IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.9 of 2015 (O&M)
Date of Decision: 01.06.2016

Mohinder Singh

.... Appellant

Vs.

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Harinder Sharma, Advocate
for the appellant.

Mr. Manjit Singh Naryal, Addl.AG, Punjab

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

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Amol Rattan Singh, J.

By this second appeal, the appellant challenges the judgments of both the Courts below, dismissing his suit for recovery of Rs.1,00,000/- from the respondents, by way of damages causing injury and loss to him, due to non-sanctioning of the mutation in his favour, in the revenue records.

2. Briefly, the plaintiffs' suit was that his father transferred the said suit land to him (appellant-plaintiff, hereinafter to be referred to as the appellant), vide a registered transfer deed dated 15.02.2002, pursuant to which Mutation No.1644 was also initially sanctioned in the appellants' favour but was subsequently rejected by the Assistant Collector IInd Grade, Abohar, vide his order dated 27.03.2002 on the ground that nobody was

present at the time of sanctioning the mutation (as per the appellants' contention).

In the meanwhile, the widow of the appellants' brother, one Chhinder Pal Kaur, and her son, filed a suit for declaration, challenging the transfer deed, further seeking an injunction against entry of the transfer deed in the revenue record.

The application for interim injunction, however, was dismissed by the learned Civil Judge (Junior Division), Abohar, vide his order dated 06.06.2002 and the appeal filed by Chhinder Pal Kaur against the said order, was also dismissed.

3. It was further contended by the appellant-plaintiff that thereafter he approached the revenue authorities to duly reflect the transfer in the revenue record but upon their refusal to do so, he first sent a complaint to the Chief Minister, Punjab, and thereafter, filed an application to the AC 2nd Grade, by registered post, on 04.10.2002, for the same purpose.

The needful not having been done, the suit was eventually instituted on 07.03.2007.

4. Upon notice, the respondents-defendants appeared and filed a written statement, firstly taking a preliminary objection that the Civil Court has no jurisdiction to decide the suit and further that the plaintiff has no cause of action, as the matter was already pending before the AC Ist Grade, Abohar. It was further stated that Chhinder Pal Kaur had contested the mutation (and as such, it was still pending with the AC Ist Grade).

Other than that, lack of notice under Section 80 CPC (which was eventually contested by the plaintiff), was also pleaded by the defendants.

Non-impleadment of the legal heirs of the petitioners' late brother, was also pleaded, alongwith other usual preliminary objections.

5. On merits, it was contended that Mutation No.1644, earlier entered in favour of the plaintiff, was challenged by his sister-in-law and consequently, was rejected “due to stay by the Court”.

6. The following issues were framed by the learned Civil Judge (Junior Division), Abohar:-

> “1. Whether the plaintiff being transferee vide transfer deed dated 15.02.2002 is owner in possession of the property in dispute? OPP
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> 2. Whether plaintiff is entitled to declaration prayed for? OPP
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> 3. Whether plaintiff is entitled to the relief of mandatory injunction as claimed? OPP
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> 4. Whether plaintiff is entitled to recover Rs.One lac as claimed? OPD
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> 5. Whether Civil Court has no jurisdiction to decide the present suit? OPD
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> 6. Whether plaintiff has no locus standi and cause of action to file the present suit? OPD
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> 7. Whether suit is not maintainable? OPD
>
> 8. Whether plaintiff is stopped by his act and conduct, from filing the present suit? OPD
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> 9. Whether suit is bad for want of notice under section 80 CPC upon all the defendants? OPD
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> 10. Whether suit is bad for non joinder and mis joinder or

necessary parties? OPD

11. Whether plaintiff has concealed true and patent facts from the court? OPD

12. Relief."

7. After appraising the evidence led in the form of two witnesses examined by the plaintiff, including himself, as also documentary evidence, and one witness examined by the respondents-defendants, alongwith certain documents, the learned Civil Judge found that due to a civil dispute raised by the appellants' sister-in-law, with regard to the transfer deed executed by the appellants' father in his favour, the revenue authorities had correctly disallowed the mutation even after its first sanction, and in any case, the Court could not issue a mandate in such circumstances, to the revenue authorities to make a mutation entry (despite a dispute pending qua the suit land), as it would actually amount to interference in the discharge of the official duties of those authorities. This was held to be especially so by that Court, as the order of the AC Ist Grade (wrongly referred to as the SDM, Abohar by the Civil Judge), dated 30.10.2007, adjourning the matter *sine die*, with regard to the mutation, had never been challenged by the appellant.

