

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

1. RSA No.49 of 1990 (O&M)
Date of decision : 10.07.2018

Narinder Singh (deceased) through his LRs

...Appellant

Versus

Ram Rakhi and others

...Respondents

2. RSA No.502 of 1990 (O&M)
Date of decision : 10.07.2018

Gurbaj Singh (deceased) through his LRs

...Appellant

Versus

Ram Rakhi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Punia, Sr. Advocate with
Mr. P.S. Punia, Advocate for the appellant.

Mr. Deepak Gupta, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Two defendants have filed separate appeals against the
concurrent findings of fact arrived at by the Courts below.

As per the provisions of the East Punjab Holdings
(Consolidation and Prevention of Fragmentation) Act, 1948,

consolidation of holdings were carried out by the authorities constituted under the Act. The final order was passed by the Assistant Director Consolidation on 27.12.1960. On the basis of the aforesaid final order, mutation No.501 was sanctioned and the land measuring 8 kanals comprised in Rectangle No.4, Khasra No.22 was allotted to the plaintiffs, whereas the land measuring 8 kanals and 8 marlas comprised in Rectangle No.13, Khasra No.4/2, (2 kanals 16 marlas), 7/1 (2 kanals 16 marlas) and 14/2/1 (2 kanals 16 marlas) was allotted to the defendants. Mutation No.501 is Ex.P4/A on the file.

Both the Courts have also noticed that when the defendant-Gurbaj Singh appeared in the evidence, he admitted that on 27.12.1960, Assistant Director Consolidation of Holdings did render his decision and mutation No.501 dated 24.09.1964 was sanctioned.

Grievance of the petitioner is that first of all, mutation No.501 has not been incorporated in the revenue record and he has not been allowed to continue in possession of the land comprised in Rectangle No.4//22, 8 kanal. His further grievance is that the defendant had taken over the land measuring 13 kanals 16 marlas instead of 8 kanals 8 marlas allotted to them.

Learned Senior Counsel appearing for the appellants has submitted that since the order dated 27.12.1960 has not been produced on file, therefore, mutation No.501 could not be relied upon by the Courts below while decreeing the suit. He has further submitted that in an application for additional evidence, the defendants have sought to

produce mutation No.489 sanctioned on the basis of the order of Consolidation Authorities. He submitted that in fact other land was already owned by them.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

The statement of Gurbaj Singh has been read-over by both the learned counsel. The Courts have correctly recorded that Gurbaj Singh when appeared in the evidence has admitted the existence of order dated 27.12.1960 passed by the Assistant Director Consolidation and sanctioned a mutation on that basis i.e. Mutation No.501 dated 24.09.1964. Once the existence of the order is admitted by one of the defendants and the aforesaid order has been duly entered in the revenue record and mutation thereof has been sanctioned, mere non-production of order dated 27.12.1960 cannot result in dismissal of the claim of the plaintiffs. Admission is best piece of evidence. Gurbaj Singh-defendant No.2 has admitted that there was an order passed by the Assistant Director Consolidation.

Next submission of the learned counsel is that the mutation does not confer any title. No doubt, the mutation does not confer any title but mutation is entered and sanctioned to update the record. In the present case, mutation has been entered and sanctioned on the basis of the order passed by the Authority who was competent under the Act of 1948.

Reliance of learned counsel for the appellants on mutation

No.489 by way of additional evidence is also misplaced as mutation No.489 was entered on the basis of the order of Original Consolidation of Holdings, however, once the Assistant Director Consolidation, who is a Superior Authority, has passed a subsequent order then the appellants cannot be permitted to take the benefit of mutation No.489. In the hierarchy, Assistant Director Consolidation is a higher officer. Under Section 21 of the Act of 1948, re-partition takes place during consolidation of holdings and Consolidation Officer after hearing the petitions, passes the orders under Section 21(2). Any person aggrieved by the order of Consolidation Officer is entitled to file an appeal under Section 21(3) of the Act before the Settlement Officer. Against the order passed by the Settlement Officer, the appeal lies to the Assistant Director Consolidation under Section 21(4) of the Act. In the present case, the order has been passed by the Assistant Collector Consolidation which was entered and mutation was sanctioned on that basis of an order passed by the Assistant Director Consolidation.

In view thereof, there is no scope for interference with the concurrent findings of fact arrived at by both the Courts below.

Both the appeals are dismissed.

CM No.8090-C of 2018

Prayer in the application is to produce by way of additional evidence a copy of mutation No.667 dated 02.05.1972. This mutation is with regard to the partition between the defendant inter se which would not effect the rights of the plaintiffs.

Learned counsel for the appellant has submitted that as per the revenue record, the brothers have partitioned and the appellant-Narinder Singh would be sufferer. Needless to say that once mutation No.501 and a decree on basis thereof has been passed, the legal heirs of the appellant-Narinder Singh would be entitled to claim the adjustment inter se amongst the brothers.

Application is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

10.07.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No