

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1862 of 2017 (O&M)
Date of decision: 23.11.2022

Zile Singh

..Petitioner

Versus

Panni Devi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Susheel Gautam, Advocate
for the petitioner.

Mr. Wazir Singh, Advocate
for respondent no.2 to 5.

ANIL KSHETARPAL, J(Oral)

1. The plaintiff, in a suit for grant of decree of declaration that he is an owner in possession of 31 kanals 2 marlas land, is the petitioner herein.

The relief sought, while filing the suit is extracted as under:-

It is, therefore, prayed that a decree for declaration to the effect that plaintiff is owner in possession of 31 Kanals-2 Marlas which is share out of 62 Kanals-4 Marlas agricultural land comprising Khewat No.321, Rect. No.237, Killa No.14 (8-0), 15(8- 0), 17(8-0), 18(8-0), Rect. No.262, Killa No.1(8-0), 2(8-0), 3(5-2), 9(4-13), 10 (4-9) vide registered sale-deed bearing Vasika No.452 dated 25.6.1985 executed and got registered by Chetu son of Desh Raj and mutation No.4857 in favour of the plaintiff and is owner in possession of 24 Kanals-0 Marla which is 480/3850th share out of agricultural land comprising in Khewat No.321, Khatoni No.413, Rect. No.236, Killa No.11(5-0), Rect.No.237, Killa No.1(7-11), 6/2 (1-11), 7/2 (5-4), 8(8-0), 10(8-0), 11(8- 01, 12(8-0), 13(8-0), 14(8-0), 15 (8-0), 16(414), 17(8- 0), 18(8-0),

19(8-0), 20(8-0), 21(7-11), 22(7-11), 23 (7-11), 24(4-11), Rect.No.262, Killa No.1(8-0), 2(8-0), 3(5-2), 9(4-13), 10(4-9), Rect.No.237, Killa No.2 (7-11), 3(7-11), 9 (8-0) total area 192 Kanals-10 Marlas situated within the area of Vill. Kurana, Tehsil Israna, Distt. Panipat, vide Jamabandi for the year 1982-83 vide judgment and decree dated 13.8.1996 passed by Sh.R.C.Godara, the then C.J. (S.D.), Panipat in Civil Suit No.1162 of 1994 instituted on 18.10.1988 titled "Zile Singh Vs. Prem Singh and Mai Dhan" and vide sale-deed bearing Vasika No.212 dated 6.6.1995 executed and got registered by Maha Singh son of Smt. Bohti daughter of Mai Dhan AND is owner in possession of '10 Kanals-0 Marla which is 200/2608th share vide sale-deed dated 3.6.1997 bearing Vasika No.205 executed and got registered by Pam Pal @ Pam Phal son of Chet Ram out of agricultural land measuring 130 Kanals - 8 Marlas part of Khewat No. 335 and vide mutation No£514 AND owner in possession of 8 Kanals - 0 Marla which is 160/2608 share out of agricultural land measuring 130 Kanals-8 Marlas comprising in Khewat No.335 vide registered sale-deed bearing Vasika No.114 executed and got registered by Smt. Nimbo Devi widow of Chet Ram and mutation of the sale-deed bearing Vasika No.5691 AND owner in possession of 8 Kanals- 0 Marla 1.e. 0 Kanal-9 Marlas which 9/4 8 2t.h share out of agricultural land comprising Khewat No.329, Khatoni No.434/435, Rect. No.237, Killa No.10 (8-0), 11(8- 0), 13(8-0), Khasra No. 1200 (0-2) AND 7 Kanals -11 Marlas which is 1/4th share out of agricultural land comprising Khewat No.330, Khatoni No.436, Feet.No.237, Killa No.6/2 (1-11), 7/2 (5-4), 19(8-01, 20(8-0), 21(7-11), 22(7-11), 237-11), 24(4-11). Khatoni No.437, Rect. No.237, Killa No.1(7-11), 207-11), Khatoni

