

**In the High Court of Punjab and Haryana, at Chandigarh**

**1. Regular Second Appeal No. 4060 of 2004 (O&M)**

Rehra Ram and Others

... Petitioner(s)

Versus

Nitish and Others

... Respondent(s)

**2. Regular Second Appeal No. 4622 of 2018 (O&M)**

Bagga Singh

... Petitioner(s)

Versus

Anil Kumar and Others

... Respondent(s)

**AND**

**3. Civil Writ Petition No. 17617 of 2014 (O&M)**

Rehra Ram and Others

... Petitioner(s)

Versus

Financial Commissioner, Haryana and Others

... Respondent(s)

**Date of Decision: 28.01.2021**

**CORAM: Hon'ble Mr. Justice Anil Kshetarpal.**

Present: Mr. Amit Jain, Advocate  
for the appellants (In RSA-4060-2004 and  
RSA-4622-2018) and petitioners (In CWP-17617-2014).

Ms. Kirti Singh, Deputy Advocate General,  
Haryana, for respondents No.1 to 4 (In CWP-17617-2014).

Mr. Sanjiv Gupta, Advocate  
for respondents No. 2 & 7 (In RSA-4060-2004) and  
for respondent No.10 (In CWP-17617-2914).

**Anil Kshetarpal, J.**

By this order, Regular Second Appeals No. 4060 of 2004, 4622

of 2018 and Civil Writ Petition No. 17617 of 2014 shall stand disposed of.

Learned counsel for the parties are *ad idem* that all these three cases can be conveniently disposed of by a common order.

After having heard learned counsel for the parties at length, this Court has come to a conclusion that the dispute in Regular Second Appeal No. 4060 of 2004 is required to be remitted back to the trial Court for decision afresh. Hence, the detailed facts which have already been noted by the Courts below are not being repeated. Suffice to note that the plaintiffs-Rehra Ram and Others filed a suit with the following prayer:

“30. *It is, therefore, prayed that a decree for declaration to the effect that the plaintiffs are owners in possession of the suit land, as per their respective shares, as mentioned in the head note of the plaint, situated in village Liwalwali, Tehsil & Distt. Sirsa, and the entries in the revenue records showing the contrary to it are wrong and are liable to be corrected in the names of the plaintiffs as per their respective shares, and the transfers made by Shri Het Ram in favour of Jalu and Santa vide mutations No. 134 and 135 and the orders of mutations of purchase, as detailed and described in the heading of the plaint in para No. 16 of the plaint, are null and void, arbitrary, illegal, ineffective qua the possessory and proprietary rights of the plaintiffs in respect of the suit land, and as such are liable to be set aside and subsequent revenue records viz jamabandies, mutations and khasra Girdawari etc. are also wrong and incorrect and are liable to be corrected*

*accordingly in favour of the plaintiffs, and as a consequential relief of permanent injunction, restraining the defendants from disturbing the possession of the plaintiffs over the land of their shares by getting the suit land partitioned till the title of all the co-sharers is cleared by the decision of the suit in hand and also restraining the defendants from interfering with the possession of the plaintiffs over their specific land, mentioned in paras No. 11 to 14 of the plaint, forcibly and illegally, restraining the defendants from getting the mutation No. 424 sanctioned in their favour, may kindly be passed in favour of the plaintiffs and against the defendants with costs of the suit.*

*Any other relief which this Hon'ble Court deems fit and proper under the facts & circumstances of the case, may also kindly be granted to the plaintiffs”.*

The plaintiffs, in para 3 of the plaint, pleaded as under:-

*“3. That Het Ram aforesaid, out of his 1/4th share of the land mentioned above, made the following transfers:-*

- i) He sold land measuring 180 bighas 19 biswas of Jot Ram, Het Ram sons of Chain Sukh to the extent of 1/3rd share and Neo Nand and Narain Singh to the extent of remaining 2/3rd share, vide mutations No. 102 dated 23.1.1954,*
- ii) He gifted 2126/25394 share out of the above said land to his wife-defendant No. 1, Smt. Parmeshwari Devi vide mutation no. 107 sanctioned on 29.9.1954.*

