

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

336

CWP-15561-2009 (O&M)

Reserved on: 30.11.2022

Date of Decision: 12.12.2022

HARI RAM

-Petitioner

Versus

STATE OF PUNJAB AND OTHERS

-Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Baljinder Singh, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Som Nath Saini, Advocate
for the respondent Nos.3 to 6 & 8 to 13.

KULDEEP TIWARI, J.

1. The petitioner, by filing present writ petition, made an endeavour to stall the execution of the judgment and decree passed by Civil Court way back on 09.03.1977, verdict whereof, has attained finality up to this Court. There is no dispute that the present writ petition is barred by principle of *res judicata* and the finding of Civil Court cannot be interfered with by this Court in writ jurisdiction. However, due to persistent arguments made by learned counsel for the petitioner, we feel it is imperative for this Court to examine and adjudicate the

controversy in detail in order to give quietus to the lis.

2. The petitioner has invoked the writ jurisdiction of this Court for quashing the order dated 22.02.2007, Annexure P-6, and order dated 04.03.2009, Annexure P-8, passed by the respondent No.2. Before we comment anything upon legality of the afore two impugned orders, it is apt to first deal with the facts, in detail, as the present case has a checkered history of litigation.

3. The averments in the present writ petition are that Uttam Singh and Mela Singh sons of Ralla (hereinafter referred to as predecessors-in-interest of contesting respondent Nos.3 to 13), were owners in possession of the land to the extent of $\frac{1}{4}$ th share, out of 28 Kanals 4 Marlas, bearing Khasra No.2486/1272-73, 2487/1272-73 min, 2485/1272-73 and 2787/1272-1273 min. The predecessors-in-interest of contesting respondent Nos.3 to 13 had also purchased $\frac{1}{4}$ th share of other co-owners namely Bhagat Singh son of Thakur Singh and Gurmukh Singh son of Beant Singh. In this way, they became owners of $\frac{1}{2}$ share of the aforementioned land, measuring 28 Kanals 4 Marlas. Subsequently, they sold their $\frac{1}{2}$ share, vide sale deed dated 21.10.1955, for a sale consideration of Rs.4500/- in favour of Hari Ram (present petitioner) and his brother. However, mutation qua subsequent purchase of $\frac{1}{4}$ th share, from Bhagat Singh and Gurmukh Singh, had not been sanctioned in the revenue record in favour of predecessors-in-interest of contesting respondent Nos.3 to 13. Consequently, mutation only qua $\frac{1}{4}$ th share was entered in favour of petitioner and his brother, however, the possession of

entire land i.e. $\frac{1}{2}$ share, out of 28 Kanals 4 Marlas, bearing Khasra No.2486/1272-73, 2487/1272-73 min, 2485/1272-73 and 2787/1272-1273 min, had been handed over to the petitioner and his brother. The petitioner also placed reliance upon the order dated 12.06.1965 passed by the Consolidation Officer, wherein it has been recorded that the predecessors-in-interest of contesting respondent Nos.3 to 13 sold out some of the area to Hari Ram (present petitioner), however, the mutation thereof could not be sanctioned and the petitioner is in possession of this land as *Gair Marusi*, and, this area is allotted to him in Killa No.7/5/2. On the strength of afore order passed by the Consolidation Officer, petitioner claimed that he is in possession of Killa No.7/5/2, which was allotted to him in lieu of share purchased by him from the predecessors-in-interest of contesting respondent Nos.3 to 13. It was further pleaded that since the order dated 12.06.1965 was not challenged and the same has attained finality, therefore, the contesting respondents cannot take undue advantage of the judgment and decree passed by civil court.

4. It is indisputable that earlier the predecessors-in-interest of contesting respondent Nos.3 to 13 had filed a civil suit before the learned Sub Judge, Anandpur Sahib, seeking relief of possession of 5 Kanals 2 Marlas of land, comprised in Khasra No.7/5/2, as per Jamabandi for the year 1966-1967, wherein it was pleaded that the land in dispute was allotted to them during consolidation proceedings in lieu of their previous holding, vide Resolution No.46 dated 25.03.1965, however, the petitioner herein, in connivance with the revenue authorities, got his name

incorporated showing him to be a “Tenant at Will”, although, he had no concern whatsoever with the land in dispute. It was further pleaded therein that the present petitioner had earlier also filed a suit against them in the year 1967 claiming himself to be the owner while denying their title, however, he withdrew the suit and the same was dismissed on 30.06.1969.

5. The suit was contested by present petitioner by filing written statement. Interestingly, the averments which the petitioner has now taken in the present petition, the same very averments were taken by him in his written statement filed before the civil court, which is very much apparent from the judgment dated 09.03.1977. The relevant extract reads as under:-

