

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

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Regular Second Appeal No.3139 of 2014 (O&M)
Date of Decision: April 01, 2016

Mahender Singh

...Appellant

Versus

Ram Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.S. Dinarpur, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the judgment and decree dated 14.12.2010 passed by the Civil Judge (Junior Division), Yamuna Nagar at Jagadhri, whereby the suit for declaration preferred by the predecessor-in-interest of the appellant namely Lal Singh claiming himself to be the owner in possession of the land measuring 31 bighas 7 biswas being 627/685 share of land measuring 34 bighas 5 biswas comprising Khewat No.49, Khatauni No.62 as further detailed in the headnote, situated at village Tejli, Hadbast No.409, Tehsil Jagadhri, District Yamuna Nagar and that the name of respondent-defendant No.1 Ram Kumar is wrongly recorded as co-sharer in this land and thus, liable to be deleted from the array of co-sharers as he has no share therein, with a further prayer that the predecessor-in-interest of the appellant namely Lal Singh is wrongly shown as owner of land measuring 17 bighas 2 biswas being ½ share of land measuring 34 kanals 9 marlas detailed above and defendant No.1 Lal Singh is wrongly shown to be in possession of land measuring 8 bighas and 11 biswas of the said land, has been dismissed both on merits and being time barred, appeal against which has also been dismissed by the

Additional District Judge, Yamuna Nagar at Jagadhri, on 19.02.2014.

2. It is the contention of learned counsel for the appellant that the total land was 62 bighas and 14 biswas, wherein Lal Singh plaintiff, predecessor-in-interest of the present appellant, was having $\frac{1}{2}$ share, Baru and Bija were jointly having $\frac{1}{4}$ th share and Lija Ram was having $\frac{1}{4}$ th share. As per the jamabandi for the years 1941-42 and 1946-47, Baru and Bija were shown as co-sharers on their own behalf and occupancy tenants on the land of Lija Ram. The land shown in their possession was 28 bighas comprising in Khatauni No.37, Kittas 11 out of the total land. On account of coming into force of The Punjab Occupancy Tenant (Vesting of Proprietary Rights) Act, 1952 (hereinafter referred to as '1952 Act'), mutation No.632 was sanctioned by the revenue authorities on 25.09.1952 and the total land measuring 28 bighas 9 biswas was recorded in the column of owners in the name of Baru son of Shibu to the extent of $\frac{1}{2}$ share and Ram Kumar, Banarsi and Phool Singh sons of Bija to the extent of $\frac{1}{2}$ share in equal shares. While doing so, share of Lal Singh plaintiff and his brother Meri was also changed in the name of Baru, Ram Kumar, Banarsi and Phool Singh. This was done under mistake because Baru and Bija were not occupancy tenants under Lal Singh and his brother Meri but were occupancy tenants only under Lija Ram. He on this basis contends that with the coming into force of the 1952 Act, the total share of Lija Ram i.e. $\frac{1}{4}$ th of the land measuring 62 bighas 14 biswas should have been mutated in the names of the occupancy tenants. The deduction from the share of Lal Singh plaintiff was, thus, incorrectly done by the revenue authorities. This mutation No.632 dated 25.09.1952 has been wrongly depicted in the

jamabandi for the year 1957-58 and a separate khewat of land measuring 28 bighas and 8 biswas was carved out exclusively in the name of the occupancy tenants i.e. Baru and the successors of Bija and a separate khewat of the remaining land out of the total land of 62 bighas and 14 biswas i.e. 34 bighas and 4 biswas was carved out in the name of Lal Singh, Bija, Baru and Lija Ram as per their respective shares. This has resulted in reduction in the share of Lal Singh as he would now be entitled to $\frac{1}{2}$ share out of 34 bighas and 4 biswas. Thus, the mutation No.632 dated 25.09.1952 cannot sustain and deserves to be set aside.

3. Counsel for the appellant asserts that there is no limitation prescribed by Article 65 of The Indian Limitation Act, 1908, for challenging the mutation for establishing the rights by an heir and, therefore, contends that the dismissal of the suit by the Courts below on the ground of limitation is erroneous. In support of this contention, he has relied upon the judgment of this Court in *Gurcharan Singh and others Versus Surjit Kaur and others* 2005(3) R.C.R.(Civil) 628. Assertion has been made that the subsequent jamabandis which are based upon mistake committed in the impugned mutation also deserve to be corrected and the suit as filed by the predecessor-in-interest of the appellant namely Lal Singh deserves to be decreed and declaration granted as prayed for.

