

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

Civil Revision No.5715 of 2015 (O&M)

Date of Decision: March 14, 2019

Dilbag Singh & another

...Petitioners

Versus

Satbir Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Rishab Lohan, Advocate for
Mr. R.N.Lohan, Advocate,
for the petitioners.

AMIT RAWAL, J. (Oral)

The present civil revision is directed against the impugned order dated 24.08.2015 (Annexure P-2), whereby the application of the petitioner-defendants in a suit filed by the respondent-plaintiffs claiming the following relief, has been dismissed:-

“Suit for declaration to the effect that the plaintiffs are the owners in possession of 1/42 shares i.e. 04 kanal 04 marlas in equal shares out of land measuring 92 kanal 14 marlas comprised in khewat no.248, khatauni no.432-433 and 1/21 shares i.e. 01 kanal 14 marlas in equal shares out of land measuring 35 kanal 06 marlas comprised in khewat no.92, khatauni no.148 and 1/21 shares i.e. 03 kanal 08 marlas in equal shares out of land measuring 71 kanal 05 marlas comprised in khewat no.290, khatauni no.505 as per jamabandi for the year 1996-97, situated at village Bass Akbarpur, Sub-Tehsil Bass, District Hisar being the legal heirs of Shri Tara Chand alias Tara and the award dated 16.12.2006 passed by Shri A.D.Diwan, Civil Judge (Jr.Div.) Hansi in civil

suit no.219-C titled as Dilbag Singh versus Tara is illegal, against law and facts, based on fraud and misrepresentation just to forfeit the rights of the plaintiffs and performa defendants,merely a paper transaction, nonest, nullity, null and void, not binding on the rights of the plaintiffs as well as performa defendants and the same is liable to be set aside and the mutation no.2587 allegedly sanctioned on 20.02.2007 based on the abovesaid illegal award is also illegal, against law and facts, based on fraud and misrepresentation, merely a paper transaction,nonest,nullity, null and void,not binding on the rights of the plaintiffs as well as performa defendants and th same is liable to be set aside and the revenue record maintained on the basis of abovesaid illegal award is also illegal, wrong, against law and facts and the same is also liable to be corrected further suit for injunction prohibitory to effect that the defendant no.1 & 2 be restrained from interfering in the lawful and peaceful possession of the plaintiffs and further be restrained from alienating the abovesaid suit land on the basis of wrong revenue entries by way of sale, gift, release deed, lease, mortgage or creating the rights of the others by any method, forever, on the basis of evidence oral as well as documentary.”

Mr. Rishab Lohan Advocate for Mr. R.N.Lohan, learned counsel for the petitioner-defendants submitted that in pursuance to the relief sought by the respondent-plaintiffs, petitioners categorically, in Para 5 of the preliminary objection of the written statement, stated as under:-

“5. That the suit of the plaintiff is barred on account of res-judicata and constructive estoppel. It is pertinent to submit here that it is the plaintiffs and proforma defendants who were causing interference and interruption in the suit property of the answering defendants. Having no other alternative the answering defendants had filed a civil suit titled as “Dilbag Singh etc. V/s Satbir Singh and others” for prohibitory and

Mandatory injunction restraining the defendants therein from interfering the peaceful ownership possession of the plaintiffs (answering defendants herein) in their suit land. The said Civil Suit No.165-C was filed on dated 09.05.2012 i.e. much prior to the present suit, but the plaintiffs have not taken any plea of any alleged fraud in the said civil suit by way of counter claim and as such the present suit being filed on the same cause of action is not at all maintainable in itself and is hit by the provisions of section 10 of the CPC and is liable to be stayed forthwith.”

From the perusal of the aforementioned stand, objection qua maintainability of the suit was taken as petitioner-defendants had already filed a Civil Suit No.165-C of 2012 titled as “Dilbag Singh and others Versus Satbir Singh and others and wanted to place on record copy of the plaint, written statement and the mutation which, due to inadvertence and oversight, could not be placed on record. The evidence, additional, would not be beyond pleadings. All these factors have not been looked into and, therefore, there is abdication.

Despite having been served, respondents have not appeared, which is fortified from the order dated 31.01.2019. The same reads as under:-

“As per office report, the respondents have been served, but there is no representation.

Service is complete.

To come up on 14.03.2019 for arguments.”

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

From the perusal of the averments in the plaint, extracted above, the documents sought to be placed on record by way of additional

evidence, are the part of the proceedings, which, in my view, would help the Court in adjudication of the lis, though the approach of the petitioner-defendants was not diligent but little cavalier.

Be that as it may, in the interest of justice and to avoid miscarriage of justice, I deem it appropriate to grant opportunity to the petitioner-defendants to lead evidence in support of the aforementioned documents, subject matter of additional evidence, subject to payment of ₹3,000/- as costs, to be paid to the plaintiffs.

Revision petition stands allowed.

March 14, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No