

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 20 of 1996 (O&M)

Date of Decision: 03.04.2019

Ram Sarup

...Appellant

VERSUS

Union of India and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Sanjiv Gupta, Advocate  
for the appellant.

Mr. V.K. Kaushal, Advocate  
for respondent no. 1.

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**SURINDER GUPTA, J.**

Heard.

2. The appellant filed suit seeking the declaration to the effect that entries in column no. 6 of the *jamabandies* prepared after 1966-67 pertaining to the land measuring 16 *kanals* comprising in *khewat* no. 162, *khatauni* no. 375, Rect. No. 39,  *khasra* nos. 18 and 19 situated in village Garhi Bhalel, *Tehsil* and District Karnal, showing the plaintiff as *gair maroosi* under the Central Government are illegal, null and void with consequential relief of permanent injunction to the effect that the defendants be restrained from interfering in the possession and auctioning the suit land.

3. The suit was decreed and against the judgment and decree passed by the trial Court, respondents no. 2 and 3 preferred appeal. During course of arguments it came to notice of learned Ist Appellate Court that trial Court instead of recording statements of DW-1 Manmohan Lal, *Kanungo* and DW-3 Mangal Ram, Clerk, *Tehsildar* Sales have taken carbon

provisions of Order XVIII Rule 5 Code of Civil Procedure (CPC) and the case was remanded to trial Court for fresh decision in accordance with law.

4. Learned counsel for the appellant has argued that firstly, the point which weighed before lower Appellate Court was not raised in grounds of appeal. He has argued that there were several connected cases in which evidence was recorded together and carbon copies of statements of witnesses were placed on the files of all the cases with consent of counsel for parties. No objection was raised by counsel representing the respondents, as such, remand of the case on this sole ground is bad and not sustainable in the eyes of law. The evidence of defendants is already on record, as such, while remanding the case, Ist Appellate Court could not direct initiation of fresh proceedings in suit.

5. A fact has come to notice of Ist Appellate Court that file of the lower Court was not containing original copies of evidence. This fact could certainly be taken note of even if no such plea was raised in grounds of appeal. The contention of learned counsel for the appellant that there were several cases, which were being tried together and evidence was recorded in one case of which carbon copies were placed in other cases without objection of counsel for respondent, is not sustainable. There is no such procedure prescribed for recording of evidence in CPC. It is not a case where present and other cases being tried together were consolidated. In case several cases having similar matter had been consolidated, the evidence could be recorded in one case and could be read in other cases. When cases were being tried separately, opportunity was required to be given separately to record the evidence. The trial Court has certainly fell in error by taking carbon copies of the evidence on record, which ultimately amount to non-

recording of evidence and deciding the case without giving opportunity to respondent to produce evidence.

6. In view of above discussion, the order passed by Ist Appellate Court remanding the case calls for no interference in this appeal, which has no merit.

7. Dismissed.

8. Parties are directed to appear before trial Court/successor Court on 02.05.2019 on which date the file of case shall be taken on board and trial Court will proceed further to decide the same on merit expeditiously in accordance with law.

**April 03, 2019**  
*jk*

**( SURINDER GUPTA )**  
**JUDGE**

***Whether speaking/reasoned:***

***Yes/No***

***Whether Reportable:***

***Yes/No***