

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

RSA No.1192 of 2018

Date of Decision.30.05.2018

Bharam Singh (now deceased) through LRs and others ...Appellants

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Virat Amarnath, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs, who filed the suit under the representative capacity, have not been successful in laying claim for declaration with consequential relief of permanent injunction claiming ownership of agricultural land measuring 5995 bighas 5 biswas as shamlat situated within the revenue estate of village Kairwali, Amarpur Kalan and Amritpur Khurd, Tehsil and District Karnal by setting aside mutation bearing No.35 dated 16.6.1918 and 134 of even date and subsequent jamabandi entries based on the mutations to be illegal and null and void on the premise that they are proprietors of the village Lallupura, Tehsil and District Karnal.

Earlier village Lallupura was in Tehsil Kairana, District Rbzuffar Nagar (UP) and came to the kitty of Punjab some where in the year 1916-17. Jamabadies prepared at that time showed the same as river action. Before the river action of Yamuna river, the total holding of the land of village Lallupura was 7860 Bighas 14 biswas.

After consolidation and having fallen of village Lallupura in Punjab,

now in Haryana, the total holding came to 7806 bighas 14 biswas. The land measuring 5838 bighas 19 biswas had already been deleted from village Lallupura vide mutation No.35 dated 16.6.1918 and was added in the villages Kairwali, Amaritpur Kalan and Amritpur Khurd vide mutation No.134 as *shamlat deh*. During the consolidation, the land of village Lallupura was further reduced and 156 bighas 6 biswas were added in aforementioned three villages, thus, total area came to be 5995 bighas 5 biswas belonging to Biswedhar of village Lallupura. It is in this background, proprietors of the village had challenged the aforementioned mutation.

The aforementioned suit was contested by the defendants by taking numerous preliminary objections that the suit was barred by Order 2 Rule 2 CPC, locus standi, maintainability, mis-joinder and non-joinder of parties. On merits, it was stated that some of the proprietors had already challenged the re-partition and consolidation proceedings but failed to achieve any result upto this Court and Hon'ble Supreme Court of India. Re-partition proceedings were finally held on 18.8.1970, which was challenged in this Court on 10.08.1987 and confirmed vide order dated 16.11.1995. Some of the proprietors filed the case in the lower Court and the stay application accompanied by the suit was dismissed and upheld by this Court whereas the present was suit filed after 80 years of the mutation, therefore, the same was time barred.

On the basis of pleadings, the trial Court framed as many as seven issues including the issue of relief. The plaintiffs examined as many as seven witnesses and brought on record documents Ex.P1

to P12 whereas the defendants examined one witness and brought on record documents Ex.DW1/B and DW1/C.

The trial Court on the preponderance of evidence brought on record noticed that the suit was not maintainable, for, it was barred under Order 2 Rule 2 CPC, as the plaintiffs had filed the writ petition which was dismissed vide order dated 6.10.2005. The appeal laid before the lower Appellate Court also met with the same fate.

Mr. S.K. Garg Narwana, Ld. Senior Counsel assisted by Mr. Virat Amarnath, learned counsel appearing on behalf of the appellants in support of the memorandum of the appeal raised the following arguments:-

(i) The judgments and decrees of both the Courts below are not sustainable in the eyes of law, for, the Courts have failed to appreciate that the defendants had taken contradictory stand in the written statement as in the one breath it was stated that it part of *shamlat deh* of *chuck mushtrka* and on the other hand, that the land was detached from village Lallupura with the consents of its inhabitants but consent of the inhabitants had not seen light of the day.

(ii) Scheme *Ishtemal* Ex.P1 and *Sharat Wazub Ul Arz* Ex.P4 showed that the land was restored by river action in the year 1916 and reverted back to the village to which it belonged. This deposition came through the testimony of DW1. On the other hand,

plaintiffs proved certified copy of the mutation No.35 Ex.P2 and 134 Ex.P3, which did not show that the suit land was deleted from village Lallupura and added to aforementioned three villages, therefore, the mutations were illegal. The matter is still under consideration with the consolidation authorities.

(iii) The suit could not be dismissed under Order 2 Rule 2 CPC as while dismissing the LPA as withdrawn vide order dated 2.5.2011, this Court observed that since the suit was pending, therefore, any observation made in the appeal could not be construed to be an expression on the merits of the civil suit to be decided on merits in accordance with law.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in submissions of Mr. Narwana, for, the plaintiffs had not been able to prove how and in what circumstances the mutation were illegally sanctioned and affected rights of the plaintiffs. Mutations were effected in the year 1916. No explanation has come forth in challenging the same after 83 years. The conceded position on record is that mutations were challenged before this Court by some proprietors of the village, which had attained finality. In the year 1966-1967, consolidation proceeding were held in the village Lallupura having 417 acres of land. Two acres of land had increased at the time of consolidation.

The suit of the plaintiffs was barred by doctrine akin to

res judicata, for, Ex.P2 mutation No.35 and mutation No.134 Ex.P3 had attained finality being upheld by the Hon'ble Supreme Court. The suit of the plaintiffs was wholly fallacious and could not have been in the representative capacity. It is an attempt to rake up an issue by circumventing the orders passed earlier declining the reliefs sought.

In view of the aforementioned, 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

May 30, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No