

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

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RSA No.2635 of 2012 (O & M)

Date of Decision:16.11.2015

Gulzara Singh (deceased) th.LRs

....appellants

Versus

Brij Raj Singh and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

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

Present: Mr.R.S.Rana, Advocate
for the appellants

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiffs was dismissed by the trial Court vide judgement and decree dated 20.02.2006. As even the appeal preferred against the said decree failed and was dismissed vide judgement dated 02.12.2011, plaintiffs are before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiffs, under Order 1 Rule 8 of the Code of Civil Procedure (CPC), they prayed for a declaration that the plaintiffs as also the persons mentioned in the list attached, were owners/co-sharers in possession of a land measuring 15842 kanals 1 marla, along with the defendants, and thus, had a right to cut grass, take timber and wood of the trees and graze their cattle in the suit land. A decree for injunction was also claimed restraining the

defendants from interfering in cutting the grass, taking timber and grazing the cattle in the suit property by the plaintiffs and also from alienating the same in any manner. It was maintained that the suit property as also the land in lieu of which the same was allotted, was joint between the predecessors-in-interest of the parties. The suit land was Shamlat Deh Mustarka Malkan Hasab Rasad Khewat. Defendants and their predecessors-in-interest, in connivance with the revenue officials, managed to have the names of the plaintiffs and their predecessors-in-interest removed from the revenue record. But despite that plaintiffs have been cutting the grass and grazing their cattle in the suit property along with the defendants without any interference. For, in the last two months, defendants denied that the plaintiffs had any right in the suit land and also obstructed the plaintiffs from free and full enjoyment of their rights, thus the suit.

In defence, it was pleaded, inter alia, that the suit was barred under Section 11 CPC, in view of decision of Civil Suit No.189/79, decided on 19.12.1980, Civil Suit No.1/1946 decided on 21.03.1947, Civil Appeal No.325/47 decided on 28.02.1948, RSA No.957/51 decided on 24.04.1952 and Civil Suit No.532/90 decided on 27.10.1993. Further, plaintiffs had failed to comply with the provisions of Order 1 Rule 8 CPC, which were mandatory in nature. It was denied that the plaintiffs and the persons mentioned in the list were either the owners or in possession in any capacity over the suit property or a part thereof. Suit was alleged to be barred by time. In fact, defendants filed a counter claim, and claimed themselves and the persons named in the list attached to be the owners in

possession of a land measuring 16256 kanals 15 marlas as described in the headnote of the plaint. Accordingly, injunction was claimed restraining the plaintiffs from causing any interference in possession of the defendants.

On a due and comprehensive consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that the plaintiffs themselves had brought on record a copy of jamabandi for the year 1991-92 (Ex.P3), which revealed that the defendants and the persons shown in the list against whose interest the suit was filed, were indeed owners in possession of the suit property. Names of the plaintiffs and other persons, for whose benefit the suit was instituted, were not reflected in the column of ownership in the jamabandi for the year 1991-92. Likewise, plaintiffs had tendered in evidence, a copy of Khatauni Paimaish (Ex.P4), jamabandi for the year 1911-12 (Ex.P5), Misal Hakiat for the year 1912-13 (Ex.P6), copy of jamabandi for the year 1919-20 (Ex.P7), copy of jamabandi for the year 1938-39 (Ex.P8), copy of jamabandi for the year 1961-62 (Ex.P9), copy of jamabandi for the year 1966-67 (Ex.P10), copy of jamabandi for the year 1971-72 (Ex.P11), copy of jamabandi for the year 1981-82 (Ex.P12), copy of jamabandi for the year 1986-87 (Ex.P13), copy of jamabandi for the year 1991-92 (Ex.P14), copy of jamabandi for the year 1996-97 (Ex.P15), copy of jamabandi for the year 1956-57 (Ex.P17) and copy of mutation No.534 (Ex.P16), and an analysis of these documents proved that neither the plaintiffs nor the persons for whose benefit the suit was filed, had anything to do with the suit land. Undoubtedly,

the jamabandis carried the presumption of truth, but nothing was brought on record by the plaintiffs to rebut the said presumption. Plaintiffs failed to show that they indeed had any right, title or interest in the suit land. Likewise, no evidence was led to prove that the predecessors-in-interest of the plaintiffs and the persons for whose benefit the suit was filed, were the co-owners in joint possession of the suit land. Accordingly, plaintiffs had no right to cut grass, take timber wood and to graze their cattle in the suit land. Even otherwise, evidence on record showed that the question involved for determination in the present suit was directly and substantially in issue even in the earlier suits between the predecessors-in-interest of the plaintiffs and predecessors-in-interest of the defendants. And as the matter was finally adjudicated upon by the courts of competent jurisdiction, thus, the present suit was barred by the principle of res judicata. Further, predecessors-in-interest of the parties have been in litigation since 1945 and thus, it was well within the knowledge of the plaintiffs as also their predecessors-in-interest that defendants were shown as owners of the suit property. Thus, plaintiffs ought to have assailed the entries in the record of rights in favour of the defendants and claimed an appropriate declaration within three years from the date the cause of action had accrued to them. Therefore, the present suit that was filed in the year 1995, was apparently barred by time. As defendants and the persons mentioned in the list, against whose interest, the suit was filed were found to be owners in possession of the land, the counter claim filed by the defendants was decreed and resultantly, the plaintiffs were restrained from causing

any interference in possession of the defendants or cause their dispossession.

Learned counsel for the appellants could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality. No argument at all was advanced.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

16.11.2015
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(ARUN PALLI)
JUDGE