

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

**CR No. 5548 of 2016(O&M)
Date of decision : 01.05.2019**

Sunil Kumar

..... Petitioner

versus

Mamta Devi and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Armaan Gagneja, Advocate
for Mr.Munish Gupta, Advocate for the petitioner.

Mr.Aditya Yadav, Advocate for respondents No. 1, 5 and 6.

AMIT RAWAL, J. (ORAL)

The present revision is directed against the order dated 02.08.2016 whereby the application of the petitioner for proving on record mutation No.180 and 2213, jamabandi for the year 1956-57, 1962-63 and 1978-79 by way of additional evidence has been declined.

Mr.Gagneja, learned counsel appearing on behalf of the petitioner-plaintiff submitted that the suit was filed for claiming declaration that the plaintiff and proforma respondents are owners in possession in equal share of the land in dispute as per the Jamabandi for the year 2008 and the contesting respondents have no connection or concern with the property. For rectification of the entry in the column of ownership in revenue record by challenging the sale deed on the ground of property being coparcenary.

During evidence the petitioner had also brought on record jamabandi for the

year 2008-2009 to urge that the aforementioned documents are essential and necessary to prove the lineage for the purpose of proving the pleaded case. No harm and prejudice is being caused to the defendants who had a right but at the same time it is not an attempt to fill up the lacuna but rather would help the court in adjudication of the lis.

Per contra Mr. Aditya Yadav, learned counsel appearing on behalf of the respondent submitted that there is no explanation of exercise of “due diligence” nor any rebuttal issue by drawing the attention of this Court to para 9 of the petition. In such circumstances the order under challenge is perfectly legal and justified as a valuable right has already accrued.

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

The issues as well as prayer in the instant suit are as follows:-

Issues:

1. Whether the plaintiff is entitled to the declaration-cum-permanent injunction as prayed for in the plaint?OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the suit of the plaintiff is time barred?OPD
4. Relief.

Prayer

“ That the plaintiffs pray that suit for the declaration may kindly be decreed; that the plaintiffs are perform respondents are owners in possession in equal shares of the land comprised in Khewat No.108 Khatoni No.115, Murabba and Killa No. 63//17/3, 18, 23, 24/1, Kitta 4 area 22 kanal 19 marlas situated in the area of village Sehland, Tehsil and District Mahendergarh as per jamabandi for the year 2008-09 and contesting respondents have no connection or concern with the property in

dispute and plaintiffs are entitled to get entered their names in column of ownership in the revenue documents as owners and Sale Deed No. 2604 dated 21.10.2011 and mutation no.3430 dated 07.12.2011 on the said basis executed by defendant no.7 in favour of defendant no.1 regarding property in dispute is totally wrong, against law, against facts, without any consideration, result of fraud and cheating, misrepresentation, without any legal necessity, without Hindu Family coparcenary and is without consideration and has no effect upon the rights of plaintiffs and perform respondents and is only a paper transaction, is null and void and liable to be cancelled and in addition to the same, sale deed no.4324 dated 13.02.2012 and mutation no.3449 dated 14.08.2012 executed by defendant no.1 in favour of defendants no. 2 to 4 and sale deed no. 4323 dated 13.02.2012 and mutation no.3451 dated 14.08.2012 executed by defendant no.1 in favour of defendants no. 5 and 6 are also wrong, against law, against facts and liable to be cancelled and the same may kindly be ordered to be cancelled and suit for permanent injunction restraining the contesting respondents from interfering in the possession, cultivation and use of the plaintiffs and perform respondents over the property in dispute, under the garb of above said alleged sale deeds and mutations and also restraining them from selling, mortgaging or creating any charge over the property in dispute, in favour of plaintiffs and against defendants with costs and justice may kindly be imparted by this Hon'ble Court in favour of the plaintiffs.”

On juxtaposition of the prayer and issue the genesis of the suit is asserting a right in the property with coparceners and the mutation and other documents sought to be placed on record by way of additional evidence would help the court in arriving at a conclusion in the right perspective. The defendants would have a right to rebut the same in accordance with law

through oral or documentary evidence. Since the additional evidence is only based upon documentary evidence the case is to be proved in accordance with law. The court will examine its presumption as per the provisions of Section 44 of the Punjab Revenue Act. The impugned order is hereby set aside and the revision petition is allowed with liberty as aforementioned but subject to payment of costs of Rs. 5000/-.

(AMIT RAWAL)
JUDGE

01.05.2019
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No