

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

Regular Second Appeal No.1792 of 2015 (O&M)

Date of decision: **27.08.2015**

Harnek Singh

... Appellant

versus

Baldev Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vikas Singh, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J.

CM No.4826-C of 2015

For the reasons stated in the application, delay in refiling the appeal is condoned.

Application stands disposed of.

Regular Second Appeal No.1792 of 2015

1. The plaintiff is the appellant before this court. He had filed a suit in a representative capacity on behalf of all the proprietors of the village seeking for annulling the Mutation No.968 of village Aujhan, sanctioned on 13.03.1981 in favour of the

defendants to a land measuring about 28 kanals 6 marlas was wrong in law and the plaintiff must be declared as the owners. The suit was made on the basis that in the year 1955-56, the property had been shown as Shamlat deh Hasab Rasad Jar Khewat of the village Aujalan and the plaintiff had suffered cut in their personal holdings on account of creation of certain common lands and the property shown in suit had been entered to the proprietors of the village in which the plaintiff had a share along with several other proprietors. The plaintiff was literally trying to assail several orders that had been passed in between particularly a transaction of purchase by the defendant on 19.12.1967, on the basis of which, the entries had been corrected and mutated in favour of the defendants. The transactions relating to the assertion relied on by the defendants were that the property belonged to Norata, Chetu and Babu from Angrej Kaur along with their share shamlat deh. The sale deed itself contained reference to Burdi and Bramdi lands which referred to alluvion and diluvion where the properties were adjoining a river and properties which were subject to such river action were entered in the records as belonging to shamlat deh but the ownership stood actually with persons who obtained the benefit of alluvion. The defendants also brought to record of courts that when the entries were mutated in favour of the village council, the defendants had challenged the same and obtained originally a mutation in their names on

26.06.1976 and when this was modified in the name of the Nagal Palika Kharar, they had challenged the order passed by the Collector on 12.09.1977 and this was set aside by the higher authority and sent back for fresh consideration under Section 15 of the Land Revenue Act. The order was passed ultimately on 13.03.1987 recognizing the plaintiffs as the owners to the property and the jamabandis had been duly in their names even in the year 1977-78. There were proceedings under Section 145 before the Executive Magistrate with reference to possession of this land and the plaintiff had given evidence against the defendants in the proceedings that took place in the year 1985. The plaintiffs therefore knew that their right was being denied and the defendant was asserting right to the property through a transaction in the year 1967 and the Nagar Palika itself engaged the defendants in disputes before the Revenue Authorities and the Revenue Authorities had recognized the defendants' right.

2. The trial Court, on the basis of documents filed, held that even the reference to the property as shamlat deh ought to also secure a proof on the plaintiffs that they and their predecessors had suffered any proportionate cut in respect of holdings and a mere entry will not prove their ownership. The court also took note of the fact that the defendants had secured their rights, established through appropriate proceedings before the Revenue Authorities and the plaintiffs knew about the same even when there were proceedings

before the Executive Magistrate. The suit was consequently dismissed. The same reasoning applied by the appellate court also.

3. The learned counsel appearing on behalf of the appellant would only contend that a property which is entered in the revenue records as Shamlat deh Hasab Rasad Jar Khewat would be a prima facie proof of their own entitlements as proprietors and the defendants cannot have any benefit by the wrong mutation that had been made even the year 1971 or 1974 or as approved in the subsequent orders in the year 1987. I think the claim of the plaintiffs itself is staved if the defendants have obtained modification of entries through a purchase of the year 1967 through orders passed by authorities originally on 17.09.1974 or mutation carried out on 01.11.1974. The earliest objection had come from the Nagar Palika and the mutation was sanctioned after objections on 13.03.1981 and it was stood through an ultimate order passed in the year 1987. The plaintiff himself was aware of the proceedings and the proceedings before the Executive Magistrate would show that the plaintiff was confronted even as a witness to proceedings issued by the Revenue Authorities and the mutations effected in the names of the defendants. The plaintiff's right in the property had been denied as early as in the year 1974 and their attempt to claim possession and through a disturbance caused when the Executive Magistrate passed an order must itself be taken as starting point when the right was

asserted. This is not to state that the proceedings under Section 145 will govern the civil rights of parties, but however it will be relevant for establishing the starting point of limitation for considering when plaintiff's right was denied. If the defendants had been asserting their right to possession in the property by the purchase and by virtue of mutation entries which had been made, the plaintiff cannot have a declaration that the mutation made in the year 1974 or still later confirmed by sanction orders be rendered void by a suit. The suit is without any merit. The plaintiff was seeking for a declaration in a round about way of what they could have succeeded in a straightforward fashion. If the defendants' possession had been held from the year 1967 from the date of purchase, they cannot have a suit for challenging the mutation made earlier to be the basis for asserting right to the property. The two courts below had correctly dismissed and I find no reason for interference in the second appeal. The second appeal is dismissed as involved no substantial question of law.

(K.KANNAN)
JUDGE

27.08.2015
sanjeev