

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

RSA No.2644 of 2018(O&M)

Date of decision:29.5.2018

Harvinder Pal Singh

.....Appellant

VERSUS

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajiv Joshi, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by the appellant/plaintiff seeking declaration that inquiry report dated 20.05.2010 submitted by the Additional Deputy Commissioner (G) Jalandhar in inquiry No.151-Steno-A.D.C./20.05.2010 is null and void, non est, illegal, unlawful, without jurisdiction and is liable to be set aside with a consequential relief of permanent injunction restraining the defendants from acting upon recommendations made in the said inquiry, has been dismissed.

In brief, case of the appellant is that Assa Singh, grandfather of the appellant/plaintiff purchased land measuring 2 kanal 9 marlas in khasra No.1031 and 25 marlas 3 sq. feet in khasra Nos.1058 and 1059 from the Central Government on the basis of conveyance deed dated 02.11.1970. Mutation was sanctioned in the name of Assa Singh who sold part of land during his lifetime and some portion was inherited by legal

heirs of Assa Singh who further sold out some land to the subsequent purchasers. One Rajinder Kaur, widow of Harbans Singh and daughter of Ganga Singh was allotted house No.NN-16B-2 from the Central Government but she never claimed that the said property falls in khasra No.1031. Rajinder Kaur sold land measuring 5 marlas 148 sq.ft. to Ravinder Singh son of Jagir Singh in the year 1980 vide sale deed No.2911 and subsequently said portion was sold to Gurdev Singh son of Sohan Singh and after his death the said property was sold to Malwinder Singh Panwar and Sandeep Singh and thereafter the said portion was sold to Harbans Singh. Harbans Singh sold the said portion to Rajesh Kumar and Radha Rani. The said portion falls in khasra No.1031 and belonged to the plaintiff.

The plaintiff got registered FIR No.93 dated 13.03.2010 under Sections 420, 465, 467, 471, 120-B IPC against Harbans Singh, Rajesh Kumar, Radha Rani, Vijay Kumar and others. The appellant/plaintiff also moved an application for demarcation of land in question and on the said application, respondent No.1 marked inquiry to respondent No.2. It is averred that respondent No.2 did not give proper opportunity to produce the required documents. The appellant moved an application for transfer of inquiry from respondent No.2 but respondent No.1 did not agree. Inquiry officer submitted inquiry report on 20.05.2010 by exceeding his jurisdiction, with a biased mind to give benefit to other parties. The revenue officer has no power to review the mutation already entered in the mutation register and in the *fard jamabandi*. The inquiry officer also made recommendation to review mutation of property No.1058, 1059 whereas no inquiry regarding the said property was entrusted to the inquiry officer.

On May 4, 2018, order passed by this Court reads as follows:-

"Counsel for the appellant prays for time to address the question of maintainability of the suit.

Adjourned to 18.05.2018."

Counsel for the appellant has submitted that as the inquiry officer has submitted the report by exceeding his jurisdiction and with a biased mind to help the other parties, the inquiry report is liable to be set aside. It is further argued that the appellant was not given proper opportunity to produce the relevant documents during inquiry proceedings, therefore, the inquiry officer conducted the proceedings in violation of principles of natural justice. Further submitted that a serious prejudice shall be caused to the appellant in case defendant No.1 acts upon inquiry report either to set aside the mutation or initiate any other proceedings against the appellant.

To substantiate his plea with regard to maintainability of the suit, counsel has referred to judgments of Calcutta High Court **Syed Abul Hasin and others Vs. Joynab and others, 2001(4) ICC 724** and **Doly Ghosh Vs. Kumud Chandra Ghosh, 2004(2) WBLR 657**. Reference has also been made to judgment of Hon'ble the Supreme Court **Horil Vs. Keshav and another, 2012(2) RCR (Civil) 852**.

I have heard counsel for the appellant, perused the paper-book and the judgments cited at bar.

Before advertng to the submissions made by counsel for the appellant, it is pertinent to note that none of the judgments relied upon by counsel for the appellant answers the question with regard to maintainability of suit seeking declaration qua validity of the inquiry report

with consequential relief of permanent injunction restraining the respondent/defendants from acting thereupon.

In **Syed Abul Hasin and others case** (supra), the plaintiffs filed a suit for declaration of title and other reliefs in respect of land which was the subject matter of three deeds registered by the District Registrar, Murshidabad under Section 74 of the Indian Registration Act, 1908 after having held an inquiry and recording evidence therein.

In **Doly Ghosh's case** (supra), the plaintiff has filed a suit for declaration that there was no marriage between the parties and the alleged marriage certificate was void and a nullity.

In **Horil's case** (supra), the question before Hon'ble the Apex Court was whether a compromise decree passed by the Revenue Court can be challenged in a Civil Court. It was held that civil suit against the decree on the premise that compromise was fake and never signed by the appellant and the decree was fraudulent and thus nullity, can be maintained before the Civil Court as revenue Courts are neither equipped nor competent to effectively adjudicate on allegations of fraud that has overtones of criminality and the courts really skilled and experienced to try such issues are the courts constituted under the Civil Procedure Code. In view of the above, counsel for the appellant has failed to successfully answer the question of maintainability of the suit by relying upon the aforesaid judgments.

Section 34 of the Specific Relief Act, 1963 deals with discretion of Court as to declaration of status or right. A relevant extract therefrom is quoted thus:-

34. Discretion of court as to declaration of status or right.—

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

Indisputably, till the inquiry report submitted by respondent No.2 is acted upon, there is no cause with the appellant to express any grievance that the State is denying or interested to deny his title to a right. As a matter of fact, the appellant has pre-empted to stall an action, if any, on the basis of inquiry report. If such a suit is entertained much less accepted, there would be plethora of cases filed in the Court to challenge the inquiry report even before the competent authority takes a call if the report invites some further action or the same is to be filed. In this view of the matter, the present suit is held to be pre-mature and liable to be dismissed on this score alone.

That being so, this Court need not to examine the correctness or otherwise of the impugned judgments/decrees.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine with costs. However, nothing stated hereinbefore shall cause prejudice to right of the appellant to take recourse to appropriate

remedy in law, if on the basis of inquiry report or otherwise, an action is taken against him.

MAY 29, 2018 'D. Gulati'	(REKHA MITTAL) JUDGE
Whether speaking/reasoned	: yes/no
Whether reportable	: yes/no