

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

RSA No.2581 of 1988 (O&M)

Date of Decision: May 01, 2018

Zile Singh

...Appellant

Versus

Kali Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. H.S. Hooda, Senior Advocate
with Mr. Chander Shekher Singh, Advocate
for the appellant.

Mr. Harkesh Manuja, Advocate
for the respondents.

FATEH DEEP SINGH, J.

The necessary facts that need to be detailed before adjudicating upon the merits of the present regular second appeal are as follows:-

Plaintiffs Kali Ram, Hukam Chand and Satbir being major, Jagbir Singh being minor sons of Kali Ram filed against the defendants Zile Singh, Jee Kaur, Kanhaiya, Deep Chand, Jiya Lal, Tokh Ram, Sheo Nath, Sukh Lal, Jug Lal, Birkhe Singh and Jotan suit for possession of land bearing khewat No.76, khata No.122, killa No.12/8/2 measuring 5 kanals and 15 marlas situated in village Fatehpur, Tehsil and District Sonapat. The claim is based on the averments that defendants, present appellant in connivance with the revenue authorities got mutation bearing No.1369 dated 12.7.1967 sanctioned in their favour without adopting due process and without the order being passed by the competent

authority alleging that under the garb of this mutation, the defendants took possession of the suit land and got entries in the revenue records in their favour showing it to be *Gair Moroosi Bila Lagan Bavajah*. It is alleged by the plaintiffs that a suit titled as *Nihalu etc. vs. Chaman* was filed challenging this mutation No.1369 and the said mutation was declared to be null and void vide order dated 4.6.1971. The appeal of the appellants against this order stood dismissed vide judgment dated 19.11.1972 which was followed by recourse to law before this Court, whereby, appeal of the appellants was dismissed by Hon'ble High Court vide order dated 26.7.1983 and, therefore, claimed that since mutation in question has been declared illegal and void, the plaintiffs were entitled to take possession of the land measuring 5 kanals and 15 marlas. Defendants in their stand taken in their pleadings have alleged that mutation No.1369 was sanctioned in their favour and since then they were in possession of the suit property as owners and have denied the allegations of the plaintiffs. Larned trial Court on the basis of pleadings of the parties framed the following issues:-

1. Whether the plaintiffs are the owners of the land in dispute, as alleged? OPP
2. Whether the plaintiffs are entitled to possession of land in dispute? OPP
3. Relief.

Plaintiffs examined Phool Dass, Patwari as PW1 and one of the plaintiff Kali Ram as PW2. On the other hand, defendant Zile Singh deposed as DW1. The Court of learned Sub Judge, 1st Class , Sonapat through judgment dated 14.12.1987 decreed the suit. Upon appeal, the first Appellate Court of learned Additional Sessions Judge, Sonapat dismissed the appeal of the appellants with no order as to costs and that is how the

present appeal has been brought about.

Going through the lengthy arguments that have sought to be addressed by learned counsel for the two sides and perusing the records of the case. It is by no means displaced in the submissions of the two sides and also finds referred to in the evidence as well as in the impugned judgment that the present suit has been filed in a representative capacity and Phool Dass, Patwari as PW1 has clearly stated on the basis of revenue records that land initially was *shamilat* land (village common land) and it was by virtue of mutation No.1369 it was changed in the name of proprietors of the village. The contention that has sought to be raised is that the appellant has been handed over possession through legal and valid means and, therefore, cannot be dispossessed does not find favour with this Court as the argument on the face of it appears to be erroneous and ill-conceived. The revenue records proved by the plaintiffs themselves including the findings of this Court clearly bear out that the land, subject matter of dispute regarding which regular second appeal No.141 of 1975 *Chaman @ Chhotu and others vs. Mange and others* Ex.P2 was filed in which this Court held that this land measuring 177 kanals and 15 marlas including the present land was owned by proprietary body of village Fatehpur and which has been duly reflected in the revenue records and the present land denoted to be Panna/Thola and this Court seeks support from Division Bench view of this Court *2006(4) R.C.R (Civil) 350 Rama Sarup and others vs. State of Haryana and others* wherein definition assigned to *shamilat* land includes lands described in the revenue records as *shamilat* Tarafs, Patties, Pannas and Tholas etc. and as per the revenue record meant

for the benefit of the village community or a part thereof or for common purposes of village and, therefore, invariably leads to irresistible conclusion that even plaintiffs cannot seek exclusive possession of this very property and land subject matter of the suit would vests in the proprietary body of the village Fatehpur. Even otherwise, suit has been filed in a representative capacity of the proprietary body of the village which makes it emphatically clear that it is a shamilat land that vests in the proprietary body of the village for which they have knocked at the doors of the Court and testimony of PW1 Phool Dass has materially supported this contention which could not be controverted by learned counsel for the respondent. Learned counsel for the appellant could not convince this Court, how the conclusions drawn by the Court below were in any manner infirm and contrary to the evidence on the records. However, the learned trial Court in its findings and so the learned first Appellate Court have failed to consider this aspect that the decree for possession of the suit land should not have been to the effect directing the defendants to hand over the peaceful possession to the plaintiffs rather it should have been to the proprietary body of the village and, thus, the same stands clarified and rectified to that extent. The claim of the appellant that mutation has been sanctioned in their favour does not carry weight as mutation is mere for the purpose of payment of land revenue and does not bestow title upon the person in whose favour the same has been sanctioned. Reliance placed on **Jattu Ram vs. Hakam Singh and others AIR 1994 SC 1653.**

Thus, the two Courts below have rightly held that the plaintiffs have been able to establish and prove their case to the hilt and the

conclusion drawn on the issues needs to be upheld. No other argument was addressed by any of the side.

In the light of what has been detailed and discussed above, the present appeal is disposed off, thereby, allowing the modification as detailed above.

(FATEH DEEP SINGH)
JUDGE

May 01, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No