IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5595 of 2018

DATE OF DECISION: SEPTEMBER 18, 2018

HARBANS SINGH ...PETITIONER

VERSUS

HARNEK SINGH & OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

PRESENT: MR. JAGRAM SINGH COONER, ADVOCATE
FOR THE PETITIONER.

AMOL RATTAN SINGH, J. (ORAL)

1. By this petition, the petitioner has challenged the order of the learned Civil Judge (Jr.Division) dated 13.7.2018, by which the application of the petitioner filed under Order 7 Rule 11 of the CPC, seeking rejection of the plaint in the suit instituted by respondent no.1 herein, has been dismissed.

2. The petitioner in his application had contended that the suit of the said respondent is not maintainable, as jurisdiction of the Civil Court is barred in terms of Section 158 of the Punjab Land Revenue Act, 1887 (for short 'the Act'), which reads as follows:-

"***158. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue-officers:-*** *Except as otherwise provided by this Act--*

(1) a Civil Court shall not have jurisdiction in any matter which the [State Government] or a Revenue-officer is

empowered by this Act to dispose of or take cognizance of the manner in which the [State Government] or any revenue-officer exercises any powers vested in it or him by or under this Act; and in particular--

(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely:-

(i) any question as the limits of any land which has been defined by a Revenue-officer as land to which this Act does or does not apply;

(ii) any claim to compel the performance of any duties imposed by this Act or any other enactment for the time being in force on any Revenue-officer as such;

(iii) any claim to the office of kanungo, or village-officer , or in respect of any injury caused by exclusion from such office, or to compel the performance of the duties or a division of the emoluments thereof;

(iv) any notification directing the making or revision of a record-of-rights;

(v) the framing of a record-of-rights or annual record, or the preparation, signing or attestation of any of the documents included in such a record;

(vi) the correction of any entry in a record-of-rights, annual record or register of mutations;

(vii) any notification of the undertaking of the general re-

assessment of a district or tahsil having been sanctioned by the [State Government];

(viii) the claim of any person to be liable for an assessment of land-revenue or of any other revenue assessed under this Act ;

(ix) the amount of land revenue to be assessed on any estate or to be paid in respect of any holding under this Act;

(x) the amount of, or the liability of any person to pay, any other revenue to be assessed under this Act, or any cess, charge or rate to be assessed on an estate or holding under this Act or any other enactment for the time being in force;

(xi) any claim relating to the allowance to be received by a land-owner who has given notice of his refusal to be liable for an assessment, or any claim connected with, or arising out of, any proceedings taken in consequence of the refusal of any persons to be liable for an assessment under this Act;

(xii) the formation of an estate out of waste land;

(xiii) any claim to hold free of revenue any land, mills, fisheries or natural products of land or water;

(xiv) any claim connected with, or arising out of, the collection by the Government, or the enforcement by the Government of any process for the recovery of land-revenue, or any sum recoverable as an arrear of land-revenue;

(xv) any claim to set aside, on any ground other than fraud, a sale for the recovery of an arrear of land-revenue of any sum

recoverable as an arrear of land-revenue;

(xvi) the amount of, or the liability of any person to pay any fees, fines, costs or other charges imposed under this Act;

(xvii) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought;

(xviii) any question as to the allotment of land on the partition of an estate, holding or tenancy or as to the distribution of land subject by established custom to periodical re-distribution or as to the distribution of land –revenue on the partition of an estate or holding or on a periodical redistribution of land, or as to the distribution of land, or as to the distribution of rent on the partition of a tenancy;

[(xviii-a) any question connected with or arising out of or relating to any proceedings for the determination of boundaries of estates subject to river action under sections 101-A, 101-B, 101-C and 101-D, respectively, of Chapter VIII];

(xix) any claim to set aside or disturb a division or appraisement of produce confirmed or verified by a Revenue-officer under this Act;

(xx) any question relating to the preparation of a list of village cesses or the imposition by the [State] Government of

conditions on the collection of such cesses;

