

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1048 of 2015(O&M)
Date of decision : March 22, 2016

Gurmukh Singh

..... Appellant

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Inderjit Sharma, Advocate
for the appellant.

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).
CM No. 3126-C of 2015

This is an application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 49 days in filing the appeal is condoned.

The application stands disposed of.

RSA No. 1048 of 2015(O&M)

The appellant-plaintiff is aggrieved against the concurrent finding of fact whereby relief qua declaration to the effect that defendant Nos. 1 to 3 are owners of land measuring 2 Kanals 13 Marlas bearing Khasra Nos. 45R/10/1, Khewat No.275 Khatauni No.

533 as per jamabandi for the year 1987-88 situated in Village Ghuman, Hadbast No.61, Tehsil Batala and the plaintiff being in actual physical and cultivating possession over the land as gair marusi and defendant Nos. 4 to 6 namely Ujagar Singh, Balkar Singh and Avtar Singh have no right, title and interest in the land in dispute and the mutation sanctioned in favour of defendant No.4 and consequent mutation sanctioned in favour of defendant Nos. 5 &6 being illegal and null and void and get the land in dispute transferred in his favour under the Package Deal Property Act,1976 has been declined, by both the courts below.

Learned counsel appearing on behalf of the appellant submits that umpteen number of documentary evidence has been brought on record to show that prior thereto, father of the plaintiff Bakhshish Singh remained in possession, over the land in dispute during his life time thereafter on his death appellant-plaintiff came in actual, physical and cultivating possession over the land. Any entry in favour of any other person during the intervening period from 1963 upto the date of record of right in column No.4 & 5 and prepared from Khasra Girdawari or stray entries are illegal, null and void.

He further submits that at the time of partition of the country, land in dispute was declared as Evacuee property and it was earmarked for the allotment to Ujjagar Singh son of Assa Singh, whereas as per Shajra Nasab Khewat Nos. 71, 73, 81, 97 attached with the Jamabandi for village Narowal for the year 1946-47 received by Government of India from Government of Pakistan for

rehabilitation purposes grandfather's name of said Ujjagar Singh was Ganda Singh but permanent rights were not attained from the rehabilitation department by Ujjagar Singh whereas record of rights received from Pakistan Government by Government of India including the Jamabandi for the year 1946-47 clearly shows name of displaced person as Vir Singh, Fateh Singh, Ujjagar Singh, Pritam Singh son of Assa Singh in half share and Khera Singh, Karam Singh son of Wasawa Singh qua remaining half share. Semi allotment was made in favour of grandfather of Ujjagar Singh. During the consolidation operation, land in dispute was allotted in lieu of the land bearing Khasra No.471 min situated in Village Ghoman Tehsil Batala as semi allottee. The entry in the settlement record regarding allottee is illegal and un-lawful and unjustified. Both the courts below have heavily relied upon the judgment and decree dated 19.4.1990 and as well decree dated 9.3.1992 which were simpliciter suit for permanent injunction against defendant Nos. 5 and 6. The present suit claiming right was filed on 30.3.1993 and thus, urges this Court that these facts go to the root of the matter which have not been noticed by the courts below, therefore there is illegality and perversity in the judgments and decrees of both the courts below, thus, prays to formulate substantial questions of law for determination by this Court.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force in the substance of the learned counsel appearing on behalf of the appellant for the reason that in the earlier round of litigation, aforementioned, it has categorically been proved plaintiff being

tenant of Ujjagar Singh. In view of such status, right of declaration as an evacuee claiming ownership is not maintainable. Even otherwise, the allotment in favour of Ujjagar Singh was never challenged and the subsequent suit is hit by Order 2 Rule 2 CPC even if injunction was sought. The finding with regard to the plea viz-a-viz possession in the earlier suit, has already been arrived at that father of the defendants was in possession and not father of the plaintiff.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

March 22, 2016
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