

RSA No.2731 of 2012 (O&M)

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

RSA No.2731 of 2012 (O&M)

Date of decision:27.08.2016

Satbir and others

... Appellants

Vs.

Ram Niwas and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun Jain, Senior Advocate with
Mr. Kanwarbir Sidhu, Advocate
for the appellants.

Mr. J.S.Ghuman, Advocate
for respondents No.1 to 13.

AMIT RAWAL J. (Oral)

C.M.No.7378-C-2012

The application is allowed, subject to all just exceptions. Legal representatives of Hardwari and Imrat, as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

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Appellant-plaintiffs are aggrieved of the dismissal of the suit by both the Courts below on the two grounds, i.e., limitation and jurisdiction of the Civil Court.

Mr.Arun Jain, learned Senior Counsel assisted by Mr. Kanwarbir Sidhu, Advocate appearing on behalf of the appellants submits that declaration with regard to mutation entered on 20.09.1955 was

challenged by filing the suit on 08.04.2002. The Courts below have dismissed the suit as noticed above on the ground that the appellants should have gone to the revenue Court for entry of *fard badar*. In support of his contention, he relies upon the provisions of Section 45 of Punjab Land Revenue Act to contend that remedy, if any, is only civil suit. For the purpose of limitation, he relies upon the Division Bench judgment of this Court rendered in **Ibrahim alias Dharam Vir vs. Sharifan alias Shanti 1979 PLJ 469** to contend that entry of mutation would not give a right to the party for filing the suit, in essence, limitation would not reckon from the date of entry of mutation but it is only when the title is under cloud or possession is threatened and thus, urges this Court that it is a fit case which should have been remanded back to the Lower Appellate Court by formulating the following substantial questions of law:-

“i) Whether the judgments and decrees of both the Courts below in non-suiting the appellants vis-a-vis jurisdiction of the Civil Court by ignoring the provisions of Section 45 of Punjab Land Revenue Act are sustainable in the eyes of law or not?

ii) Whether the suit could have been thrown out on the ground of limitation?”

Mr. J.S.Ghuman, learned counsel appearing on behalf of respondents No.1 to 13 submits that the limitation would start from 1951, when the possession is of the defendants and therefore, the factum of mutation was in the knowledge of the plaintiffs and they cannot take the benefit of the judgment referred (supra). Nothing prevented the plaintiffs to

approach the revenue Court for correction of *fard badar* and thus, submits that there is no illegality and perversity in the findings rendered by both the Courts below as no substantial question of law arises for adjudication of the present appeal.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below.

For the sake of brevity, the provisions of Section 45 of Punjab Land Revenue Act read thus:-

“45. Suit for declaratory decree by persons, aggrieved by an entry in a record: - If any person considers himself aggrieved as to any right of which he is in the possession by an entry in a record-of-rights or in an annual record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877.”

The plain and simple reading of the aforementioned provisions, leave no manner of doubt that if a person is aggrieved with regard to entry, the remedy is to seek a declaration in civil court. The findings of both the Courts below, in my view, are not sustainable in law, particularly that of the Lower Appellate Court being the last Court of facts and law. In view of the ratio decidendi culled out by this Court in Ibrahim's case (*supra*), the limitation would not reckon from the date of entry of mutation but it has to start from the date of threat of dispossession or cloud on the title. Mr. Jain submits that it is a case of joint possession and entry would not give a cause of action to file the suit. It is only threat to dispossess and the suit

aforementioned was filed. I am in agreement with the aforementioned ratio decidendi culled out by this Court. This aspect has not been noticed by the Lower Appellate Court.

For the foregoing reasons, the judgment and decree of the Lower Appellate Court is hereby set aside and the matter is remitted back to it to decide the appeal afresh on merits in view of the observations given hereinabove. The aforementioned substantial questions of law are answered in favour of the appellants and against the respondents.

The parties through their counsels are directed to appear before the Lower Appellate Court on 30.09.2016.

It is expected that as litigation is quite old, the Lower Appellate Court shall decide the appeal as expeditiously as possible preferably within a period of eight months from the date of a receipt of certified copy of this order.

Accordingly, the appeal stands disposed of.

The original record be also sent back to the Court below.

(AMIT RAWAL)
JUDGE

August 27, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No