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

**RSA-3151-2016 (O&M)
Date of decision : 15.05.2019**

Mahabir (deceased) through LRs and others

... Appellants

Versus

Surajmal @ Ishwar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

AMIT RAWAL, J.

CM-8465-C-2016

For the reasons stated in the application, which is supported by an affidavit, the legal representatives of appellant No.1-Mahabir, are ordered to be brought on record for the purpose of prosecuting the appeal.

CM stands disposed of.

MAIN CASE

The appellants-defendants are, in the regular second appeal, against the judgment and decree of the lower Appellate Court, which decreed the suit of respondent No.1/plaintiff, seeking mandatory and prohibitory injunction as well as declaration, to defendant Nos.1 to 4, to sanction the mutation in favour of the plaintiff, to the extent of 1/4th share i.e. 36 kanals 19 marlas, on the basis of the judgment and decree dated

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04.02.1969, rendered in Civil Suit No.224-C of 1968, titled as “Suraj Mal @ Ishwar V/s Pohkar etc., for possession by way of pre-emption and for causing the mutation etc.

The plaintiff sought the aforementioned relief on the premise that the plaintiff was the owner in possession of the suit property as per the jamabandi for the year 1965-66 and 2000-2001, in respect of land measuring 147 kanals 15 marlas. The father of the plaintiff, vide sale deed dated 19.05.1967, sold the land in favour of Pohkar, Jage and others, for a consideration of ₹12,000/-, resulting into, institution of the suit for pre-emption through his mother Sandokhi, which was decreed as per the judgment and decree, aforementioned. The possession was given to the plaintiff in execution petition and *rapat roznamcha* No.64 of 1969, in this regard, was entered. The revenue officers were given the copy of decree to sanction the mutation and on 25.02.1987, the mutation bearing No.772 was sanctioned, but despite that, the revenue record showed the defendants to be in possession, accordingly, an application dated 20.03.2008, was submitted to Naib Tehsildar, which was marked to Halqua Patwari. Mutation was not effected. It is, in these circumstances, the suit has been filed.

Defendant Nos.1 to 4 contested the suit and stated that mutation No.772, sanctioned in favour of the plaintiff and on 14.06.2008, was cancelled, which fact has been concealed. Defendant Nos.5 to 10, 15 and 17 to 22, filed the separate statement and stated that they were in possession of the suit land for the year 25-30 years and no body raised the objection. Decree of 1969 was alleged to have been obtained by fraud.

The plaintiff in support of the pleadings examined nine witnesses and brought on record the documents (Ex.P-1 to Ex.P-61). On the

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other hand, the defendants examined two witnesses and produced the documents (Ex.D-1 to Ex.D-3)

The trial Court, while noticing Ex.P44, Civil Suit for pre-emption, formed an opinion that the plaintiff did not challenge the cancellation of mutation of 2008, whereas, vide order dated 30.10.2009 (Ex.D1), mutation was ordered to be sanctioned in favour of Mahabir. The aforementioned order remained unchallenged, therefore, the civil court could not sit in appeal, dismissed the suit. The lower Appellate Court, after examining the oral and documentary evidence, reversed the findings.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellants-defendants submitted that the lower Appellate Court has committed illegality and perversity in granting the decree of declaration with consequential relief of prohibitory and mandatory injunction, but did not notice the fact that the direction was to sanction mutation No.772 of 1987, on the basis of the decree dated 04.02.1969. The suit was emphatically barred by law of limitation as the period of execution had already elapsed. The plaintiff has not been able to prove the possession by direct and cogent evidence.

I am afraid the aforementioned argument is not sustainable, for, after the aforesaid judgment and decree, the possession of the land was given to the plaintiff on 30.10.1969, but the mutation bearing No.772 was entered in 1987. DW-2, Naib Tehsildar, stated that mutation No.772 was still pending, therefore, the findings of the trial Court in holding that mutation was cancelled, were wholly fallacious. Misreading of the evidence, itself, is a perversity. It is also a matter of record that Pohkar, in the previous suit, had also withdrawn the pre-emption amount, which has

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been proved through Ex.P7 and Ex.P8. PW5, Karambir, categorically stated that the possession was with Suraj Mal. All these facts have been looked into by the lower Appellate Court. The suit cannot be said to be barred by law of limitation.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Goel, to form a different opinion than the one already arrived at by the lower Appellate Court, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, the second appeal is dismissed.

15.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**