

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

RSA No.2121 of 2012 (O&M)

Date of decision : 20.10.2016

Shamlat Thola Chandan (HASAB RASAD RAKBA KHEWAT), Village  
Kharak Ramji, Tehsil and District Jind

...Appellant

Versus

Gram Panchayat, Village Kharak Ramji, Tehsil and District Jind

..Respondent

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.**

Present: Mr. A.K. Kansal, Advocate for the appellant.

Mr. Arvind Chauhan, Advocate for respondent.

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**AMIT RAWAL, J. (Oral)**

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby judgment and decree of the trial Court dated 19.11.2010 decreeing the suit by granting the declaration that mutation No.1857 dated 29.07.2005 in respect of land measuring 30 kanals 19 marlas comprised in Khewat No.339, Khatoni No.444 Rect. No.167(9-3), 168 (21-16) situated in revenue estate of Village Kharak Ramji Tehsil and District Jind as per jamabandi for the year 1999-2000 mutated in the name of defendant and the order of Collector, Sub Division, Jind dated 17.06.2008 passed in appeal No.17 of 08.01.2007 being illegal, null and void, has been reversed.

Mr. A.K. Kansal, learned counsel appearing on behalf of

appellant-plaintiff submits that mutation on the basis of certain orders by the Financial Commissioner was wrongly effected in the name of Gram Panchayat as it was passed at his back, whereas, there is already a finding in favour of appellant in Civil Suit No.41/ACIG passed by the Assistant Collector, IInd Grade, Jind titled as Shamlat Thola Chandan Vs. Gram Panchayat of Village Kharak Ramji etc. vide which the appellant was accorded the status of ownership. The lower Appellate Court on the basis of the judgment rendered in ***Jai Singh Vs. State of Haryana, 1995(1) RRR 623***, dismissed the suit, whereas the said judgment was set aside by Hon'ble Supreme Court and matter was remitted back to the High Court. The judgment came to be passed in the year 2003 i.e. 13.03.2003 wherein as per the ratio decidendi culled out in principle No.(iii) in para No.62, land contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceeding, not earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and entered in the column of ownership as Jumla. Mustarka Malkan Wa Digar Haqdarani Hasab Rasad Arazi Khewat, shown in the column of possession, with the proprietors, shall not vest with the Gram Panchayat. Moreover, the judgment and decree of the lower Appellate Court based upon misreading and misconstrual of the documentary evidence.

Per contra, Mr. Arvind Chauhan, learned counsel appearing on behalf of respondent-defendant, submits that judgment and decree rendered by the lower Appellate Court was based on the earlier decision rendered by this Court in Jai Singh's case is not disputed.

I have heard learned counsel for the parties and appraised the paper book and of the view that findings rendered by the lower Appellate Court is not sustainable in the eyes of law in view of the principle No.(iii) in para No.62, which reads as under:-

*“62 (iii) the lands which have been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceeding and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and entered in the column of ownership as Jumla. Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat and in the column of possession with the proprietors shall not vest with the Gram Panchayat or the State Government, as the case may be, on the dint of Sub-section (6) of Section 2(g) and the explanation appended thereto or any other provisions of the Act of 1961 or the Act of 1948”*

Even otherwise on the basis of the evidence, Assistant Collector, IInd Grade, Jind vide order dated 29.03.1985 had accorded the status of the appellant of the ownership, therefore, cannot be dispossessed in the manner and mode as adopted. Declaration was only with regard to the mutation and the subsequent order challenging the mutation passed by the revenue authorities which resulted into filing of the suit. Mutation does not confer title to the Gram Panchayat.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in ***Pankajakshi (dead) through LRs and others Vs. Chandrika and***

***others AIR 2016 SC 1213***, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in ***Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262*** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 – 29]”*

*“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the*

*Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”*

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

Accordingly, judgment and decree of the lower Appellate Court is set aside and that of the trial Court is restored.

Suit of the appellant-plaintiff is decreed.

Accordingly, present appeal is allowed.

**20.10.2016**

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**(AMIT RAWAL)  
JUDGE**

**Whether speaking/reasoned:-**

**Yes/No**

**Whether reportable:-**

**Yes/No**