*iii) He sold land measuring 10 bighas 18 biswas to Sheo Nand son of Jhanjju, since deceased vide mutation No. 100 dated 23.1.1954.*

*iv) He sold land measuring 19 bighas 06 biswas to Jaswant son of Shri Gurbachan Singh, vide mutation No. 109 dated 15.6.1954.*

*By all these transfers, said Het Ram son of Ram Sukh sold away land measuring 317 bighas 09 biswas and thus, was left no interest or right in this khewat. But the jamabandi for the year of 1955-56 was wrongly prepared and aforesaid Het Ram was wrongly shown to be the owner in possession 3619.25394 shares of the total land measuring 1269 bighas 14 biswas, despite the fact that he was left with no land in this khewat after the aforesaid transfers.*

The defendant No. 1 to 7 filed their written statement. Para 3 of the plaint was replied in the following manner:-

*“3. That para No 3 of the plaint is correct that Het Ram sold 1/7 share out of total joint land and not particular numbers, not amounting to 180 bighas 19 biswas.*

*3(ii) That para No. 3(ii) of the plaint is admitted.*

*3(iii) That para No. 3 (iii) of the plaint is admitted.*

*3(iv) That para No. 3(iv) of the plaint is admitted.*

*It is wrong that Het Ram sold 317 B 9B. As per shares*

*Het Ram was correctly recorded owner in jamabandi 55-56*

*after deaucting sales as per shares”.*

The learned trial Court, on appreciation of the pleadings, framed the following issues:

- “1. Whether the plaintiffs are entitled to be declared owner in possession of the suit land as alleges? If so to what effect? OPP*
- 2. Whether the transfer made by Het Ram S/o Sukh Ram etc. in favour of Jaly and Santa vide Mutations No. 134 and 135 and the order dated 13.8.1964 passed by A.C. Ist Grade, Sirsa and consequently mutation No. 147 in favour of Ram Rakha, order dated 21.5.1968 passed by AC Ist Grade, Sirsa and consequently Mutation No. 183 sanctioned in favour of Sunder etc. order dated 22.8.1964 passed by AC Ist Grade, Sirsa and mutation No. 158 sanctioned in favour of Ram Rakha, order dated 21.5.68 passed by AC Ist Grade, Sirsa Mutation No. 184 sanctioned in favour of Kanshi Ram etc. order dated 21.5.68 passed by AC Ist Grade and Mutation No. 185 sanctioned in favour of Duni Chand, order dated 21.5.68 passed by AC Ist Grade, Mutation No. 186 in favour of Pema, order dated 30.4.69 passed by AC Ist Grade, Mutation No. 190 sanctioned in favour of Devi Ram, order dated 25.11.69 passed by AC Ist Grade, Mutation No. 197 in favour of Rakha, order dated 18.2.1975 and*

*Mutation No. 255 sanctioned in favour of Tirath Ram, order dated 18.2.75 and mutation No. 256 sanctioned in favour of Mohri Ram, order dated 31.10.1975 and mutation No. 260 in favour of Gugan, order dated 30.9.75 and mutation No. 263 sanctioned in favour of Sita Ram, order dated 26.12.75 and mutation No. 3264 sanctioned in favour of Ram Lal, defendant, are null and void, arbitrary, illegal, ineffective and not binding up on the rights of the plaintiffs as alleged? OPP*

3. *Whether the plaintiffs have no cause of action and locus-standi to file the present suit? OPD*
4. *Whether the suit is not maintainable in the present form? OPD*
5. *Whether the plaintiffs have not come to the court with clean hands? OPD*
6. *Whether the suit of the plaintiffs is bad for non-joinder and mis-joinder of necessary parties? OPD*
7. *Whether the defendants are bonafide purchaser for consideration? If so, to what effect? OPD*
8. *Whether the suit of the plaintiff is hopelessly time barred? OPD*
9. *Whether the suit of the plaintiffs has not been properly valued for the purpose of court fee and jurisdiction? OPD”*

It is appropriate to notice that neither the trial Court nor the first Appellate Court have adverted to the issues framed and have further failed to examine the facts of the case in a correct perspective. In fact, both the Courts below have failed to scrutinize the evidence and analyse the same to arrive at a correct conclusion. In fact, the learned trial Court as well as the first Appellate Court have refused to go into the real controversy involved between the parties and assess the evidence in that perspective. While deciding issue No. 1, learned trial Court has recorded the following finding:

