

RSA No.1205 of 2016(O&M)

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

RSA No.1205 of 2016(O&M)

Date of Decision: 19.1.2017

Municipal Corporation, Faridabad

.....Appellant

Vs.

Krishan Kumar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. R.D.Bawa, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Defendant No.4 is in second appeal against the concurrent findings of facts recorded by both the learned courts below, however, only qua issue No.5.

Brief facts of the case, as noticed by learned first appellate court, in para 2 of its judgment, are that the land bearing khewat No.195, khata No.257-261, khasra No.106/1 min (53-19), 106/1 min (2- 0), rect.No.25, killa No. 18/1(2-3), 23/1(5-17), 24/1(2-16), 37/4(6-3), 22/18/4(1-2), khasra No. 106/2(3-15), 25/23/1(1-0), total measuring 77 kanals 15 marlas, situated in village Sarai Khawaja, Tehsil and District Faridabad was owned and possessed by proprietors of Shamlat Deh of village Sarai Khawaja, Tehsil and District Faridabad vide jamabandi for the year 1990-

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1991. Name of the father of respondent No.1 was given at serial No.46 of the list, who expired and name of the father of respondent No.2 was given at serial No.18 of the list, who also died long back. Respondents No.1 and 2 were also proprietors of Shamlat Deh of village Sarai Khawaja and that interest of respondents No.1 and 2 was similar and common with the interest of other proprietors. Hence, the suit was filed by respondents No.1 and 2 in their representative capacity for themselves as well as on behalf of all other proprietors of Shamlat Deh of village Sarai Khawaja.

It was further submitted that respondents No.3 to 5 were stated to have purchased part of share of some of the proprietors of Shamlat Deh of village Sarai Khawaja and were bent upon to convert the nature of suit land and raising pucca construction without partition, which they had no right to do so. Respondents No.1 and 2 several times asked respondents No.3 to 5 to partition the land in suit by metes and bounds, but they were evading and finally refused to do so. It was also transpired that in the year 1992, a mutation of change of ownership was recorded and sanctioned at serial number 1388 in the name of appellant in respect of Shamlat Deh of village Sarai Khawaja, Tehsil and District Faridabad, purported to have been carried out at the instructions of Deputy Commissioner, Faridabad dated 11.2.1992, which was totally illegal and was not binding upon respondents No.1 to 2. Even otherwise, the mutation does not confer any title in favour of the appellant and that mutation was, illegal and void *ab initio* and the appellant has no right, title or interest in the suit land.

It was further submitted that as per revenue record as well as, in fact, the land had never been used for common purposes of the village at any point of time and that it always remained in possession and occupation of

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the proprietors of village both before and after consolidation of holdings in the village and as such the same did not and could not vest in favour of the appellant in any manner. The entire land in suit measuring 77 kanaIs 15 marlas became part of abadi of village Sarai Khawaja for more than 20 years and was liable to be partitioned amongst all the co-sharers/proprietors of Shamlat Deh of village Sarai Khawaja, as per list of proprietors in proportion to their shares given against their names respectively and as such all of them were entitled to get separate possession of their respective shares in the suit land in accordance with law. Respondents No.1 and 2 were entitled to a decree of possession by way of partition of the suit land by metes and bounds in favour of the proprietors.

Having been put to notice, defendants appeared and filed their written statement. On completion of pleadings of the parties, learned trial court framed the following issues:

1. Whether the plaintiffs alongwith other proprietors of village Sarai Khawaja are co-shares with the defendants No. 1 to 3? OPP
2. Whether the plaintiffs have cause of action to get the suit property partitioned by meters and bounds?OPP
3. Whether the suit is not maintainable for non-joinder of necessary party?OPD
4. Whether this Court has no jurisdiction to try the present suit?OPD
5. Whether the suit property or any part of it has been legally vested with the defendant No.4?OPD
6. Relief.”

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With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that so far as claim of the plaintiffs for possession by way of partition was concerned, neither they could bring on record cogent evidence in this regard, nor learned trial court was able to ascertain their shares, coupled with the fact that jurisdiction of the learned civil court would be barred, said claim of the plaintiffs was declined. However, onus to prove issue No.5 was on defendant No.4-Municipal Corporation, Faridabad, but it failed to discharge its onus. Accordingly, learned trial court recorded its findings on issue No.5 against the appellant-defendant No.4 and in favour of the plaintiffs. Finally, the suit was dismissed by learned trial court vide its impugned judgment and decree dated 24.12.2011.

Feeling aggrieved, defendant No.4 filed its first appeal against findings recorded by learned trial court on issue No.5. However, learned first appellate court rightly dismissed the first appeal, vide its impugned judgment and decree dated 1.12.2015. Hence this second appeal at the hands of the defendant-Municipal Corporation.

Heard learned counsel for the appellant.

The only argument raised by learned counsel for the appellant is that since the suit land was recorded as Shamlat Deh and mutation thereof had been recorded in favour of the Municipal Corporation-defendant No.4, appellant herein, it was aggrieved party and rightly filed its appeal before learned first appellate court. He also places reliance on the judgment of the Hon'ble Supreme Court in **Smt. Ganga Bai Vs. Vijay Kumar and others**,

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1974 AIR (SC) 1126, to contend that under these circumstances, learned first appellate court ought to have decided the case on merits, instead of observing that appellant was not aggrieved party. He prays for setting aside the impugned judgment and decree, by allowing the present appeal.

