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

RSA No. 148 of 2017 (O&M)
Decided on: 04.10.2017

Karam Singh through LRs and othersAppellants

versus

Ujjagar Singh through LRs and othersRespondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. R.L.Batta, Senior Advocate with
Mr. Mandeep K. Sajjan, Advocate
for the appellants.

Ms. Aashna Gill, Advocate
for Mr. Aman Pal, Advocate
for respondent No. 1-Caveator.

Rajbir Sehrawat, J.(Oral)

1. This is a second appeal filed by the plaintiffs aggrieved of the dismissal of their suit by the Trial Court and the dismissal of the appeal by the lower Appellate Court. Since, the plaintiffs as well as the defendants have expired and the matter is being contested through their legal representatives, therefore, the parties would be referred as the plaintiffs and the defendants for the convenience.
2. The brief facts of this case are that the appellants-plaintiffs claimed that the suit land measuring 20 Kanals, was originally allotted to their father-Narain Singh during consolidation proceedings in lieu of old khasra numbers owned by him. Therefore, the plaintiffs

came in possession thereof as the owners and are continuing in possession of the same. It was further pleaded by the plaintiffs that the defendants got wrong entries recorded in the revenue record by way of mutation and the subsequent *jamabandis*, on the basis of ex-parte order passed by the Assistant Director of Consolidation, Punjab, vide which the ownership of the above said land have been transferred to the father of the defendants. It was claimed that such an order passed by the Assistant Director of Consolidation, Punjab is a nullity and nonest. It was further claimed that this order was passed contrary to the scheme of the consolidation and at the back of the plaintiffs. Hence, any mutation on the basis of the same does not carry any effect. It was further claimed by the plaintiffs that even if they are not the owners then also they have been continuing in possession of the suit land for more than 20 years. Such possession by them is hostile, open, notorious and to the knowledge of the owners-defendants. Therefore, they claimed the ownership by way of adverse possession. However, in the prayer clause of the plaint only a decree was sought that they had become owners of the suit land by way of adverse possession and that the defendants be restrained from alienating the suit property which was wrongly recorded in their names in the revenue records.

3. On the notice being given, the defendants filed written statement. Besides taking preliminary objections on merit, they pleaded that they were the owner of the suit land and were so recorded in the revenue records. It was further pleaded that the plaintiffs were only

tenant on the suit land on rent of 1/3rd of the agricultural produce. It was further alleged by them that the claim of ownership by the plaintiffs is incorrect and not sustainable. The defendants further claimed that an application for ejectment was filed against the plaintiffs. In that application filed before the Assistant Collector 1st Grade, the plaintiffs agreed that they would continue to pay the rent to the present defendants. Therefore, it was claimed by the defendants that the plaintiffs themselves have admitted the ownership of the defendants and the fact of the plaintiffs being tenant over the suit land.

4. Parties led their respective evidence.

5. After hearing the parties and appreciating the evidence on the file, the Trial Court dismissed the suit filed by plaintiffs. The learned Trial Court held that the plaintiffs have failed to bring on record any proof of their ownership over the suit land. The plaintiffs have not placed on record any order of allotment of suit land to Narain Singh; as claimed by the plaintiffs. It was further recorded by the trial Court that the revenue records show that the plaintiffs are tenant over the suit land and the defendants are recorded as owner of the same. Still further, it was recorded by the trial Court that as per the order of the Assistant Collector II Grade, Zira, Ex.-D1, the plaintiffs had agreed to pay 1/3rd agricultural produce as rent to the defendants. Hence, the trial Court held that the conduct of the plaintiffs themselves shows that they are not the owners of the suit land and in fact, they are the tenants. It was further held that since the order of the Assistant Director of Consolidation,

Punjab, by which the land was allotted to the defendants, has not been challenged by the plaintiffs; either before the consolidation authorities or even before the Court, therefore, the said order cannot be held to be illegal. Hence, the suit of the plaintiffs was dismissed. Aggrieved against this judgment and decree passed by the trial Court, the appellants preferred an appeal before the lower Appellate Court.

6. Since, the Trial Court had recorded finding that the plaintiffs have not placed on record, the evidence regarding allotment of the suit land to the plaintiffs, therefore, the present appellants; while filing appeal before the lower Appellate Court, also moved an application for additional evidence to bring on record the *khatoni paimaish* and *khatoni istemal* to show that Narain Singh was allotted this land. However, the lower Appellate Court dismissed the appeal filed by the present appellants. The lower Appellate Court also dismissed the application filed by the appellants for leading evidence on the ground that the documents of title, right from the time of consolidation, were already on record in the form of *jamabandi* and mutations. Therefore, these documents would be irrelevant for the purpose of the present case. While dismissing the above said application filed by the appellants for leading evidence, the lower Appellate Court recorded that after these documents which were sought to be placed on record in the shape of *khatoni paimaish* and *khatoni istemal*, the ownership of the suit land was changed by the competent consolidation authorities by passing a specific order. On the basis of that order of the Assistant Director

