

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

**RSA No.6630 of 2016 (O&M)
Date of Decision.01.06.2018**

Smt. Kanta Devi and another

...Appellants

Vs

State of Punjab and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay Lath, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.8551-C of 2018

Application is allowed.

Exemption from filing certified copy of Annexure A-1 is
granted and the same is taken on record subject to all just exceptions.

C.M. No.8552-C of 2018

The application for preponing the date of hearing of the
appeal is allowed and the main case is taken up today itself.

C.M. No.17316-C of 2016

Application is allowed.

Delay of 56 days in re-filing the appeal is condoned.

RSA No.6630 of 2016 (O&M)

The appellants-plaintiffs have not been successful in the
suit seeking declaration to the effect that they are in joint owners in
possession of land measuring 61 kanals 15 marlas described therein
(hereinafter called the suit property) on the basis of the registered
Will dated 13.8.1985 executed by Inder Singh son of Gobinda and

challenging the review order dated 25.01.1985 passed by the Collector and subsequent allotment order dated 18.11.1985 passed by defendant No.3, order dated 14.03.1997 of the Commissioner Appeals, Patiala Division, Patiala and the remand order dated 19.05.1998 passed by the Financial Commissioner Revenue (Appeals-1) Punjab, Chandigarh with alternative relief of possession of the suit property on the premise that Inder Singh son of Gobinda i.e. father-in-law of plaintiff No.1 and grand father of plaintiff No.2 was in possession of the suit property measuring 61 kanals 15 marlas under the big landlord Ram Lal. Owing to the land at the hands of the land owner, declared surplus, the suit property was allowed to be purchased by Inder Singh under Section 15 of the Punjab Land Reforms Act, 1972 vide order dated 19.02.1977. In lieu thereof, Inder Singh made payment to the land owner Ram Lal, thus, became owner in possession of the property. Mutation bearing No.1015 was also sanctioned in this regard. During his life time, had also executed his last registered Will dated 13.08.1985 but the revenue record showed that the property was mutated in the name of defendant No.4 and 5 on the basis of alleged allotment order dated 18.11.1985. The aforementioned order was assailed before the competent authority and the Financial Commissioner remitted the matter to the Assistant Collector which was still pending. Vide order dated 14.03.1997, the Commissioner Patiala Division referred the matter to the Financial Commissioner Revenue (Appeals) Punjab, Chandigarh, who vide order dated 19.05.1998 further remanded back the case to the Assistant Collector 1st Grade, Anandpur Sahib.

Defendant No.1 to 3 filed joint written statement and submitted that the order dated 25.01.1985 passed by the then Collector Agrarian was correct as the allottee could not sell or transfer the land to him within 15 years from the date of allotment.

Defendant No.4 and 5 contested the suit by alleging that they had become owner of the property by virtue of allotment made in the year 1985, which had attained finality, thus, prayed for dismissal of the suit.

Since the parties were at variance, the trial Court framed as many as six issues including the issue of relief.

The plaintiffs examined four witnesses whereas defendants examined two witnesses.

On the preponderance of the evidence brought on record, the trial Court dismissed the suit by holding that cancellation of allotment in favour of Inder Singh was justified, for, he could not have transferred the property as there was an embargo for selling the property within 15 years from the date of allotment and the allotment in favour of defendant No.4 and 5 in November, 1985 was as per the provisions of law application. The appeal filed before lower Appellate Court also met with the same fate.

Mr. Vijay Lath, learned counsel appearing on behalf of the appellants-plaintiffs submitted that during the life time of Inder Singh had gifted the property measuring 14 kanals 10 marlas vide gift deed dated 15.10.1981 in favour of his son, who further sold it to Jagan Nath and Prem Chand, defendant No.4 and 5. However, the civil suit was filed by Inder Singh, which was decreed vide judgment

and decree dated 02.12.1985 wherein Bikram Singh was proceeded ex parte, thus, the alleged gift deed was cancelled but the revenue authorities in the review petition cancelled the allotment made in favour of Inder Singh vide order dated 25.01.1985 and defendant No.4 and 5 at the back of the appellants obtained the allotment vide order dated 18.11.1985. The matter was taken up before the authorities with regard to mutation, which was pending adjudication before the authorities. The cause of action accrued only in the year 2001 when vide order dated 19.05.1998 passed by the Financial Commissioner Revenue (Appeals), the matter regarding the mutation was remitted to the Assistant Collector 1st Grade, Anandpur Sahib, thus, urges this Court setting aside the findings under challenge as the same suffer from illegality and perversity.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Lath, for, the appellants-plaintiffs have not been able to explain the delay in challenging the allotment order passed in favour of defendant No.4 and 5 way back in the year 1985 i.e. 18.11.1985. Accrual of the alleged cause of action in the year 2001 owing to the fact that the Financial Commissioner Revenue (Appeals) remitted the matter to the Assistant Commissioner was not in respect of the title but with regard to the mutation. It is settled law that mutation does not confer title. No explanation has come forward for not challenging the allotment in favour of defendant No.4 and 5 within a period of three years and under the garb of challenging the order of mutation, the appellants-plaintiffs cannot be permitted to

challenge the allotment. The suit was not maintainable and rightly so, the Courts below arrived at a finding of declining the relief as sought for.

In view of the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

June 01, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No