Further, even the appellant-plaintiffs' contention that due to non-entry of the mutation in his favour, he could not get a loan sanctioned for better cultivation, and had suffered mental tension etc. could not be accepted, as no evidence in that regard was led by him and consequently, no damages were payable by the respondents.

8. It was also held that the suit was bad for non-joinder of

necessary parties, inasmuch as the appellant-plaintiff had not impleaded either his late brothers' LRs, nor even his own mother as necessary parties, despite the fact that the dispute qua the suit land was raised by his late brothers' widow. For the aforesaid reasons (after recording a finding that a notice under Section 80 CPC had, however, been duly served upon the defendants), the learned Civil Judge dismissed the suit of the appellant-plaintiff.

9. The first appeal filed by the appellant, before the learned Additional District Judge, Ferozepur, was also dismissed, essentially on the same findings.

10. When this Court had issued notice in this appeal, vide order dated 15.03.2016, learned counsel for the appellant had submitted that the revenue authorities had wrongly refused to reflect the title of the plaintiff in the revenue record, despite the transfer deed in his favour by his father, especially after the application for interim stay in the suit filed by Chhinder Pal Kaur, had been dismissed by the Court below.

At that stage itself, this Court had pointed to Section 36 of the Punjab Land Revenue Act, 1887, by which a revenue officer may, if an objection is raised to a mutation entry, make such enquiry as he deems fit, into the matter and thereafter pass an order.

However, despite having recorded the above, notice was still issued to the respondents, as it had been pointed out by learned counsel that the entry had been wrongly made by the respondents, to the effect that a stay was operating by the Civil Court, whereas actually no stay was operating in favour of Chhinder Pal Kaur.

On a separate application moved by the appellant, seeking a direction to the respondents to pay compensation to the appellant for loss of crops in the year 2007-08, notice was also issued vide the same order dated 15.03.2016.

11. Thereafter, the respondents eventually put in an appearance with the personal appearance of the Tehsildar, alongwith records pertaining to the case, (other than representation for the respondents by the learned State counsel). The matter was argued in detail by both the sides and records were also produced.

A query was put by this Court, as to why, after the decision of the Civil Court in favour of the appellant, in separate suits (one filed by the appellant and the other by one Chhinderpal Kaur against the appellant), damages for crops were still not paid to the appellant.

In response to that query, records have been produced in Court today by the respondent-State, showing that, for the first time after the litigation had ended on 19.10.2010, in one suit filed by the appellant, he made an application for correction of the revenue record on 22.01.2014. The said record has been shown to the learned counsel for the appellant, who does not dispute the same. Accordingly, a photocopy of the aforesaid application, dated 22.01.2014, is taken on record as Ex.C-A1, by way of additional evidence under Order 41 Rule 27 (b) CPC, read with Section 151 CPC.

12. As regards non-sanctioning of the mutation, even after

dismissal of the application filed by Chhinder Pal Kaur under Order 39 Rules 1 and 2 CPC and dismissal of the appeal filed against that order, I yet find no strength in the arguments of learned counsel for the appellants, inasmuch as, as already noticed, the revenue authorities were well within their rights to refuse to sanction a mutation in favour of the appellant in view of the objection raised thereto by his sister-in-law, in the suit ongoing on at that time. Even though learned counsel pointed out that the Civil Court had specifically held that mutation may be entered in the appellants' favour, after dismissal of the application for interim injunction, in the opinion of this Court, the revenue authorities were still well within their rights to refuse to make such an entry, in terms of Section 36 of the Punjab Land Revenue Act, 1887, as already noticed.

Sections 36 and 37 of the Act of 1887, are reproduced hereinunder:-

> 36. Determination of disputes: -
>
> (1) If during the making, revision or preparation of any record or in the course of any inquiry under this Chapter a dispute arises as to any matter of which an entry is to be made in a record or in a register of mutations, a Revenue-officer may, of his own motion, or on the application of any party interested but subject to the provisions of the next following section, and after such inquiry as he thinks fit, determine the entry to be made as to that matter.
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> (2) If in any such dispute the Revenue-officer is unable to satisfy himself as to which of the parties thereto is in possession of any property to which the dispute relates, he

shall ascertain by summary inquiry who is the person best entitled to the property, and shall by order direct that that person be put in possession thereof, and that an entry in accordance with that order be made in the record or register.