(xxi) any proceeding under this Act for the communication of the dues of a superior land-owner;

(xxii) any claim arising out of the enforcement of an agreement to render public service in lieu of paying land-revenue ; or

(xxiii) By claim arising out of the liability of an assignee of land-revenue to pay a share of the cost of collecting or re-assessing such revenue, or arising out of the liability of an assignee to pay out of assigned land-revenue, or of a person who would be liable for land-revenue if it had not been released, compounded for or redeemed to pay on the land-revenue for which he would but for such release, composition or redemption be liable, such a percentage for the remuneration of a village officer as may be prescribed by rules for the time being in force under this Act."

3. Before that Court, on behalf of the petitioner, a judgement of this Court in ***Raj Kumar vs. Katu Ram @ Chhotu Ram & Ors. 1995(1) RRR 709***, had been cited. The learned trial Court however dismissed the application, holding that as per Section 45 of the Act, a person who is in possession of a suit property (as falls within the purview of the Act) and is aggrieved by an incorrect entry in the revenue record, can institute a suit for declaration of title, as was held by this Court in ***Tarlok Singh vs. Financial Commissioner, Co-operation, 2004(3) RCR(Civil) 548***.

Thus, that Court held that as the respondent-plaintiff was seeking a decree of declaration of title, to the effect that he is owner in possession of his 1/12th share on the basis of a compromise entered into by him, <u>and that he had not challenged any order of the revenue Court</u>, therefore, the Civil Court had, in fact, jurisdiction to entertain the suit.

4. Before this Court, learned counsel for the petitioner firstly points out that the last part of the order of the trial Court is wholly erroneous, in view of the fact that the respondent-plaintiff has sought a consequential relief of correction of what is termed in the plaint to be a clerical error/mistake that, according to the plaintiff, has occurred in the order of partition of the suit property (dated 15.9.2003), he further also having challenged Mutation entry no.5707 sanctioned by the AC-II Grade, Ambala and further entries in the record of rights (*jamabandies*) and other revenue record.

5. Whereas undoubtedly learned counsel for the petitioner is correct as regards the error in the impugned order qua the prayer sought by the respondent-plaintiff in his plaint, however as regards the suit not being maintainable on the touchstone of Section 158 of the Act, I cannot agree with the contention, in view of the fact that the primary relief sought by the respondent-plaintiff is a declaration of title of ownership of the suit property, on the basis of a compromise contended by the plaintiff to have been entered into by him.

Of course, whether or not he is entitled to such a declaration would be a matter to be considered by the trial Court on the basis of evidence led by the parties, but as regards maintainability of the suit, no revenue authority would have the jurisdiction to entertain such a suit where a person seeks a declaration of title, (unless of course it is covered by any of provisions of the Punjab Village Common Lands (Regulation) Act, 1961, that obviously not being the case at all in the present *lis*).

6. Before proceeding further, it would be first appropriate to reproduce the prayer of the respondent-plaintiff, as made in his plaint in the suit instituted by him, as per a copy thereof annexed by the petitioner-defendant himself, with this petition, as Annexure P-2.

The said prayer reads as follows:-

> "It is, therefore, prayed that a decree for declaration to the effect that the plaintiff is the owner and in possession of 1/12th share of Jai Singh defendant no.1 on the basis of order dated 28.03.2003 passed by DRO, Ambala in appeal titled as "Harnek Singh vs. Jai Singh etc." on the basis of compromise Ex.C2 as mentioned in the order dated 28.03.2003 by which the plaintiff alone is entitled to get whole share of Jai Singh defendant no.1 and is liable to get whole share of Jai Singh defendant no.1 and is liable to be declared as owner and in possession of 1/12th share of defendant no.1 in Khasra no.8//29 (3-9), while Jai Singh was given land bearing Khasra no.8//15/2, Khasra no.108 and 54//4 min i.e. land measuring 04 Kanal 11 Marla and to order for correction of clerical error/ mistake occurred in the Naksha Jeem, Bay & partition order dated 15.09.2003, Sanand Takseem and mutation no.5707 sanctioned by the AC IInd Grade, Ambala and in subsequent jamabandis and other relevant Revenue Record showing the share of Jai Singh in the name of defendant nos.2 to 8 where as the share of Jai Singh defendant no.1 should have been transferred in the name of plaintiff alone and further to declare the plaintiff as owner and

