

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4536 of 2014 (O&M)

Date of Decision.15.12.2015

Municipal Council, Amloh Road, Khanna through its Executive Officer

.....Appellant

Vs.

Didar Singh and others

.....Respondents

Present: Mr. Sandeep Kumar, Advocate for
Mr. J.S. Toor, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. Delay of 78 days in filing the appeal is condoned.
2. The defendant is the appellant before this Court. The plaintiff filed the suit for declaration that he is the owner in possession of the property in Khasra No.66 having his ownership recognized as such and entered at the time of consolidation by order dated 10.04.1996 and he had been continued to be in possession of the same. The plaintiff's suit against the defendant was bringing incidentally a challenge to the notification issued in relation to the property recording the defendant as the owner when the limits of the Municipal Council, Khanna was extended under notification made on 23.10.1998 recording the defendant's name as owner of the property. The defendant entered a contest to contend that the suit had been barred by limitation and a notification which is made on 23.10.1998 cannot be a subject of challenge through a suit instituted in the year 2008. It was the further

contention that the Director Consolidation had no power to adjudge on title and the plaintiff cannot be conferred with title to the property by virtue of the order of the Director Consolidation.

3. The suit is for a declaration that he was the owner of the property and the plaintiff was making a reference to the fact that consolidation proceedings had been initiated by the Director Consolidation and the authorities referring to the various persons in possession and ultimately issuing orders recognizing the plaintiff as the owner in relation to the property comprised in Khasra No.66. While the Director Consolidation himself will not have any jurisdiction to decide on title, if there was a dispute, the Act contemplates a particular procedure to call for objections from persons who may be affected by any order contained in the consolidation proceedings. All official acts must be taken as duly done and the plaintiff could not have been recognized as the owner and recorded as such in the consolidation proceedings without following a procedure of allowing for any person having an interest in the property to state his objections. I would take it, therefore, that so long as there was no challenge to the proceedings initiated by the Director Consolidation and order passed by him recognizing the plaintiff as owner in possession will obtain a sure credible value for the plaintiff to sue. The dictum that the Director Consolidation cannot decide the question of title will be confined to an adjudication brought before the Director Consolidation and cannot prevail in a Civil Court where the suit is sought for a declaration of title to the property and the plaintiff is placing a reliance on the order of the Director Consolidation as a corroborative piece of evidence for his

assertion that he has been in possession of the property without any obstruction from others.

4. If the plaintiff was, therefore, pressing his own right to the property to a transaction which had taken place before the modification of the area of Municipal Council and before a notification was made, the defendant can rely on the entry recording him as an owner only if he can show independently that even prior to the date when the plaintiff was recorded as an owner in the consolidation proceedings, the defendant had held the property and the notification which was made was an affirmation of his previous holding in relation to the property. If the defendant cannot prove any document anterior in point of time to the consolidation proceedings and the order passed in favour of the plaintiff on 10.04.1996, the proceedings in the consolidation ought to prevail to dislodge the effect of an entry brought by the defendant on the basis of notification issued at the time of setting boundary for the Municipal Council, Khanna. The suit cannot be barred so long as the defendant was not able to establish his possession or claim that he had held the same adversely to the plaintiff to defeat plaintiff's right to the property by extinguishment by operation of Section 27 read with Article 65 of the Limitation Act.

5. The suit that was decreed by the two Courts below was on justifiable grounds and there is no merit in the second appeal brought at the instance of the defendant. The second appeal is dismissed.

(K. KANNAN)
JUDGE

December 15, 2015
Pankaj*