Having heard learned counsel for the appellant at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since cogent findings of facts recorded by both the learned courts below have not been found suffering from any patent illegality or perversity, the same deserve to be upheld. Present appeal is without any merit and liable to be dismissed. To say so, reasons are more than one, which are being recorded hereinafter.

It is the settled proposition of law that mutation does not confer any title. It is also not in dispute that entire case of the appellant is based on mutation. Learned counsel for the appellant could not show any source of drawing title qua suit land, except the mutation. This was the reason that learned trial court rightly left this issue open to the plaintiffs, to get their shares in Shamlat Deh determined and seek the possession thereon, in accordance with law. However, at the same time, learned trial court was well within its jurisdiction to record cogent findings on issue No. 5 in favour of the plaintiff and against defendant No.4-appellant herein.

It is also pertinent to note here that onus to prove issue No.5 was on defendant No.4-appellant. However, appellant failed to discharge its onus on issue No.5. As noticed hereinabove, since the entire case of the appellant was based on mutation alone, which does not confer any title, appellant was bound to fail before learned trial court as well as learned first

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appellate court. That is what has been held by both the learned courts below.

So far as judgment relied upon by learned counsel for the appellant is concerned, there is no dispute about the law laid therein. However, on close perusal of the cited judgment, the same has not been found to be of any help to the appellant, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in Ganeshi Lal's case (supra), reiterating its view taken in Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

11. *"12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the*

well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do

complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. **Ed.** See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V.

Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it

*Ed. See Union of India VS. Amrit Lal Manchanda,
(2004) 3 SCC 75, pp. 83-84, paras 15-18."*

A combined reading of both the impugned judgments rendered by learned courts below will make it crystal clear that cogent findings recorded by learned courts below were based on a Full Bench judgment of this Court in **Jai Singh Vs. State of Haryana, 2003 (2) RCR (civil) 578**. It is also not in dispute that mutations, like the one in favour of the appellant, were set aside by the Hon'ble Full Bench of this Court in Jai Singh's case (supra), because no mutation, as the one in the case in hand, had been found having any force of law. Since the appellant-Municipal Corporation has admittedly stepped into the shoes of Gram Panchayat, learned courts below were well justified in following the law laid down by the Hon'ble Full Bench in Jai Singh's case (supra). Having said that, this Court feels no hesitation to conclude that learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

Before arriving at its just conclusion, learned Additional District Judge in para 14 of the impugned judgment, recorded his own cogent findings, which deserve to be noticed hereinabove and the same read as under:-

"It would be proper to discuss the record for adjudicating the above mentioned questions. As far as first question is concerned, it is not disputed that the suit was filed by respondent Nos. 1 and 2 and the said suit was dismissed vide impugned judgment and decree. It is also not disputed that no appeal has been filed by the

respondents against the impugned judgment and decree.

*Now, as far as finding of the learned lower court, to the extent that the suit land is not vested in the present appellant, is concerned, it is clear that the learned lower court has relied upon the judgment passed by our Hon'ble High Court in Jai Singh's case (supra), in which it has been held that title or possession cannot be claimed on the basis of mutation. Our Hon'ble High Court cancelled or set aside the mutation on the basis of 1992 amendment and held that mutations in favour of State Government or Panchayat, cannot be sustained. This judgment was passed by Full Bench of our Hon'ble High Court. Hon'ble Supreme Court in case of **H.Lakshmaiah Reddy and others Vs. L.Venkatesh Reddy, Civil Appeal Nos. 3725-3726 of 2015, decided on 17.4.2015**, has held that mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue. Hence, stand of the appellant that mutation in favour of the appellant regarding the suit property is not sustainable in view of the above discussed judgments. Moreover, Hon'ble Supreme Court of India in Hardevinder Singh's case (supra), has held that the appeal can only be filed by a person or by a party, who is aggrieved by the decree. It has also been held by various Hon'ble Courts in the catena of decision that unless a person prejudicially or*

adversely affected by decree, he is not entitled to file decree. In the present case, it is undisputed that the impugned judgment and decree have been passed against the respondents No.1 and 2 and not against the present appellant. Hence, both the above mentioned questions are decided against the appellant.”

Learned first appellate court was well justified in following the law laid down by the Hon’ble Supreme Court in **H.Lakshmaiah Reddy and others Vs. L.Venkatesh Reddy, Civil Appeal Nos. 3725-3726 of 2015, decided on 17.4.2015**, which squarely covers the case against the appellant. Since the appellant had never been owner of the suit land and mutation alone would not be sufficient to confer title on the appellant, no prejudice, as such, would have been caused to the appellant, by passing the impugned judgments by learned courts below. Under these circumstances, it can be safely concluded that since learned trial court and learned first appellate court rightly appreciated true facts of the case as well as settled proposition of law applicable thereto in the correct perspective, the impugned judgments and decrees deserve to be upheld, for this reason as well.

Under the abovesaid circumstances, the impugned judgments and decrees have not been found suffering from any patent illegality or perversity, which may warrant interference at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. No substantial question of law, which is sine qua non for entertaining second appeal, has been found involved in the present case and the impugned judgments and decrees deserve to be upheld, for this reason as well. In this regard, reliance can be placed on the Hon’ble Supreme Court in

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**Naryanan Rajendran and another Vs. Lekshmy Sarojini and others,
2009 (2) RCR (civil) 286.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)
JUDGE**

19.1.2017
Ak Sharma

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