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

**RSA No. 5411 of 2012 (O&M)
Date of decision : 04.05.2016**

Mahender and others

... Appellants

Versus

Paras Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashwani Bakshi, Advocate
for the appellant.

Mr. Surya Parkash, Advocate
for the respondent(s).

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?

AMIT RAWAL, J. (ORAL)

The appellants-plaintiffs are aggrieved of the impugned judgment and decree rendered by both the Courts below whereby the suit challenging the mutation bearing No.2403 dated 22.04.1994 (Ex.P-14) and subsequent mutations which according to the plaintiffs had not been passed in terms of the compromise dated 25.11.1987 passed by this Court in RSA No. 218 of 1982.

Mr. Ashwani Bakshi, learned counsel appearing on behalf of the appellants-plaintiffs submits that the land measuring 253 kanals 10 marlas was owned by Haria Singh and Tek Chand in half share each. Tek Chand was issueless and he suffered a decree dated 20.05.1972 in favour of the plaintiffs

and defendants, vide which his half share was divided in equal shares. The mutation was entered into, however, in the year 1979, Tek Chand challenged the aforementioned decree and the suit was dismissed by the trial Court. However, the lower Appellate Court reversed the findings and the matter reached this Court vide RSA No.218 of 1982. During the pendency of the aforementioned regular second appeal, a compromise was arrived at and the RSA was disposed of in terms of the compromise. The decree sheet was prepared and as per the decree sheet, land measuring 56 kanals 17 marlas i.e. half share of Tek Chand from 253 kanals 10 marlas, was ordered to be mutated in favour of the respondent(s)-defendant(s), whereas other half share in favour of the appellant(s)-plaintiff(s). However, as per the mutation bearing No. 2403 dated 22.04.1994, the half share of total holding i.e. 253 kanals 10 marlas has been mutated in favour of the respondent(s)-defendants. He submits that the aforementioned mutation was challenged by filing the present suit, however, the record of this Court was sought to be summoned and report came that the record was burnt. The miscellaneous application was moved in the aforementioned pending appeal and this Court ordered for seeking report of the District and Sessions Judge, Sonapat with regard to the authenticity and veracity of the document and the District Judge reported that the documents were genuine. However, this Court while deciding the miscellaneous application with regard to the reconstruction of the record gave the finding that the mutation bearing No.2403 has been entered into as per the decree and therefore, there was no need of reconstruction of the record. He submits that the trial Court on the basis of the order passed by this Court on 03.07.2009 which were obiter in nature, dismissed the suit and so was fate in the lower

Appellate Court. He submits that the finding rendered in the application seeking reconstruction of the record treated as “OBITER”. In support of his contentions, he relies upon the Division Bench judgment of this Court rendered in “Amar Nath V/s The Financial Commissioner, Taxation, Punjab and others”, 1979 PLR 47 and as well as the judgment of Larger Bench of this Court rendered in “Mihan and another V/s Inder and another”, 2008(3) RCR (Civil) 124, to contend that the “Obiter Dictum as distinguished from the “Ratio Decidendi” is an observation by this Court on a legal question suggested in a case, before it, but not arising in such a manner as required a decision, such obiter would not be a binding precedent. Even, the finding rendered with regard to the effecting the mutation as per the consent decree was not correct as the mutation itself reveals only half share of the total land holding i.e. 253 kanals 10 marlas has been mutated, whereas it should have been 56 kanals 17 marlas, thus, urges this Court to formulate the following substantial questions of law:-

1. Whether the observation given by this Court in the order dated 03.07.2009 in miscellaneous application No.10635-C of 2004 and 2768-C of 2004, where a prayer was made for reconstruction of the record qua entry of the mutation would be treated a “Ratio Decidendi” or “Obiter Dictum” and would not have binding precedent.
2. Whether the Courts below were required to pass the judgment and decree on the basis of the independent both oral and documentary evidence uninfluenced with the findings rendered in the order aforementioned dated 03.07.2009.

Mr. Surya Parkash, learned counsel appearing on behalf of the respondent(s)-defendant(s) submits that the judgment and decree has not been

proved on record in view of the order dated 03.07.2009, and therefore, the authenticity and veracity of the aforementioned judgment and decree was surrounded by the suspicious circumstances and the report of the District Judge, Sonapat cannot be looked into. He further submits that the observations given by this Court in the application, aforementioned, for the purpose of reconstruction of the record is perfectly legal and justified. The lower Appellate Court did not have any occasion except to return finding, in essence, the order dated 03.07.2009 had a binding effect on the Courts below. He further submits that the appellant(s)-plaintiff(s) in the cross-examination admitted the statement suffered in the earlier litigation that he had no concern with the property, therefore, the suit has rightly been dismissed, thus, urges this Court for affirming the findings, under challenge, as no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and substance in the submission of Mr. Ashwani Bakshi. A translated copy of the mutation (Ex.P-14) has been handed over during the course of arguments, which reads thus:-

