

RA-RS-19-C of 2016 (O&M) in
R.S.A.No.1286 of 2011

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RA-RS-19-C of 2016 (O&M) in
R.S.A.No.1286 of 2011
Date of Decision: March 09, 2017

Kuldeep Singh & others

...Applicant/Appellants

Versus

Zile Singh & others

...Non-applicant/Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Sunil Chadha, Senior Advocate with
Mr.Chetan Bansal, Advocate,
for the applicant-appellants

Mr.Arun Jain, Senior Advocate with
Mr.Khushagra Mahajan, Advocate,
for the non-applicant/respondents.

AMIT RAWAL, J.

The applicant-appellants have approached this Court seeking review of the decision dated 9.2.2016 rendered in Regular Second Appeal No.1286 of 2011 directed against the judgments and decrees of the Courts below, whereby the plaintiffs had failed to succeed in the suit seeking possession of the land.

This Court, while issuing notice in the review application, had raised the following two questions:-

a) The findings given by this Court while dismissing the appeal vis-a-vis Section 50 of the Indian Evidence Act, has already been dealt with by the Hon'ble Supreme Court in Civil

Appeal bearing No.4947 of 2011.

b) The defendants have set up a plea of adverse possession and therefore, they could not claim the title on the basis of mutation, much less, decree of 1969, which has not been proved on record, therefore, suit cannot be said to be barred by law of limitation.”

The thrust of the contention was that in order to establish the relationship with deceased Darab Singh, the matter had already been dealt with by the Hon'ble Supreme Court in **Civil Appeal No.4947 of 2011 (Zile Singh and another Versus Gulab Singh and others)**, decided on 13.4.2011 and since the defendants had taken a plea of adverse possession, therefore, they could not claim the title on the basis of the mutation.

Reply to the review application has been filed and an objection has also been taken with regard to the maintainability of the suit under Order 2 Rule 2 CPC as qua possession of land measuring 175 kanals, the plaintiffs have lost from the Courts below but succeeded in the Hon'ble Supreme Court in the Civil Appeal aforementioned.

Mr.Sunil Chadha, learned senior counsel assisted by Mr.Chetan Bansal, Advocate, representing the applicant-appellants, while drawing the attention of this Court to the provisions of Section 50 of the Indian Evidence Act, submitted that no evidence has been led before the Courts below with regard to the suit seeking possession of land measuring 175 kanals, therefore, the findings given by this Court for not establishing the claim by the applicant-appellants are not sustainable. This fact was conceded by Mr.Arun Jain, learned Senior Counsel assisted by Mr.Khushagra Mahajan, Advocate, representing the non-applicant/respondents, therefore, I deem it appropriate to expunge the

findings given by this Court with regard to the aforementioned fact. Ordered accordingly.

As regards the limitation, the conceded position on record is that the mutation was effected in the year 1971, whereas the suit had been filed in 1997 seeking possession of the property. The limitation to seek the possession of the property is twelve years. The defendants have set up a plea of decree dated 6.11.1969, which, according to Mr.Chadha, has not seen the light of the day, but during the course of the hearing, there has been reference to the decree in Para 20 of the plaint, which reads as under:-

“20. That the cause of action for this suit arises within the jurisdiction of this learned Court from 01.08.1996 the day on which the plaintiffs discovered the facts about the fraud having been committed on Sh.Darab Singh and about the invalidity and enforceability of the judgment and decree dated 06.11.1969 and the learned court has got the jurisdiction to entertain and try this suit.”

Thus, both the parties were alive to the aforementioned situation, therefore, the onus was upon the applicant-appellants-plaintiffs to prove the decree. They examined PW-2, who stated that the record room at Kaithal is functioning only from 1972 onwards, therefore, the onus has not been discharged by the plaintiffs in not making efforts to summon the record from the concerned department from where the decree was obtained.

The factum of mutation Ex.P6 has been noticed by both the Courts below, particularly the Lower Appellate Court and also the fact that the aforementioned mutation was sanctioned in Jalsa-e-aam and in the presence of Darab Singh. The entries have been made in the jamabandies Ex.D2, Ex.D3, Ex.D4, Ex.D5 and Ex.D6 for the years 1975-76, 1980-81,

1985-86, 1990-91 and 1995-96. The name of the defendants continued in the column of ownership and as well as column of possession. Even the plaintiffs have also not sought any relief of declaration.

In my view, rest of the grounds raised in the present review application basically tantamount to re-hearing of the matter, which is not permissible in view of the ratio decidendi culled out in **Tamilnadu Terminated Full Time Temporary LIC Employees Association Versus S.K.Roy, The Chairman, LIC of India and another, 2016 AIR SC 3964.**

With the aforementioned clarification in regard to relationship, I am of the view that there is no error apparent on the record.

Before I could part with the judgment, I must deal with the objection raised by Mr.Arun Jain, learned Senior Counsel with regard to the provisions of Order 2 Rule 2 CPC as nothing prevented the appellant-plaintiffs to file the suit for possession in 1971 and not availed the remedy with regard to land measuring 814 kanals. In this regard, they replied that the aforementioned plea was given up. In my view, that plea can always be raised at any time even if has been given up. There is nothing on record to establish as to how and under what circumstances, the plaintiffs could not seek the possession of land measuring 814 kanals when they chose to file the suit with respect to land measuring 175 kanals.

For the foregoing reasons, there is no merit in the review application. The same is accordingly dismissed.

March 09, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No