

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

RSA No.1135 of 2013 (O&M)

Date of Order:15.11.2017

Fateh Mohammad and others

..Appellants

Versus

Ismail and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Deepak Sharma, Advocate,
for the appellants.

Mr. Sachin Mittal, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J.

Defendants-appellants are in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for declaration to the effect that the plaintiff is co-owner in joint possession of the land in question along with the defendants to the extent of his share.

It is not in dispute that Luti, a common ancestor, was recorded as an owner of the property. It is also not in dispute that after the death of Luti, the land was mutated in favour of Jaggan @ Jagdev and Sugru @ Chhotu. The revenue record from the year 1911-1912 continuously shows that Jaggan @ Jagdev and Sugru @ Chhotu were joint owners in possession of the property in question. However, during consolidation in the year 1962-63, by mistake the name of Sugru @ Chhotu was got deleted and the land was shown to be exclusively owned by children of Jaggan @ Jagdev.

Plaintiff filed a suit claiming that the entry in the revenue

record ordered to be corrected.

Both the learned Courts on appreciation of evidence have found that the name of Sagru @ Chhotu, predecessor-in-interest of the plaintiff has been wrongly omitted in the ownership column of the revenue record.

I have heard counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that the jurisdiction of the Civil Court is barred as the land was being recorded as “Shamilat Patti Medi”. He has further submitted that the plaintiff has not connected previous khasra numbers before consolidation and khasra numbers which are being recorded in favour of the defendants. Hence the suit filed by the plaintiff could not be decreed.

I have considered the submissions of learned counsel for the appellant.

It is not disputed before me that the question of jurisdiction was never pleaded or raised before the Courts below, hence the Courts below did not deal with the issue of jurisdiction.

Still further it is not in dispute that both the parties to the litigation are claiming inheritance of the property from Luti, a common ancestor. It is also not in dispute that the land is not being used for common purposes. It is not the case of any of the parties that the land vests with the Gram Panchayat. In these circumstances, the jurisdiction of the Civil Court cannot be held to be barred.

Second argument of learned counsel for the appellant is that the plaintiff has not connected khasra numbers before consolidation and after consolidation.

It is sufficient to say that even this issue was not raised before the Courts below. It is not the case of the defendants that they had not inherited the property in question from Sh. Luti (common ancestor).

Plaintiff has only prayed for correction in the revenue record and incorporation/addition of his name which has wrongly omitted. In such situation, it was not necessary for the plaintiff to prove that the land in question was the same which was earlier in the name of Sh. Luti and, thereafter it was showing Jaggan @ Jagdev and Sugru @ Chhotu to be joint owners.

For the reasons recorded above, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

November 15, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No