"In General meeting Paras Ram one of the receivers of the ownership and possession along with identifier Harbans Lal Numberdar come present in the general meting transfer of ownership and possession admitted correct by order of High Court and for transfer of ownership and possession in compliance of judgment and decree passed by Hon'ble Punjab and Haryana High Court by M.R. Agnihotri, Judge on dated 25.11.1987 has entered. Copy of the judgment and decree after perusal is annexed with the mutation of transfer of ownership vide order of

Court bearing Khatas and Jamabandi No.68/156 to 159, 69-169/382 to 385 respectively area of which 169-0, 4-0, 80-10 = 253-10 half of which is 126-15 from Mahenderpal, Rishi Raj, Anil, Mukesh, Ramesh every 5 in equal share in favour of receivers Paras Ram, Sahi Ram in equal share. The mutation of ownership and possession is sanctioned as per present situation.

*AC IInd Grade,
Ganaur"*

On bare perusal of the same, the half share of Tek Chand i.e. in respect of the land out of 253 kanals 10 marlas, the land measuring 126 kanals 15 marlas have been transferred/mutated in favour of the defendants, whereas, according to compromise, should have been only 56 kanals 17 marlas. The finding rendered by this Court on 03.07.2009 with regard to the mutation having been effected as per the compromise decree dated 03.12.1987 passed in RSA No.218 of 1982, endorsing the factum of the decree that half share had been transferred, in my view, "Obiter Dictum" and but not "Ratio Decidendi" as per the findings culled out in the judgments cited supra. It is a settled law that once, the matter was *sub judice* before the trial Court, this Court while dealing with the prayer for reconstruction of the record ought not to have adjudicated upon the merits and demerits of the matter. It was required to be confined only with regard to the reconstruction of the record as valuable right of party would be taken away and the decision on the suit would be a total futile exercise. For the sake of brevity, the finding rendered by this Court in the miscellaneous application seeking reconstruction of the record reads thus:-

"The present case, i.e. RSA No.218 of 1982 was decided on the basis of a compromise entered into between the parties, i.e. Paras Ram and Sahi Ram sons of Jiai Lal on the one

hand and Mohinder Pal, Rishi Raj and Anil, Mukesh and Ramesh sons of Haria on the other. The only record which is relevant in the present case is the consent decree dated 03.12.1987 passed by the High Court in RSA No.218 of 1982. On the basis of said decree mutations have duly been sanctioned. I have carefully perused mutation No.2403 dated 22.04.1994, which clearly shows that mutation is being sanctioned on the basis of the judgment and decree of the High Court of Punjab and Haryana passed by Hon'ble Mr. Justice M.R. Agnihori. The mutation also categorically states that the same is being sanctioned in the presence of Harbans Lal, Lambardar and also in the presence of Mohinder Pal, Rishi Raj, Anil, Mukesh and Ramesh and in the presence of Paras Ram and Sahi Ram. Mutation no.2403 was entered on 17.02.1994 by the Patwari and was accepted by the Assistant Collector IIInd Grade, Ganaur vide order dated 22.04.1994. Thus, from the aforementioned document it is clear that the entire decree as passed by the High Court in RSA No.218 of 1982 dated 03.12.1987, has duly been incorporated in the mutation. Mohinder Pal etc. who were the respondents in the aforementioned RSA had duly acted upon the comprise decree of the High Court for more than 17 years. It is only in the year 2004, after they realized that the records have been burnt in a fire in the High Court that they filed the present application in the year 2004 for reconstruction of the record. It is clear that they are obviously trying to take undue advantage of the destruction of record and are trying to create a false and fictitious record for ulterior motive. Even the report of the District Judge also cannot be relied upon as no original or attested copies of the High Court were produced, but only true copies by the counsel were produced.”

The trial Court and the lower Appellate Court had blindly taken into consideration the observations without referring to the oral and

documentary evidence, much less, contents of the mutation which has been proved vide Ex. P-14. The attenuating circumstances of the order *ibid* of this Court dated 03.07.2009 also reveal that both the parties were *ad idem* with regard to the compromise decree only fact remained that the certified copies were not available on record.

There is no force in the submission of Mr. Surya Parkash that the compromise has not been proved, for, this Court in order dated 03.07.2009 has endorsed the factum of the compromise. Even, the defendants did not dispute before this Court, when the application for reconstruction of the record was moved that they were get only half share of Tek Chand. It was not the case of the defendants that they had got half share of the entire shares holding i.e. 256 kanals 10 marlas.

In view of the foregoing reasons, the impugned judgment and decree, under challenge, rendered by both the Courts below are hereby set aside. The suit is decreed. Substantial questions of law as noticed above are answered in favour of the appellant(s)-plaintiff(s) and against the respondent(s)-defendant(s).

With the aforesaid observations, the appeal is allowed.

04.05.2016
yogesh

(AMIT RAWAL)
JUDGE