4. I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned judgments as also the records of the Courts below.

5. There is no dispute with regard to the fact that the total land was 62 bighas and 14 biswas of which plaintiff was having $\frac{1}{2}$ share, Baru and Bija $\frac{1}{4}^{\text{th}}$ share and Lija Ram $\frac{1}{4}^{\text{th}}$ share. Jamabandi for the year

1903-1904 Exhibit D-8/A and jamabandi for the year 1929-30 Exhibit DW4/1 reveal that the occupancy tenants namely Baru and Bija were shown to be in cultivating possession of the land of all the co-sharers to the extent of 28 bighas and 8 biswas. There are two stray entries in the jamabandis for the years 1941-42 and 1946-47, where the occupancy tenants are shown to be in possession of the land of Lija Ram on the basis of which the appellants-plaintiffs are claiming that the land of Lija Ram alone should have been mutated in the names of Baru and Bija with the coming into force of the 1952 Act but the same cannot be accepted. The correct position as was prevalent on the spot was that the occupancy tenants were cultivating 28 bighas and 8 biswas of all the co-sharers. It is admitted case that the land has not been partitioned and continues to be in the joint ownership of the parties. If that be so, proportionate share has to be deducted from all the co-sharers from the total land while vesting the land in the occupancy tenants after the coming into force of the 1952 Act.

6. There is no evidence on the file to prove that the occupancy tenants have relinquished their tenancy qua the share of Lal Singh plaintiff or any other change was made subsequent to the entry in the jamabandi for the year 1929-30 and the previous jamabandis. In Exhibit P-1/A which is jamabandi for the year 1941-42, Lija Ram has been shown to be owner of 3/4th share and in the other i.e. 1946-47 Exhibit P-2/A, he is shown withholding 1/2 share, which as per the pleadings of the parties, is not the correct position as he is owner of only 1/4th share of the total land of 62 bighas and 14 biswa. Thus, the jamabandis for the years 1941-42 and 1946-47 have rightly been ignored by the Courts below, especially in the light of

the fact that these jamabandis show different entries and incorrect share with regard to the share of Lija Ram.

7. That apart, mutation No.632 as sanctioned on 25.09.1952, correctly matches with the entries with the jamabandi for the year 1929-30 and the jamabandis prior thereto, as also keeping in view the pleadings and the provisions as contained under the 1952 Act which confers ownership on the occupancy tenants. Admittedly, Baru and Bija were occupancy tenants of 28 bighas and 8 biswas of land. With the vesting of this land in Baru and Bija which was depicted in the earlier revenue records to be of all co-sharers and not merely in the land of Lija Ram (as there is no partition prior thereto), the proportionate share has rightly been deducted from each of the co-sharers which has been reflected in the mutation No.632 which cannot be said to be illegal.

8. As regards the contention of the counsel for the appellant that there is no limitation for seeking a declaration challenging the mutation for establishing rights of an heir as per Article 65 of The Indian Limitation Act, 1908, suffice it to say that the judgment in *Gurcharan Singh's case (supra)* on which reliance has been placed, was in a different context altogether, where the Court had relied upon the observations of this Court in *Pahalwan Singh Versus Lado Bibi, 2001(3) RRR 481 (P&H)*, where the suit has been filed within a period of three years when the cause of action had arisen i.e. when the defendant has chosen to act adversely to the interest of the plaintiffs and got the mutation entered on 18.03.1982 and the cause of action arose on 20.04.1984 when the mutation was sanctioned, it is when the possession was threatened that the suit was filed. In the present case,

neither the plaintiff has given any specific time when he came to know about the wrong revenue entries, wherefrom it could be inferred that it came to his knowledge nor has he proved that he got knowledge about the wrong revenue entries on some subsequent date. Merely because it is stated by the plaintiff that he got knowledge a day before the filing of the suit, would not prove that the plaintiff did not have knowledge of the fact about the wrong entry for the last 52 years. Nothing has come on record in the form of documentary evidence which would reflect possession of the appellant over the share claimed by him but to the contrary respondent No.1 Ram Kumar is shown to be in exclusive ownership and in possession of 8 bighas 11 biswas of the suit land comprising in Khasra No.3 and 8. Even if the knowledge is presumed to be from the date of decision in the partition proceedings initiated by the respondent i.e. in the year 2001, although the application for partition of the suit land was filed in the year 1999 of which the plaintiff Lal Singh was a party, the present suit is barred by limitation as the plaintiff has filed the suit on 25.08.2004.

9. In view of the above, the findings as returned by the Courts below being based upon the pleadings, evidence and proper appreciation of law, cannot be faulted with.

10. No other point has been raised or argued by the counsel for the appellants.

11. Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

12. No substantial question of law is involved in the present

appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

13. In the light of the dismissal of the appeal, the application for stay i.e. CM No.7393-C of 2014, stands disposed of as infructuous.

April 01, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE