

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

**RSA No.3138 of 2016 (O&M)
Date of Decision:18.07.2019**

Ramphal

.....Appellant

Versus

Randhir and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Ramesh Malik, Advocate
for the applicant-appellant.

LISA GILL, J.

CM-1849-50-C of 2019.

Prayer in CM-1849-C of 2019 is for condonation of delay of 152 days in filing the application for restoration of RSA No. 3138 of 2016 and prayer in CM-1850-C of 2019 is for recalling of order dated 10.07.2018, whereby the said appeal was dismissed in default and restoration of the appeal.

Heard.

For the reasons mentioned in the applications and the arguments addressed, delay of 152 days in filing the application for restoration of the appeal i.e., RSA No. 3138 of 2016, is condoned and order dated 10.07.2018 is recalled. Appeal is restored to its original number.

At request of learned counsel for the applicant-appellant, main appeal is taken up for hearing today itself.

Applications are disposed of.

R.S.A No. 3138 of 2016 (O&M).

Appellant-plaintiff, is aggrieved of judgement and decree dated 25.02.2014, passed by learned Civil Judge (Jr. Division), Jhajjar, as well as judgement and decree dated 22.07.2015, passed by the learned Additional District Judge, Jhajjar.

Brief facts necessary for the adjudication of the case are that the plaintiff filed a suit for declaration to the effect that entry in the revenue records in respect to the ownership and possession in favour of Sanwalia and mutation no. 6787 dated 31.07.2005 in favour of defendants no. 1 to 3 and the subsequent record are illegal, null, void and not binding on the rights of the plaintiff and the proforma defendants. It is further prayed that the plaintiff and proforma defendants be declared to be the owner of the suit property with consequential relief of possession and permanent injunction. It is pleaded that the owner of the suit property as described, was Deshu son of Jhabbar. Deshu died issueless and Nanhu being a collateral of Deshu, was entitled to inherit Deshu's property and thereafter Hari Ram son of Nanhu and ultimately the plaintiff, who is the son of Hari Ram. It is claimed that entries in the jamabandi for the year 1976-77 in the name of one Sanwalia, as owner in possession of the suit land, have been wrongly recorded. Consequent to the incorrect entry in the jamabandi for the year 1976-77, mutation of inheritance dated 6787 dated 31.07.2005 was further carried out wrongly and sanctioned in favour of defendants no.1 to 3, in the capacity of legal heirs of Sanwalia. Plaintiff claimed to have gain knowledge about the said entry in the month of July 2010. Plaintiff requested defendants no.1 to 3

to get the revenue record corrected and to handover peaceful possession. When defendants no.1 to 3 did not accede to the plaintiff's request, the suit was filed.

Defendants no.1 to 3 contested the suit. Pedigree table given by the plaintiff was denied and the correct pedigree table was produced in para no. 1 of the written statement. It is denied that Deshu son of Jhabbar died issueless. It is stated that Deshu had a son namely Sanwalia. Defendants no.1 to 3 are claimed to be the sons and daughter of Sanwalia. It is denied that any wrong entry has been carried out in the revenue records. Deshu son of Jhabbar, is claimed to be the sole owner of the agricultural and residential property. Deshu gifted 3 Bigha 6 Biswas pukhta land to his son namely Sanwalia on 17.11.1930 and mutation dated 17.02.1931 was sanctioned in Sanwalia's favour. Deshu also gave part of his land in exchange to Sanwalia and received 2 Bighas 4 Biswas from Sanwalia in lieu thereof. Mutation no. 3769 dated 28.03.1951 was sanctioned in this respect. Suit land including land measuring 13 Kanals 14 Marlas, was transferred by Randhir son of Sanwalia in the name of his son vide release deed dated 25.08.2010. Mutation in this respect was sanctioned on 07.09.2010. Dismissal of the suit was prayed for.

Proforma defendants no. 4 to 6 filed a written statement admitting the claim of the plaintiff.

From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for a decree for declaration to the effect that the entry in the revenue record in respect of ownership and possession in favour of Sanwalia and the mutation no. 6787 dated 31.07.2005,

- thereof on the basis of same in favour of defendants no.1 to 3 and subsequent revenue record on the basis of same are illegal, null, ultravirus and void and not binding on the rights of the plaintiff?OPP
2. Whether the plaintiff and proforma defendants be declared owner of suit land mentioned in para no.3 of the plaint?OPP
 3. Whether the plaintiff is entitled for a decree for permanent injunction restraining the defendants, their agents, servants from alienating the suit land?OPP
 4. Whether the suit of the plaintiff is not maintainable in the present form?OPD
 5. Whether the plaintiffs are estopped to file the suit by their own act and conduct?OPD
 6. Relief

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances as well as evidence on record, concluded that that the plaintiff had failed to prove his case on the basis of the evidence on record. It is held that Sanwalia, was the son of Deshu. Mutation in favour of Sanwalia and the exchange etc., was never challenged by the father or the grandfather of the plaintiff during their lifetime. It is further observed that no catagoric evidence has been led by the plaintiff to corroborate the plaintiff's version that Deshu was not survived by his son Sanwalia or any other legal representatives. Suit filed by the plaintiff was accordingly dismissed by the learned trial Court.

Appeal preferred by the plaintiff was also dismissed by the learned Additional District Judge, Jhajjar, vide impugned judgement and decree dated 22.07.2015.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that the

impugned judgements and decrees are liable to be set aside as both the learned Courts below have grossly erred on facts and in law in dismissing the suit filed by the plaintiff-appellant. It is contended that both the learned Courts below have wrongly presumed Sanwalia to be the son of Deshu in the absence of specific documentary evidence to this effect. DW-2-Tarrif Singh, it is submitted, admitted in his cross-examination that Deshu never had a wife, therefore there was no question of Deshu being survived by a son. Moreover, DW-6-Bhoop Singh, Namberdar of village Barhana, could not reveal whether Sanwalia, was the legal son of Deshu or the Gailarh son (son born from the first marriage of the wife) of Deshu. It is further submitted that DW-7-Randhir, alleged to be the grandson of Deshu also could not bring-forth material particulars, which shows that Sanwalia was not the son of Deshu. It is thus prayed that this appeal be allowed and the judgements and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the appellant-plaintiff, be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

Plaintiff, in this case, has challenged the revenue entries in favour of Sanwalia. The said entries were admittedly recorded way back in the year 1931. Admittedly, the plaintiff's grandfather i.e., Nanhu or even his father-Hari Ram, did not challenge the said entries. PW-1-Ramphal, in his testimony has admitted that the fact that Deshu had exchanged some land with Sanwalia. Ancestral nature of the suit property has not been proved by any evidence on record.

At this stage, it is pertinent to refer to the testimony of DW-2-

Tarrif Singh, who has specifically stated that Deshu had a son-Sanwalia and a daughter-Tulsa. Learned counsel for the appellant had referred to the statement of DW-2 to the effect that Deshu did not have any wife. However, the same is succinctly explained by DW-2 when he immediately asserted that Deshu had a wife and therefore a son was born. The said stray reference has rightly been ignored by both the learned Courts below. Similarly, inability of DW-7-Randhir Singh, in revealing the name of the State and District, where village Jitholi is situated, does not detract from the credibility of this witness. DW-7 is admittedly an illiterate person.

The defendants have proved the relevant revenue record as is copiously referred to by the learned trial Court. It is rightly held by both the learned Courts below that the plaintiff has failed to prove that the revenue record in respect to the ownership and possession of Sanwalia and subsequent entries in favour of defendants no.1 to 3, are null, void or ultravires thus not having any effect on the rights of the plaintiff.

Both the learned Courts below, after proper appreciation and consideration of the evidence on record have returned concurrent findings vide impugned judgements, which call for no interference. Learned counsel for the appellant, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 25.02.2014 and 22.07.2015 passed by the learned Civil Judge (Jr. Division) Jhajjar and learned

Additional District Judge, Jhajjar, respectively, are upheld.

There is delay of 98 days in re-filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing of this appeal is rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

18.07.2019

s.khan

**[LISA GILL]
Judge**

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No.