in possession of land of share of Jai Singh referred to above and a decree for Mandatory Injunction directing the defendant nos.9 & 10 to correct the clerical error/mistake occurred in the Revenue Record details of which is given above in respect of the land in suit with consequential relief of Permanent Injunction restraining the defendants from selling, mortgaging or creating any charge over the Khasra no.8//29 (3-9) situated in village Sonda, Tehsil & District Ambala, may kindly be passed in favour of the plaintiff and against the defendants with costs or any other relief which this hon'ble Court deems fit, may please also be granted to the plaintiff and against the defendants."

7. Section 45 of the Punjab Land Revenue Act, 1887, is also reproduced as follows:-

"***45. Suit for declaratory decree by persons, aggrieved by an entry in a record.-*** *If any person considers himself aggrieved as to any right of which he is in the possession by an entry in a record-of-rights or in an annual record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877.*"

Hence, even as per the aforesaid provision any erroneous/wrongful entry in the record of rights or in the annual record (*jamabandi* and *khasra girdawari*, respectively), can also be challenged before a civil suit, if such right goes to the question of ownership and title. Hence, as regards that question, it can only be settled by a civil court of competent jurisdiction, such question of right of ownership and title not being confined to simple mutation or other entries made in the revenue record and not being relatable to land revenue paid or payable, or covered by the bar contained in Section 158 and the 'entries' listed therein.

No doubt, some part of what is contained in sub-section (2) of Section 158 may, at first blush, seem to be included in the bar contained in the said provision on exercise of jurisdiction of a civil Court, especially as regards the entries in clauses (iv), (v) and (vi); however, such bar is only with regard to entries in the record of rights or annual records as do not emanate from a question of title, ownership or other possessory rights, as are to be settled by a civil Court. Thus, an error in the annual records or the record of rights as does not emanate from any such substantive rights of a person, may be challengeable only before a revenue authority as regards any correction required to be made therein; but reflection of ownership and possession or any rights thereto in the revenue record, essentially is only that, i.e., it is a <u>reflection of such rights</u>, with revenue entries not actually conferring any substantive right on any person. Hence, if a substantive right existing in a person as regards the question of his title on the basis of any ownership or as regards his possessory rights over any land is concerned, then such mutation entries, despite the bar contained in Section 158 (2) (iv), (v) and (vi), would be entries that are challengeable before a civil Court even in terms of Section 45 of the Act, if such entries are contended to be wrongly reflecting such right of title, ownership or possession.

That, in fact, would be the proper application of Section 45 and 158, when read together and in harmony.

8. Undoubtedly, what the respondent-plaintiff has also sought as a consequential relief to the declaration of title (if such decree is granted to him), is an order seeking partition of the suit land. However, in the opinion of this Court, even that aspect would not affect the eventual adjudication on merits on the question of declaration of title (i.e. whether the respondent-plaintiff has a right to such declaration or not), the only outcome being that if that decree is granted to the respondent-plaintiff and he succeeds in his suit on the question of title of ownership of the suit land, he would have to only move an appropriate application before the revenue authorities for correction of the order of partition, such correction therefore being based upon his title (if it is so declared in his favour by the trial Court). That is to say, that if a declaration of title is made in favour of the respondent-plaintiff, then to get his name substituted on the basis of that declaration, in place of any other person, in the partition proceedings, that would need to be done by him by applying to the competent revenue authority, for the needful to be done.

With the aforesaid observations, this petition is dismissed in *limine*.

September 18, 2018 **(AMOL RATTAN SINGH)**
Gulati/dinesh **JUDGE**

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes