cancellation of mutation No.1502 entered on the basis of compromise settled in aforesaid civil suit is illegal and is liable to be set aside on the grounds as alleged?OPP

iii)Whether suit is not maintainable in the present form?OPD

iv) Whether the plaintiff has no locus standi to file the present suit?OPD

v) Whether the plaintiff has no cause of action to file the present suit?OPD

vi) Whether the suit of the plaintiff is time barred.?OPD

vii) Relief."

The trial court did not ponder on the issue of maintainability and rendered a finding on the said issue against the defendants by holding that the said issue was not pressed. In appeal the appellants-defendants had specifically raised a ground No.2 by challenging the finding rendered by the trial court on issue Nos. 3 to 5. The trial court was enjoined upon an obligation to ponder upon the maintainability of the issue by referring to respective submissions of the learned counsel for the parties before the Court.

The provisions of Section 158 of the Act are extracted hereinbelow:-

Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue-officers: -*Except as otherwise provided by this Act-*

(1) a Civil Court shall not have jurisdiction in any

matter which the [1][State Government] or a Revenue-officer is empowered by this act to dispose of or take cognizance of the manner in which the [1][State Government] or any revenue-officer exercises any powers vested in it or him by or under this Act; and in particular--

(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely: -

(i) any question as the limits of any land which has been defined by a revenue-officer as land to which this Act does or does not apply;

(ii) any claim to compel the performance of any duties imposed by this Act or any other enactment for the time being in force on any Revenue-officer as such;

*(iii) any claim to the office of kanungo, [1][*] or village-officer , or in respect of any injury caused by exclusion from such office, or to compel the performance of the duties or a division of the emoluments thereof ;*

(iv) any notification directing the making or revision of a record-of –rights ;

(v) the framing of a record-of-rights or annual record, or the preparation, signing or attestation of any of the documents included in such a record ;

(vi) the correction of any entry in a record-of-rights, annual record or register of mutations ;

(vii) any notification of the undertaking of the general re-assessment of a district or tahsil having been sanctioned by the 2[State Government] ;

(viii) the claim of any person to be liable for an assessment of land-revenue or of any other revenue assessed under this Act ;

(ix) the amount of land revenue to be assessed on

any estate or to be paid in respect of any holding under this Act ;

(x) the amount of, or the liability of any person to pay, any other revenue to be assessed under this Act, or any cess, charge or rate to be assessed on an estate or holding under this Act or any other enactment for the time being in force ;

(xi) any claim relating to the allowance to be received by a land-owner who has given notice of his refusal to be liable for an assessment, or any claim connected with, or arising out of, any proceedings taken in consequence of the refusal of any persons to be liable for an assessment under this Act ;

(xii) the formation of an estate out of waste land ;

(xiii) any claim to hold free of revenue any land, mills, fisheries or natural products of land or water ;

(xiv) the amount of, or the liability of any person to pay any fees, fines, costs or other charges imposed under this Act ;

(xv) any claim to set aside, on any ground other than fraud, a sale for the recovery of an arrear of land-revenue or any sum recoverable as an arrear of land-revenue ;

(xvi) the amount of, or the liability of any person to pay any fees, fines, costs or other charges imposed under this Act ;

(xvii) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought ;

(xviii) any question as to the allotment of land on the partition of an estate, holding or tenancy or as

to the distribution of land subject by established custom to periodical re-distribution or as to the distribution of land –revenue on the partition of an estate or holding or on a periodical re-distribution of and, or as to the distribution of land, or as to the distribution of rent on the partition of a tenancy ;

[(xviii-a) any question connected with or arising out of or relating to any proceedings for the determination of boundaries of estates subject to river action under sections 101-A, 101-B, 101-C and 101-D, respectively, of Chapter VIII] ;

(xix) any claim to set aside or disturb a division or appraisement of produce confirmed or verified by a Revenue-officer under this Act ;

(xx) any question relating to the preparation of a list of village cesses or the imposition by the [2][State] Government of conditions on the collection of such cesses ;

(xxi) any proceeding under this Act for the communication of the dues of a superior land-owner

(xxii) any claim arising out of the enforcement of an agreement to render public service in lieu of paying land-revenue ; or

(xxiii) any claim arising out of the liability of an assignee of land-revenue to pay a share of the cost of collecting or re-assessing such revenue , or arising out of the liability of an assignee to pay out of assigned land-revenue, or of a person who would be liable for land-revenue if it had not been released, compounded for or redeemed to pay on the land-revenue for which he would but for such release, composition or redemption be liable, such a percentage for the remuneration of a 3[ ] village officer as may be prescribed by rules for the

time being in force under this Act."

From the perusal of the provisions of Section 158, it is evident that the civil court does not have jurisdiction in respect of matter where mutation has been challenged but not title. The revenue court is empowered to dispose of or by taking cognizance of the matter in which the State Government or any Revenue Officer exercises any powers vested in it or him by or under this Act. Since as per case set out by the respondents-plaintiffs that mutation dated 27.1.1995 entered in their favour was suo motu cancelled by the revenue officer, the remedy, if any, for the respondents-plaintiffs was to challenge the order by filing an appeal before the Collector under Section 13 of the Act and so on so forth by availing the remedies provided under the Act, whereas, the respondents-plaintiffs had already been declared owners by a decree in a preemption suit. There was no occasion for the respondent-plaintiff to file second suit claiming declaration though as per the respondents-plaintiffs the appellants-defendants were not the parties in the previous suit. The decree dated 1.10.1994 was not in personam and therefore the claim for declaration declaring them owners in possession in the second round of litigation by filing a suit in 2004 was not maintainable and, as already observed above, the respondents-plaintiffs are well within their rights to challenge the order suo motu cancelling the mutation on the grounds available to them.

The aforesaid view has already been endorsed by a Division Bench of this Court **Fauja Singh Vs. Pritam Singh 1993 (2) RRR 640, Jagga Singh Vs. Surjeet Singh and others 2000 (3)**

RCR (Civil) 52 and Harjinder Singh Vs. Kesar Singh and others 2014 (2) PLR 188 wherein it has been held that remedy, if any, for the parties who were affected by the order passed by the revenue authorities was to challenge the order and not to invoke the jurisdiction of the civil court.

Since it has been held that the suit of the respondents-plaintiffs was not maintainable as civil court did not have a jurisdiction to try and decide, the challenge to the mutation therefore the judgment and decree passed by the trial court as well as the appeal whereby the appeal of the appellants-defendants has been dismissed, is set aside.

The question of law is thus answered in favour of the appellants-defendants and against the respondents-plaintiffs. The impugned judgment and decree of the court below are set aside.

Accordingly, the appeal is allowed.

Decree sheet be prepared.

(AMIT RAWAL)
JUDGE

February 13 , 2015
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