

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.115 of 1989 (O&M)

Date of decision: 17.01.2018

Phool Singh

..... Appellant

Versus

Hazari and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Amit Jain, Advocate
for the appellant.

Mr. Tarun Singla, Advocate, for
Mr. Ashok Aggarwal, Sr. Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff-Hazari filed a suit for declaration and permanent injunction claiming that he is co-owner/co-sharer in possession of 15 marlas of land comprised in khasra No.1020 which is gair mumkin land situated in the abadi of the area.

On the other hand, the defendants contested the suit and claimed that it is the plaintiff who is in occupation of the land and property comprised in khasra No.1020 is joint property of Patti Thulla Ram Bal and it has not been partitioned amongst the joint owners.

After appreciation of evidence available on the file, both the Courts have recorded a concurrent finding of fact that the plaintiff-

respondent was a co-owner during pre-consolidation in khasra No.7790 which after consolidation was given new khasra No.1020. The Courts have further held that the plaintiff has continued in possession thereof.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has vehemently relied upon an order passed by Director, Consolidation by moving application under Order 41 Rule 27. Learned counsel has submitted that the plaintiff had filed an application for correction of the record post-consolidation which has been rejected. He, therefore, submitted that in view of the dismissal of the application under Section 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948, now the appeal has to be accepted. On the other hand, learned counsel for the respondents has supported the concurrent finding of fact and has submitted that under Section 44 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948, there is no absolute bar on the jurisdiction of the Civil Court. Hence, he submits that once both the Courts on appreciation of evidence have recorded a finding of fact that the plaintiff in fact was a co-owner/co-sharer in khasra No.7790 which is also established from the revenue record produced before the Civil Court and khasra No.7790 was assigned new number post-consolidation as khasra No.1020, therefore, the claim made by the plaintiff cannot be defeated.

I have considered the submission of both counsels. I have also seen the order dated 30.01.1987 passed by Director, Consolidation. The order passed by Director, Consolidation is wholly non-speaking and

primarily the application under Section 42 has been dismissed on the ground of limitation.

Still further, once before the Civil Court, it has been established that the plaintiff was a co-owner/co-sharer in land comprising khasra No.7790 as per the revenue record and khasra No.7790 was the new khasra number as 1020, no reason is forthcoming how the name of the plaintiff was deleted from being co-sharer.

Learned counsel for the appellant has further argued that it was for the plaintiff to prove that he was allotted land in khasra No.1020 in lieu of khasra No.7790 but he could not.

I have considered the submission. In the present case, the land is in abadi. Plaintiff is recorded in possession as a co-owner pre-consolidation in the revenue record which has a presumption of genuineness and continuity. Revenue record is evidence of title. If in subsequent Jamabandi, post-consolidation, his name has been omitted by the Consolidation Authorities by mistake, the plaintiff cannot be made to suffer on that account.

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

Appeal is dismissed.

CM-1928-C-1989 & CM-285-C-1989

In view the discussion made above, the applications are dismissed.

17.01.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No