No.438, Rect. No. 236, Killa No.11(10), 12(8-0), Rect.No. 237, Killa No.16(4-14) and Khatoni No.439, Rect.No.237, Killa No.3(7-11), 8(8-0), 9(8-0) situated within the area of Vill. Kurana, Tehsil Israna, Distt. Panipat vide Jamabandi for the year 1997-98 vide sale-deed dated 20.5.2002 bearing Vasika No.116 executed and got registered by Smt. Ram Kali daughter of Chetu and mutation No.5807 AND Judgment and decree dated 4.8.1999 passed by the court of Miss Ritu Garg, the then Learned C.J. (J.D.), Panipat in Civil Suit No.877 of 1996 titled "Pani Vs. Mange Ram and others" is illegal, null and void and not binding upon the plaintiff and sale-deed dated 26.5.2008 bearing Vasika No.274 and sale-deed dated 28.5.2008 bearing Vasika No.291 executed and got registered by Smt. Pani defendant No.1 in favour of Smt. Sweety and Sunil defendants No.2 and 3 are illegal, null and void, against law and fact and are not binding upon the plaintiff, WITH A CONSEQUENTIAL RELIEF OF PERMANENT INJUNCTION restraining the defendants from interfering in the peaceful possession of the plaintiff and also from alienating/mortgaging or creating charge in any manner over the above said suit property be passed in favour of the plaintiff and against the defendants. Costs of the suit be also awarded to the plaintiff. Any other relief which the Hon'ble Court deems fit and proper may also be granted in favour of the plaintiff and against the defendant."

2. When the case was fixed for the hearing of the application filed by the defendants for the dismissal of the suit against the amendment and for setting aside the order dated 08.04.2009 i.e. ex-parte order against defendant no.4, the petitioner and his counsel absented themselves. The trial court dismissed the suit for default on 07.12.2011. The petitioner filed an

application for the restoration of the suit on 07.03.2012, while asserting that he was informed that 07.02.2012 is the next date of hearing and he was never intimated that the case is fixed for 07.12.2011. He also stated that in the diary maintained by his learned counsel, the date for the next hearing is entered on 07.02.2012. The trial court has refused to restore the suit on the ground that there is no material available on the file to suggest that the case was ever fixed for 07.02.2012 or that the plaintiff wrongfully noted the date. The court further held that the application is barred by limitation period.

3. Challenging the correctness of the order passed by the trial court on 27.10.2014, this revision petition has been filed.

4. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

5. At the outset, it is important to note that the filing of application for condonation of delay is not necessary if the contents of the application itself disclose the sufficient details of the reasons for said delay in moving the application. Reliance in this regard can be placed on the judgment passed in **Bhagmal and others vs. Kanwar Lal and others (2010) 12 SCC 159.**

6. In the proceeding for the restoration of the suit, the court did not call upon the plaintiff to produce the diary maintained by his advocate. A specific assertion was made about the advocate's diary in the said application. Either the court should have called upon the plaintiff to produce the diary of the advocate or should have accepted the version of the plaintiff. Moreover, the suit itself was not fixed for hearing on 07.02.2012. Certain miscellaneous applications were fixed for hearing on the said date. At the most, the court could have proceeded against the decision of the aforesaid

miscellaneous applications.

7. Moreover, it is a well settled law that the rules of procedure are a handmaid of justice. The courts while deciding such applications are required to adopt a pragmatic approach while taking a holistic view of the matter. A suit which was filed in the year 2008 was dismissed in default in the year 2011. The court took nearly two years to decide the said application. This time could have been utilized to decide the case on merits rather than on defaults. The courts are expected to make sincere endeavours for deciding the cases on merits rather than on mere technicalities. Hence, the order dated 27.10.2014 is set aside. The suit is restored to its original number.

8. The revision petition is allowed.

9. The parties are through their learned counsels are directed to appear before the trial court on 20.12.2022.

10. All the pending miscellaneous applications, if any, are also disposed of.

November 23, 2022

nt

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*