

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

**RSA No.5038 of 2016 (O&M)
Date of Decision: 17.07.2018**

Ishwar Singh

... Appellant

Versus

Dharam Singh (deceased) through LRs

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

Plaintiffs filed a suit for declaration and permanent injunction on the pleadings that in the Jamabandi for the year 2001-02, their share in the suit property was reduced without any information and by way of connivance between the defendants on the basis of Fard Badar No.906 dated 04.06.2003. Plaintiffs questioned Fard Badar No.906 dated 04.06.2003 on the ground that no notice prior thereto had been served upon them. It was averred that Khasra Nos.1504 and 1505 measuring 02 bighas 01 biswa had been acquired by the Government and the award had been announced in the year 2003. Khasra No.1505 had been released from acquisition. Defendant Nos.1 to 3 were trying to receive compensation of the acquired land on the basis of illegally enhanced shares vide Fard Badar Number 906 dated 04.06.2003 and also to alienate part of Khasra No.1505 on the basis of such Fard Badar.

Suit filed by the plaintiffs was dismissed by the trial

Court on 29.10.2013 and a civil appeal preferred has met the same fate vide judgment dated 25.05.2016 passed by the learned Additional District Judge, Gurgaon. Resultantly, plaintiff/appellant Ishwar Singh is in second appeal before this Court.

Counsel for the appellant has argued that the Courts below have overlooked the provisions contained in para 7.29 of the Punjab Land Records Manual which prescribes the procedure with regard to correction of revenue entries. Further urged that the revenue officials had no jurisdiction to correct the revenue record by way of Fard Badar and it is only the Civil Court which has the jurisdiction to order correction thereto as per Section 45 of the Punjab Land Revenue Act. Further contended that it is a case of mis-appreciation of evidence inasmuch as statement of DW-1 Dharam Singh clearly reflected ignorance about issuance of any notice to the plaintiffs prior to effecting the Fard Badar and thereby illegally enhancing share of the defendants in the suit land.

Having heard counsel for the appellant at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

Counsel does not dispute that the plaintiffs had earlier filed suit No.267 of 2003 for mandatory injunction and which was decided vide judgment dated 16.04.2007 Ex.P-3 and in which a specific ground had been taken that Fard Badar No.906 dated 04.06.2003 is without knowledge and notice and the same was in collusion with the defendants and against the Punjab Land Records

Manual.

It has also gone uncontroverted that the plaintiffs in the previous proceedings had filed an application for amendment of the suit and such application having been dismissed, Civil Revision No.7284 of 2015 had been filed with regard to Fard Badar involved in the present lis and the revision petition had been dismissed by this Court on 29.03.2016 and the operative part of the order reads as follows:

“Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that originally, suit was filed with the averments that Farad Badar No.906 dated 04.06.2003 was changed without notice and against the interest of the plaintiffs and the same be declared null and void. The defendants filed written statement and the Court framed issues in respect of legality of Farad Badar No. 906 and after leading of evidence by the parties and appreciation thereof, suit was dismissed. Now the petitioners want to amend the nature of litigation altogether that they be allowed to treat Farad Badar as No.3 in issue and not No.906. The Court below has rightly taken the view that such an amendment cannot be allowed for more than one reasons because amendment of pleadings as belated stage can be allowed but for that purpose, the same must be essential for the just decision of the case. Secondly, the same should not result into injustice to the other party. The Court below has rightly dismissed the application taking into consideration the fact that earlier Civil Suit No.267 dated 16.12.2003

was decided on 16.04.2007 by learned Additional Civil Judge (Senior Division), Gurgaon and in that litigation, legality of Farad Badar No.3 was in issue and the same was declared illegal, null and void. The said finding in respect of legality of Farad Badar No.3 dated 04.06.2003 has already attained finality and the same issue cannot be allowed to be raised by way of amendment of pleadings.

In view of the above, there is no illegality in the order dated 13.10.2015 passed by learned Additional District Judge, Gurgaon and present petition stands dismissed being devoid of any merit.”

The Courts below have rightfully taken a view that the issue with regard to Fard Badar No.906 dated 04.06.2003 had already attained finality and it would not be open for the plaintiff/appellants to agitate the matter afresh.

The present matter does not warrant any interference.

The instant second appeal does not raise any question of law.

Appeal is dismissed.

17.07.2018

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No