*“iv) After hearing both the sides at length, I am of the considered view that plaintiffs have failed to prove issue No.1. It is an admitted fact that regarding reduction of shares, the matter is pending before the Collector and the order dated 20.1.68 passed by the Director/Consolidation was confirmed upto High Court. Hence, the plaintiffs are not entitled to any declaration. Therefore, issue No.1 is hereby decided against the plaintiffs and in favour of the defendants”.*

While deciding issue No. 2, the trial Court recorded the following observations:

*“ii) Learned counsel for the defendants has stated that as per wording of issue No. 2, all transfers made by Het Ram son of Sh. Sukh Ram have been taken into notice by Director Consolidation in his order Ex.D3, also in the order of the Collector dated 7.9.1989 in Ex.D4 and the order of the Hon’ble High Court passed in Civil Revision dated 25.10.1982 and the*

*final decision was made by the Hon'ble High Court. This relief cannot be granted by this Court. Keeping in view the above discussion and discussion on issue No.1, the matter regarding reduction of share is pending before the Collector, I feel that there was absolutely no mistake in shares of the plaintiffs which could be rectified. If a co-sharer in a joint khata sometimes feel aggrieved of cause of action of any co-sharer he would have his own share partitioned. Facts of this case are not covered by the authority placed by plaintiffs counsel. In the present case, the matter is pending before the Collector and the order dated 20.1.68 passed by the Director Consolidation which was confirmed by the Civil Court and Appellate Court is binding on the rights of the plaintiffs also. Therefore, issue No.2 is hereby decided against the plaintiffs”.*

With these observations, the suit filed by the plaintiffs was dismissed. The plaintiffs filed the first appeal, which was dismissed by the first Appellate Court assuming that the plaintiffs have challenged different purchase orders passed by the competent authority under Section 18 of the Punjab Security of Land Tenures Act, 1953 and therefore, the jurisdiction of the Civil Court is barred. The Court further held that the plaintiffs have challenged the various orders and mutations sanctioned, which have been upheld upto the High Court, which reads as under:

*“19. After having heard both the sides at length and going through the lower court record carefully, it is crystal clear that*

*the plaintiffs have challenged the different purchase orders passed under Section 18 of the Punjab Security of Land Tenures Act (hereinafter referred to as the Punjab Act) by the Asstt. Collector Ist Grade, Sirsa ranging from 13.8.1964 to 26.12.1975 and different mutations ranging the period 1964 to 1975. However, the jurisdiction of Civil Court is barred under Section 25 of the Punjab Act to entertain and try a suit challenging an order passed by the Asstt. Collector Ist Grade under Section 25 of the Punjab Act.*

*Before proceeding further, it will be proper to incorporate the provisions of Section 25 of the Punjab Act which read as under:*

*“25. Exclusion of Courts and authorities-Except in accordance with the provisions of this Act, the validity of any proceedings or order, taken or made under this Act, shall not be called in question in any Court or before any other authority”.*

*20. From the bare reading of the provisions of Section 25 of the Punjab Act, it is crystal clear that an order passed by the competent Authority under the Punjab Act cannot be challenged in a Civil Court. The Hon’ble Punjab & Haryana High Court in an authority reported as **Thakar Dwara Gaddi Bawa Lal Dial Jee Dhhianpur Versus Sewa Singh (dec.) and others 1995(1) The Latest Judicial Reports 54**” has also held that an order passed by the Asstt. Collector Ist Grade under Section 18 of the*

*Punjab Act cannot be challenged in a Civil Court. Similar view has been taken by the Hon'ble Punjab & Haryana High Court in an authority cited as Amar Singh Versus Waryam Singh 1995(1) The Latest Judicial Reports 205".*

21. *The plaintiffs have also challenged an order passed by the competent authority under the Punjab Act, vide which the land of Shri Het Ram was declared surplus and under Section 12(3) of the Haryana Ceiling Land Holdings Act, 1972 the land so declared surplus under the Punjab Act stood vested in the State of Haryana free from all encumbrances with effect from 23.12.1972. I am supported by an authoritative pronouncement of the Hon'ble Supreme Court of India reported as Surinder Nath Dewan Versus State of Haryana and Others 1994 The Punjab Law Journal 252". So, once the land was declared surplus by the competent authority and vested in the State of Haryana on enforcement of the Haryana Ceiling on Land Holdings act on 23.12.1972, the State of Haryana became owner thereof and the State of Haryana became fully competent to utilize the same under the Haryana Utilization of Surplus and Other Areas Scheme, 1976, but the plaintiffs have neither impleaded the State of Haryana nor the subsequent purchasers as parties in the suit. So, the suit is also bad for non-joinder of necessary parties.*

22. *The plaintiffs have also challenged the various orders*

*and mutations ranging from 1964 to 1975 transferring of land by Het Ram in favour of purchasers under the Punjab Act. These transfers and mutations were taken into consideration by the Director (Consolidation) while passing the order dated 20.11.1968 Ex.D3 passed by the Settlement Officer (Sales), Chandigarh and also in the order dated 7.8.1989 passed by the Collector, Sirsa Ex.d4 and by the Hon'ble Punjab & Haryana High Court while passing the order in Civil revision dated 25.10.1982. The said order passed by the Director Consolidation and the order passed by the Hon'ble High Court have become final between the parties. So, the plaintiffs have no right, title or interest to challenge the same and the principles of resjudicata applies”.*

It is important to note that neither the authorities, constituted under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, nor the authorities under the Punjab Land Revenue Act (while deciding the mutations), have the jurisdiction to decide on the question of title. In fact, a Full Bench in ***Parkash Singh v. Joint Development Commissioner, Punjab and Others (2013) SCCOnline P&H 26809*** has held that even if the orders have been upheld by the High Court by a non-speaking order, such an order will not operate as *res-judicata*. The Full Bench, after framing four questions, has laid down that if the order passed by the first authority is without jurisdiction being *coram non judice*, then if the order was upheld by a non-speaking order, it would not operate as

*res-judicata.*

Further, it is not the case of the defendants that the land belonging to the plaintiffs was ever declared surplus and was purchased by the tenants under Section 18 of the Punjab Security of Land Tenures Act, 1953. Still further, the Courts have overlooked that whenever there are allegations that some of the co-owners/co-sharers have sold more than their share, the Court is required to apply the well settled principle that the purchaser prior in point of time gets a preferential right. It is also well settled that while sanctioning mutation of the property, neither the rights of the parties are adjudicated nor they are binding on the Civil Courts. Still further, the mutations are entered by the authorities for updating the record in exercise of powers under the Punjab Land Revenue Act. Further, it is also well settled that the exclusion of the jurisdiction of the Civil Court has to be interpreted very strictly. After examining the language used in the Act/Statute, the Civil Court is required to interpret as to what kind of the disputes have been kept out of the purview of Civil Court. In the present case, the first Appellate Court has relied upon Section 25 of the Punjab Security of Land Tenures Act, 1953. On a careful reading of the aforesaid provision, it is apparent that the jurisdiction of the Civil Courts has been excluded from examining the validity of any proceedings or orders taken or made under the Act.

Still further, both the Courts have failed to note the distinction between Section 31 and 34 of the Specific Relief Act, 1963, which are extracted as under:

*“31. When cancellation may be ordered.—(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.*

*(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.*

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**34. Discretion of court as to declaration of status or right.—**  
*Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*

*Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.*

*Explanation.—A trustee of property is a “person*

*interested to deny” a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee”.*

Section 31 falls in Chapter-V which deals with the cancellation of instruments. Such cancellation of instrument can be obtained by a person against whom such a written instrument is void or voidable. Whereas Section 34 provides for declaration of status or right. It is not in dispute that the plaintiffs were not the parties to the litigation when the orders under Section 18 of the Punjab Security of Land Tenures Act, 1953 were passed or when the land was declared surplus. When the proceedings or orders of the quasi judicial Tribunal are challenged before the Civil Court, one is not required to challenge the order in the strict sense as he is not bound by the same. Hence, such person is entitled to file a suit for declaration that such orders do not affect his rights. Keeping in view the aforesaid discussion, this Court has come to a conclusion that both the Courts below have failed to decide the suits in correct perspective.

It is important to note that learned counsel for the respondent has relied upon the decision in ***Jot Ram and Others v. Smt. Parmeshwari Devi (Regular Second Appeal No. 76 of 1974, decided on 25.10.1982)*** to contend that the claim of the plaintiff-appellants is barred by *res-judicata*. This Court has carefully read the judgment passed on 25.10.1982. In the aforesaid case, the dispute was that the State Government had acquired the land measuring 492 bighas 18 biswas in 1961-62. During the consolidation proceedings, the Additional Director (Consolidation) allotted the land to the

co-owners/co-sharers after deducting the proportionate share of the acquired land. The correctness of the aforesaid order was assailed in the Civil Court. The Court framed the following issues:-

- “1. Whether order dated 20.1.1968 passed by the Additional Director C/H is illegal, without jurisdiction, against facts and not binding upon the plaintiffs? OPP*
- 2. Whether acquisition of land out of joint khewat by the State Government could not effect the share of the plaintiffs in respect of the land purchased by them from Het ram, defendant No.1, a co-sharer, as allege? OPP*
- 3. Whether this Court has jurisdiction to try this suit? OPP*
- 4. In the light of decision on the foregoing issues to which share plaintiffs are entitled to be recorded as owners in the record of rights – respecting the suit land? OPP*
- 5. Whether the suit is barred by time? OPD*
- 6. Whether the suit is not maintainable in the present form? OPD*
- 7. Relief”.*

The High Court held that since Jot Ram etc. purchased only 1/7th share out of 1/4th share of Het Ram in the joint khewat, therefore, the Additional Director (Consolidation) has correctly held that the acquisition of the land is from the joint land and accordingly, the share of all the co-sharers shall stand proportionately reduced. Thus, it is obvious that in the previous civil suit, which was subject matter of Regular Second Appeal No. 76 of 1974, the

dispute was entirely different from the claim in this suit. Hence, the contention of learned counsel for the respondent is without substance.

Consequently, this Court is left with no choice but for to remit the suit back to the trial Court to decide afresh. The parties, if make a prayer, be given opportunity to lead further evidence. Liberty is granted to the Civil Court to seek the help of the revenue officials in deciding the rights of the parties.

As regards, Regular Second Appeal No. 4622 of 2018, it would be noted that the plaintiff-Bagga Singh, who is also party to Regular Second Appeal No. 4060 of 2004, filed a suit for injunction against the defendants or their successors-in-interest to the previous suit. The only prayer made in the suit is to grant a decree of permanent injunction restraining the defendants from alienating the suit land or dispossessing him. Learned counsel for the parties are *ad idem* that the suit land is also a part of the suit, subject matter of Regular Second No. 4060 of 2004. Since the main dispute between the parties is being remanded back, therefore, this appeal is disposed of by granting liberty to the plaintiff to file an application for injunction in the suit. With these observations, Regular Second Appeal No. 4622 of 2018 is disposed of.

Civil Writ Petition No. 17617 of 2014 has been filed challenging the correctness of the order passed by the revenue authority while sanctioning mutation. As already noticed, the revenue authorities, while deciding mutations, do not have jurisdiction to decide the question of right, title or interest of the parties. The revenue authorities are bound to

**Regular Second Appeal No. 4060 of 2004 (O&M)**  
**Regular Second Appeal No. 4622 of 2018 (O&M) AND**  
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implement the order finally passed by the Civil Court. Hence, this writ petition is disposed of with the observations that whenever the Civil Court finally decides the suit, the revenue authorities would be bound to give effect thereto in the revenue record.

With the observations made above, Regular Second Appeal No. 4066 of 2004 is allowed, whereas Regular Second appeal No. 4622 of 2014 and Civil Writ Petition No. 17617 of 2014 are disposed of.

The miscellaneous application(s) pending, if any, in both the appeals as well as in the writ petition shall also stand disposed of.

**(Anil Kshetarpal)**  
**Judge**

**January 28, 2021**  
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No