of Consolidation, the mutation Ex.P5 was entered in favour of the defendants. Resultantly, the ownership of the defendants qua the suit land is continuing since 27.06.1961. This change of ownership is duly reflected in the *jamabandi*, Ex.P5, for the year 1966-67. It was held that since the suit was filed only in the year 1984, therefore, the plaintiffs were barred from challenging the entries after a period of more than 20 years since they were required to challenge the *jamabandi* within the period of three years, as per the Section 45 of Punjab Land Revenue Act. On merits, the lower Appellate Court held that the adverse possession cannot be used as a sword and it can be used only as a shield. It was further held by the lower Appellate Court that even the adverse possession of the plaintiffs was not proved because they were the tenant over the suit land agreed to pay the rent in the form of 1/3rd of the agricultural produce. Another argument raised by the plaintiffs that in a suit filed against one Bara Singh, some decree was passed and in that decree, some compromise was arrived at; was also rejected by the lower Appellate Court on the ground that the defendants were not party in those proceedings. The land involved in that decree was different than the present suit land and that the compromise has not been proved on record. It was further held that the plaintiffs have not challenged the order of the Assistant Director of Consolidation of Punjab. Therefore, that shall continue to be validly passed order. Hence the appeal of the present appellants-plaintiffs was dismissed.

7. While arguing the case, learned counsel for the appellants

admitted that they have not challenged the order passed by the Assistant Director of Consolidation way back in 1959; whereby the suit land was allotted to the father of the defendants. However, his contention is that originally this land was allotted to the father of the plaintiffs, Narain Singh. Any order passed behind their back is a void order. It was his further submission that the mutation entered on the basis of such an order does not convey any title in favour of the person in whose favour this mutation has been entered. To support his argument, learned counsel has relied upon the judgment passed by this Court in **1979 PLJ 469** titled as ***Ibrahim alias Dharam Vir Versus Smt. Sharifan alias Shanti*** and some other similar judgments and submits that the mutation is not a record of right and that a mutation does not confer a title upon a person in whose favour, the mutation is entered. It is his further submission that even the defendants have admitted that initially this land was allotted to Narain Singh, the father of the plaintiffs. It is his further argument that since the appellants-plaintiffs have been in a long possession over the suit land, therefore, their possession has matured into ownership over the suit property.

8. On the other hand, learned counsel for the respondents has argued that the judgments passed by the lower Courts below are well reasoned judgments and the present appellants have not been able to lead any evidence and to show anything from the record to substantiate their claim. It is his further argument that the plaintiffs-appellants herein have never challenged the order of

allotment of the suit land to the father of the defendants; made by the competent statutory authority. Therefore, a prayer is made for dismissal of the appeal.

9. After having heard the learned counsel for the parties and perusing the record available on the file; with the assistance of the learned counsel for the parties, this Court is of the considered view that the arguments raised by the learned counsel for the appellants are not legally sustainable. There is no dispute regarding the proposition of law laid down by the judgments referred to by the learned counsel for the appellants that the mutation is not a record of right and mutation does not confer any title upon a person in whose favour such a mutation is entered by the revenue authorities. However, the judgments are distinguishable in the facts of the present case.
10. In the present case, though in the initial stages of the consolidation, the suit land might have been allotted to Narain Singh as claimed by the appellants, though this fact is not proved on record, however, the fact remains that vide order dated 05.05.1959, the Assistant Director of Consolidation, Punjab had allotted the suit land to the father of the defendants. Resultantly, the mutation of the ownership was entered in favour of the defendants on 26.07.1961. Since then they are continuously recorded as the owners of the suit land in the repeated *jamabandis* prepared subsequent thereto. This entire record was well within the knowledge of the present appellants; since they claimed to be cultivating this land. Otherwise also, these facts are admitted by the plaintiffs-appellants herein; in the plaint itself. Despite that, the

above said order of the Assistant Director of Consolidation has not been challenged before any authority so far. Even in the present suit, only ownership on the basis of the adverse possession and injunction against the defendants have been prayed for. It deserves to be mentioned here that the consolidation authorities are the competent statutory authorities to allot the land in the process or in continuation of the process of consolidation. During this process, they are entitled to change and re-change the allotment. Therefore, the final orders passed by the consolidation authorities shall be the documents of ownership over the land allotted by the consolidation authorities. Such an order passed by the consolidation authorities could have been challenged before the statutory authorities by filing statutory appeal. The same has not been done by the appellants so far. Even in the present case, they have neither challenged that order of Assistant Director of Consolidation nor have placed that order on record of the case. Therefore, only through the argument, the appellants cannot be permitted to question the validity of the statutory order passed by the consolidation authorities. The submission of the learned counsel for the appellants that such an order was passed behind the back of the present appellants; is also not substantiated by them by placing any cogent evidence on the file.

11. So far as the plea of the adverse possession taken by the present appellants is concerned; the Courts below have rightly held that neither they can take this plea as plaintiffs nor have they proved the factum of possession being adverse; on the record of the

- present case. On the contrary, it has come on record in the form of orders, Ex. D1 to D3, the orders passed by the Assistant Collector, Grade-II; that the present appellants had admitted themselves to be the tenant under the present respondents-defendants. Hence, there cannot be any plea of adverse possession against the defendants. Once a tenant always a tenant unless that status is tampered by another legal process.
- 12.No other argument was raised by the learned counsel for the appellants.
- 13.In view of the above, the present appeal fails and the same is hereby dismissed being devoid of any merits.

4th October, 2017
shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes