

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

CM No. 6595 C of 2018 in/and  
RSA No. 2496 of 2018 (O&M)  
Date of decision: 29.11.2019

Jagir Singh

...Appellant

Versus

Dalip Singh and others

...Respondents

**CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present: Mr. GS Nagra, Advocate,  
for the appellant.

**JAISHREE THAKUR, J.**

**CM No. 6595 of 2018**

This is an application that has been filed for condonation of 5 days' delay in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay in filing the appeal is condoned.

CM stands disposed of.

**Main case**

1. The appellant herein seeks to challenge the judgment and decree dated 18.2.2016 passed by the Additional Civil Judge (Senior Division), Nakodar as well as judgment and decree dated 25.5.2017 passed by the first Appellate Authority, whereby the suit of the appellant/plaintiff stands dismissed.

2. In brief, the facts are that the plaintiff/appellant herein filed a

suit for declaration to the effect that he is owner in possession of the land measuring 12 kanals situated in the area of Village Badli, as detailed in the head note of the plaint, while seeking to challenge Mutation No. 360 and also seeking consequential relief of permanent injunction restraining the defendants/respondents herein from alienating the suit land with alternative prayer for joint possession of the aforesaid land. The appellant set out a case that previously his father Massa Singh was owner in possession of the suit land and he died about 35 years ago leaving him behind as the only legal heir. Said Massa Singh sold some other property to Dalip Singh, Chanan Singh, Didar Singh, Arjan Singh, Atma Singh, Bachan Singh, Hazara Singh, vide sale deed dated 1.6.1963, which was registered in the office of Sub-Registrar, Nakodar on 4.6.1963. It was alleged that Massa Singh, father of the appellant, did not sell the suit property to respondents or any one else. However, respondents had succeeded in getting Mutation no. 360 entered in their favour in connivance with the revenue authorities. Since the respondents were threatening to take possession of the suit land on the basis of the entries in the revenue record, the appellant was constrained to file the instant suit.

3. The suit was contested and written statement was filed controverting the claim of the appellant. A replication was filed and on the basis of the pleadings of the parties, issues were framed. The parties led evidence in support of their respective claims. In order to prove his case, the appellant relied on several jamabandies and Khasra girdawari showing his father Massa Singh to be owner in possession of the land in dispute, whereas the respondents sought to rely upon the sale deed and a certified

copy of the order passed in Civil Suit No. 270/64 filed by the appellant titled as 'Jagir Singh Vs. Dalip Singh and others', decided on 18.11.1964, to argue that earlier too the appellant had filed a suit for pre-emption against the vendees in the year 1964 in which a compromise had been effected between the parties and Jagir Singh—appellant had withdrawn the suit. It is also submitted that another suit was filed which was dismissed as withdrawn with liberty to file a fresh one, subject to payment of ₹1,000/-. As costs were not made the suit is not maintainable.

4. The trial court, after appreciating the oral as well as documentary evidence, dismissed the suit by holding that the cause of action to file the suit arose for the first time in the year 1994 when the appellant had gained the knowledge of the alleged incorrect revenue entries and the period for filing the suit was three years, whereas the present suit has been filed in the year 2011. The trial court also held that Massa Singh during his life time had never challenged the revenue entries in question and, therefore, came to the conclusion that the appellant was not entitled to any relief. The findings were upheld by the first Appellate Court, which has resulted in filing of the instant appeal.

5. Learned counsel appearing on behalf of the appellant vehemently contends that the judgments and decrees of both the courts below are illegal and perverse and the issue of limitation has wrongly been decided. It is also argued that the appellant had filed a suit, which was titled as 'Jagir Singh Vs. Dalip Singh and others' and the same was dismissed as withdrawn with permission to file a fresh one on the same cause of action.

The period of limitation would not be a question since the suit was

withdrawn only on 21.1.2010 and the present suit was filed in the year 2011.

6. I have heard learned counsel for the appellant and find no merit in the arguments raised.

7. Admittedly, Massa Singh, father of the appellant, sold the land to the respondents by registered sale deed dated 1.6.1963, which was registered in the office of the Sub-Registrar on 4.6.1963. On the basis of the said sale deed, mutation No. 360 was entered by the revenue authorities. The appellant herein was well aware of the mutation that has been entered since he had filed a pre-emption suit in respect of the property, which was subject matter of the sale deed dated 1.6.1963 and registered on 4.6.1963. The said suit was compromised and the appellant had relinquished his claim regarding the subject matter and, therefore, the appellant had lost his right to seek declaration that he is owner in possession of the land and that mutation No. 360 has wrongly been entered into by the revenue authorities. It cannot be lost sight of that once a suit for preemption was withdrawn, it cannot be said that the appellant was unaware of the revenue entries and, therefore, the right to challenge the same would have been within a period of three years. Having arrived at a compromise and thereafter having got the suit dismissed as withdrawn on the basis of the said compromise, the instant suit would not have been maintainable. Even otherwise, the appellant herein filed a suit verbatim to the present suit which he had got dismissed as withdrawn on 21.1.2010 with liberty to file a fresh one on the same cause of action. Further what was not disclosed to the Court was that the suit was dismissed as withdrawn with liberty to file a fresh one on the same cause of action, subject to payment of ₹1,000/- as cost, which cost admittedly had not been

paid. Therefore, on this score alone, the suit would not have been maintainable. The judgments as relied upon by the first Appellate Court would be applicable to the facts of the instant case. The judgments of both the courts below are well considered. No question of law, much less substantial question of law arises for consideration in the present appeal.

8. The Regular Second Appeal stand dismissed accordingly.

29.11.2019  
prem

(JAISHREE THAKUR)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes  
No