(3) A direction of a Revenue-officer under sub-section (2) shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction.

37. Restrictions on variations of entries in records:- Entries in records-of-rights or in annual records, except entries made in annual records by Patwaris under clause (a) of Section 35 with respect to undisputed acquisitions of interest referred to in that section, shall not be varied in subsequent records otherwise than by-

a) making entries in accordance with facts proved or admitted to have occurred;

b) making such entries as are agreed to by all the parties interested therein or are supported by a decree or order binding on those parties;

c) making new maps where it is necessary to make them."

13. Hence, in the opinion of this Court discretion was wisely exercised by the revenue authorities against making a mutation entry in the appellants' favour, until after the final decision in the civil suit pending between the appellant, his sister-in-law and the appellants' father, so as to

avoid unnecessary possible third party rights etc. being created, that may have been created, due to the revenue entry having been made qua the land which was under dispute.

14. The only question now, therefore, is as to whether the Courts below erred in dismissing the suit of the appellant-plaintiff, seeking damages from the respondent State, for not reflecting his name in the revenue record in the column of cultivation, in the jamabandi for the years subsequent to the dismissal of the suits filed by him and one Chhinderpal Kaur.

As regards the appellant allegedly losing out on any loan by the bank to him, on account of non-reflection of his name as the owner and cultivator of the suit land, though that may otherwise be a possibility, admittedly no evidence was led in that regard, showing any refusal by the bank to sanction a loan to the appellant on that ground, as also noticed by the learned Civil Judge. Hence, the appellant not having been able to show that he actually suffered any loss due to non-sanction of any loan etc., I do not see how any damages are payable to him by the State, on that count.

15. Learned counsel thereafter submitted that the appellant in any case was entitled to damages for non-entry of the sanctioning of the mutation in his favour, after the civil litigation was decided in his favour qua the title of the suit land and as such at least thereafter, he was entitled to damages.

I find no force in that argument either, for the reason that if the appellant applied for the time time for correction of the revenue record only on 22.01.2014 after the civil litigation was decided in his favour, and such correction was thereafter made on 11.06.2014, I see no ground for payment of such damages either.

Therefore, there is no reason to interfere with the judgments of the Courts below, even though the application dated 22.01.2014 has been produced for the first time before this Court, by the respondent defendants.

16. However, admittedly, even as per the State, compensation for loss of damages to the crops is still lying unpaid with the respondents, in view of the pendency of the litigation between the parties, which would now be paid to the appellant, in view of the fact that Chhhinderpal Kaurs' suit seeking possession was dismissed, thereby obviously meaning that the appellant was the owner in possession of the suit property, with no other person having raised any claim with regard to possession of the suit property. In any case, it is admitted that the appellants' own suit seeking a declaration that he and his father were exclusive owners in possession of the suit land, has been decreed in his favour. The respondents also specifically admit that the appellant is now entitled to such compensation for damaged crops, his possession over the suit property during the period of such damage not being in doubt any longer.

Consequently, the compensation for loss of damage to crops, as has not been paid to the appellant, shall be paid to the appellant within a period of three months from the date of receipt of a copy of this order.

It may also be observed here that though the suit filed by the plaintiff was actually seeking damages from the respondents for non-entry of his name in the revenue record and damages have now been awarded with respect to damage of crops, on an application having been moved in that regard, the appeal is still being treated as partly allowed, as such damages are otherwise payable, not because of any non-action by the respondents, but because the respondents themselves admit that such damages by way of compensation are payable to all persons of the area concerned, for damage to their crops, for the period 2007-08. Thus, these damages are by way of admitted compensation now payable to the appellant, in view of the fact that the question of ownership and possession of the suit property, during that period, has been otherwise settled in separate civil litigation.

The appeal qua the issue of damages to the appellant from the State, for non-reflection of his name in the revenue records, is however, dismissed in view of what has been noticed earlier hereinabove.

With the above observations, Civil Misc. No.65-C of 2015 is allowed and the appeal is accordingly, partly allowed. No order as to costs.

The decree sheet shall be drawn up accordingly.

June 01 , 2016 **(AMOL RATTAN SINGH)**
anil **JUDGE**