

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

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Regular Second Appeal No.3186 of 2012 (O&M)
Date of Decision: September 04, 2015

Jaspreet Singh and others

...Appellants

Versus

Chatin Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Mohinder Singh Joshi, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the judgments and decree passed by the Courts below, whereby the suit preferred by the appellants-plaintiffs for possession and permanent injunction with regard to land comprising Killa No.665/20 measuring 1 bigha 1 biswa pukhta as per entries in the jamabandi for the years 1993-94, situated at village Bhambabadi, Tehsil and District Sangrur, stands dismissed by Civil Judge (Senior Division), Sangrur on 16.04.2004 and appeal preferred against the same was dismissed on 28.02.2012 by the Additional District Judge, Sangrur.

2. It is the contention of the counsel for the appellants-plaintiffs that as per the sale deed No.1625 dated 16.12.1957 registered on 24.12.1957, the predecessor-in-interest of the appellants-plaintiffs purchased 17 bighas and 1 biswa pukhta of land. Till the year 1994, neither the appellants-plaintiffs nor the father of the respondents-defendants got the mutation entered on the basis of their sale deeds. The mutation was got entered on 15.12.1974. The Khasra numbers were mentioned in the resolution of allotment No.121. During consolidation proceedings, new

Khasra numbers were carved out from the old Khasra numbers and consequently the appellants-plaintiffs were allotted land comprising Khasra No.665//18/2-9, 20/3-8, 21/3-10, 22/6-3, 23/1-3 total 17 bigha 1 biswa by mutation No.621. Assertion has been made that before preparation of the jamabandi for the year 1978-79, mischief was played by the Patwari by making overwriting of Khasra No.665//20/3-8 and made it 665//20/2-7 in the mutation sheet of mutation No.621. Because of this overwriting/cutting, area of the appellants-plaintiffs was shown as 15-12 instead of 16-13, which resulted in reduction of the land measuring 1 bigha and 1 biswa pukhta in the revenue records. It is alleged that this cutting was done in order to give undue advantage to the respondents-defendants father of the respondents-defendants had purchased land measuring 13 kanals and 7 marlas as per mutation No.634 and the Revenue Patwari simultaneously made overwriting therein and made entry of Khasra No.627//20/1-11. Counsel contends that the findings recorded by the Courts below that the cutting/overwriting made in the mutation was at the time of the sanction of the same and not subsequent thereto, cannot sustain. He further states that the Courts have erred in holding that since there is no suit for declaration of title and only relief of recovery of possession of the suit property has been claimed, the suit cannot be maintainable and further the dismissal of the suit on the ground that it is barred by time cannot be sustained in the light of the fact that the issue of title is involved in the present case for which there is no limitation period prescribed.

3. I have considered the submissions made by the counsel for the appellants-plaintiffs and have gone through the judgments passed by the Courts below.

4. The assertions of the counsel for the appellants-plaintiffs that the cutting has been made subsequent to the sanction of the mutation No.621 by some Patwari to give undue advantage to the respondents-defendants cannot be accepted as there is no evidence on record to prove such an assertion, in fact, the conclusions, as has been drawn by the Courts below are on the basis of due consideration of the evidence that the cutting has been made at the time of sanction of the mutation and not subsequent thereto and thus, cannot be faulted with.

5. It is not disputed by the counsel for the appellants-plaintiffs that the suit was filed for recovery of possession of the suit property and for permanent injunction and, therefore, the period of limitation has to be calculated on that basis. No declaration of the title has been sought for.

6. Perusal of the record indicates that both the parties are claiming title and as a matter of fact it is admitted by the appellants-plaintiffs that the possession is with the respondents-defendants and the revenue record also indicates the title in favour of the respondents-defendants. The findings and the conclusions returned by the Courts below that the relief of recovery of possession sought for without a prayer for declaration of the title is legally not sustainable as there is a serious dispute with regard to title of the property which issue has not been agitated in the suit nor have the pleadings been amended for the said purpose cannot be faulted with.

7. The conclusion drawn by the Courts below that the suit is time barred also cannot be said to be wrong as the mutations were sanctioned in the year 1975 and the appellant-plaintiff Gurnam Singh while appearing as PW-4 has admitted in his cross-examination that he had knowledge of the cutting from the day when the cutting was made, which would mean that he

had come to know about the said alleged tampering of record in the years 1978-79 when the jamabandi was prepared, whereas the suit has been filed in the year 1999 after a period of 20 years from the date of knowledge of the alleged cutting. As per law of limitation, the suit ought to have been filed within a period of three years from the date of knowledge of the alleged cutting in the revenue record.

8. In view of the above, none of the contentions as raised by the counsel for the appellants-plaintiffs are found to be of such a nature which would call for any interference by this Court.

9. Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

10. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

11. In view of the dismissal of the appeal itself, all the pending applications stand disposed of.

September 04, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE