

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RA-RS-35-C of 2017 (O&M) in  
RSA No.2285 of 2005  
Date of Decision: March 27, 2018

Mohan Lal (since deceased) through L.Rs & others

...Appellants

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr.C.B.Goel, Advocate,  
for the review applicant-appellants.

Mr.Ajit Bhardwaj, AAG, Haryana,  
for the non-applicant/State.

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**AMIT RAWAL, J.**

The present review application has been filed for recalling/reviewing of the order dated 17.11.2009 rendered in Regular Second appeal No.2285 of 2005, accompanied by an application seeking condonation of delay.

It has been stated in the application that the plaintiffs had filed a suit for declaration with consequential relief of permanent injunction on the ground that they are owners in possession of land, for, Mohan Lal and one Chiranji Lal, father of plaintiffs No.2 to 4 purchased the land from Kishan Pal son of Jagan Nath vide sale deed dated 9.10.1959. Mutation thereof was sanctioned in 1960. For the purpose of obtaining loan, when a

copy of jamabandi was obtained, it came to the notice that the land had been illegally mutated in the name of defendant on 24.11.1983 vide mutation No.1758. The suit aforementioned was filed in 2001. It is in this aspect of the matter, the orders were challenged in the following grounds:-

*“a) That mutation No.1758 was passed secretly without knowledge and notice of plaintiffs.*

*b) That no valid orders were passed by S.D.O.(C) Gurgaon or any other competent authority on 15-10-1982 or on any date for declaring suit land surplus.*

*c) That plaintiffs were owners of suit land on 15-10-82 and as per settled principles of law and justice opportunity must be given to owner of land prior to declaring land as surplus.*

*d) That as per Notification of Haryana Govt.Memo No.6632-AR (II)-76/33309 dated 29-10-76 from Secretary to Govt.of Haryana, Revenue Department Chandigarh land in suit could not be declared surplus and exempted from pool of surplus.*

*This orders, if any, declaring suit land surplus are illegal, void and without jurisdiction.*

*e) That provisions of Act have not been complied with prior to declaring land surplus and proceeding adopted by defendant in getting land declared surplus and mutation in favour of defendant are illegal and against principles of natural justice.*

*f) That plaintiffs are/were small land owners between 30-7-1958 to 23-12-1972 and plaintiffs are bonafide purchasers who are not related to their vendors.”*

The trial Court as well as the Lower Appellate Court dismissed the suit.

This Court, vide order dated 17.11.2009, dismissed the appeal.

The applicant-appellants filed a writ petition by challenging some other entries of the revenue authorities vide Civil Writ petition No.16787 of 2016.

The said writ petition came before this Court and this Court vide order dated 27.1.2017 dismissed the same on the ground that they have not been able to explain the delay and laches in approaching the Court for correction of mutation No.1758 dated 24.11.1983 and filed the writ petition in 2016. However, they were granted liberty to file a review application qua maintainability of the suit as it was made to understand before this Court that the trial Court dismissed the suit on account of non-maintainability. It is in background of the matter, the review application has been filed.

Mr.C.B.Goel, learned counsel representing the applicant-appellants submitted that his clients would be rendered remediless as once the liberty has been granted to seek review of the order as the civil court dismissed the suit on the ground of non-maintainability of the suit and as well as this Court had not entertained the writ petition, therefore, it is proper case for recalling of the order aforementioned.

I have heard the learned counsel for the parties and appraised the paper book.

The argument of Mr.Goel, in my view, is not tenable, for, in the suit aforementioned following issues were framed:-

- “1) Whether the plaintiffs are owner in possession of the suit land as mentioned in the para No.1 of the plaint? OPP*
- 2) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*
- 3) Whether this court has no jurisdiction to try and entertain the present suit? OPD*
- 4) Whether the suit is not maintainable in the present form? OPD*
- 5) Whether the suit is bad for want of notice U/S 80 C.P.C.? OPD*

- 6) *whether the suit is barred by limitation? OPD*
- 7) *Whether the suit is bad for mis-joinder of necessary parties? OPD*
- 8) *Relief.”*

Issue No.3 was with regard to the fact that the Court did not have the jurisdiction. The said issue was decided against the review applicants/appellants in view of the provisions of Section 26(1)(b) of the Haryana Ceiling on Land Holding Act, 1972, but the fact of the matter is that suit was not solely decided on issue No.3 as issues No.1 and 2 were also rendered against the applicant-appellants, for, the trial Court found that not a single word had been pleaded in the plaint as and when plaintiffs came to notice about mutation No.1758 and passing of the order dated 15.10.1982. The aforementioned order was assailed before the Lower Appellate Court and this Court also not dismissed the suit on the ground that the suit was not maintainable, but on examination of the evidence noticed that plaintiff Ami Chand when appeared as PW-3, in cross-examination deposed that he purchased the land from Kishan Lal and came to know that the land of Kishan Lal was declared surplus and he did not make any enquiry which khasra number had been declared surplus. The suit was essentially dismissed having not been filed within reasonable time as the land was declared surplus in 1983. It was an incidental finding with regard to the jurisdiction of the Court.

For the reasons stated above, I do not finding any error apparent on record. Moreover, the observation given by this Court in the order dated 27.1.2017 while disposing of the writ petition was on the basis of the submission made by the learned counsel that the suit had already been dismissed for want of jurisdiction, but it is not so.

Resultantly, the review application and the application seeking  
condonation of delay are dismissed finding no error apparent on record.

**March 27, 2018**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

|                                  |               |
|----------------------------------|---------------|
| <b>Whether speaking/reasoned</b> | <b>Yes/No</b> |
| <b>Whether Reportable:</b>       | <b>Yes/No</b> |