“3. The defendant pleaded that the land in dispute had been allotted, during consolidation, in lieu of 1/4th share in Khasra No. 2486/1272-1273, 2487/1272-1273 min, 2185/1272-1273 and 2487/1272-1273 min., measuring 28 Kanals 5 Marlas. He further pleaded that the plaintiffs sold their ½ share of the aforesaid 28 Kanals 5 Marlas of land to him and his brother Chhotu Ram, vide registered sale deed dated 21.10.55 and also delivered the possession thereof to them. The plaintiffs had earlier purchased the said land from its original owner. The mutation was duly sanctioned in his and his brother's favour, but, later on, the said mutation was sought to be reviewed and was referred to higher authorities for necessary orders. As the averments go further, in the meanwhile, consolidation of land holding started in the village. The plaintiffs then filed a civil suit which was decided in their favour regarding their ½ share of the aforesaid land

measuring 29 Kanals 5 Marlas. The defendant further claimed that the possession of the land in dispute, which formed part of $\frac{1}{2}$ share of the plaintiffs in 28 Kanals 5 Marlas of land, i.e., of $\frac{1}{4}$ th share of the defendant continued to be with him. Accordingly, the defendant claimed that he is owner in possession of the land in dispute, which was allotted to him in lieu of his $\frac{1}{4}$ th share in 28 Kanals 5 Marlas of land, which he had purchased from the plaintiffs. The defendant also pleaded that the plaintiffs are even now liable to comply with the terms and conditions of the sale deed dated 21.10.1955 and are also liable to account for the land which they got in civil litigation.”

6. The learned Civil Court, after considering the pleadings of both the parties and the evidence led, decreed the suit filed by the predecessors-in-interest of respondent Nos.3 to 13 and gave unambiguous findings. The relevant extract of the judgment reads as under:-

“12-A. The material question to be seen, however, is as to whether or not the disputed khasra no. was allotted, during consolidation, in lieu of $\frac{1}{4}$ th share of the defendant in the aforesaid land, which he had purchased from the plaintiffs. The disputed Khasra No.7R/5/2 was carved out, during consolidation, in the name of the plaintiffs vide Resolution No.46 dated 25.3.1965, copy Ex.P3. In this resolution, reference had been made to Gath No. 66. Copy of Naqsha Haqdarwar Ex.P2 also bears a reference to the said Gath No. 66, which means that the land referred to in Resolution Ex.P3, including the disputed Khasra No. 7R/5/2, was allotted in lieu of the entitlement of the plaintiff worked out in the Naqsha Haqdarwar Ex.P2. This document further indicates that the entitlement of the plaintiffs in this naqsha was worked out in lieu of their previous holdings compared

in Khewat no. 7 and 193 min. Copy of Khatoni Istemal Ex.P1 gives the detail of khasra no. comprised in khewat no. 71. All the three khasra numbers purchased by the defendant and his brother from the plaintiff do not find any mention in this khewat, which means that the said khasra nos. were not covered by khewat no. 71. So far as khewat no. 193 min is concerned, the plaintiffs had only 374/22156th share therein. It is no case of the defendant that he and his brother purchased any land from that khewat. On the contrary, his case is that the land in dispute had been purchased by the plaintiffs from its previous owner and no mutation had been sanctioned in favour of the plaintiffs in respect of that sale. That being so, the documents, Ex.P1, P2 and P3 prove beyond any manner of doubt that khasra no. 7R/5/2 in dispute was not carved out in lieu of the land comprised in the three khasra numbers, which the defendant and his brother had purchased from the plaintiffs.”

7. It is also relevant to mention that the Civil Court specifically dealt with the order dated 12.06.1965 passed by the Consolidation Officer and held that this order was based on any patent error of facts, therefore, the order and the resolution does not confer any right upon the petitioner. The relevant extract of this finding reads as under:-

“The Consolidation Officer observed that since the petitioner had sold some land to Haria, defendant, the mutation of which had not yet been sanctioned, khasra no. 7R/5/2 had been allotted to the defendant as Gair marusi. This order is clearly based upon a patent error of fact because the land sold by the plaintiffs had not been taken into consideration while working out their entitlement of Gurmukh Singh and Bhagat Singh. Therefore, this order and the resolution Ex.D4

cannot confer any right on the defendant to the land in dispute because he is to follow the land sold by him and cannot claim any other land belonging to the plaintiffs.”

8. The petitioner challenged the civil suit by filing first appeal before the learned Additional District Judge, Rupnagar, however, the same was dismissed vide judgment and decree dated 20.05.1978, Annexure P-3. Thereafter, he preferred Regular Second Appeal before this Court, which was also dismissed. Feeling aggrieved against the dismissal order dated 10.09.1990 passed by this Court in Regular Second Appeal, he filed SLP No.4321 of 1911 before the Hon'ble Supreme Court. The Hon'ble Supreme Court, vide order dated 07.03.1996, remanded the matter to this Court for deciding the issue afresh and to give a finding with regard to identity of area, to which the petitioner was entitled to on account of the admitted purchase of land in his favour, and, if not in possession thereof, why and what remedial steps would be necessary.

9. Thereafter, this Court, while hearing the Regular Second Appeal, after its being remanded, elicited a specific report from Director, Consolidation of Holdings, Punjab, Chandigarh, with regard to whether Khasra No.7/5/2 has been carved out in lieu of Khasra No. 2485/1272-73 min, 2486/1272-73 and 2487/1272-73 min. On the basis of the report received from the aforesaid authority, the Regular Second Appeal was again dismissed vide order dated 03.07.2002 with the following observations:-

“As already indicated by me, in view of the directions of the

Apex Court, a report had been summoned from the Additional Director, Consolidation of Holdings, Punjab Chandigarh, which indicates that khasra no. 7/5/2 has not been carved out in lieu of khasra nos.2485/1272-73 min, 2486/1272-73 and 2487/1272-73 min. The doubt which was created on account of assertions by the defendant-appellant was evidently attributable to the fact that the appellant was trying to project that khasra nos. 2485/1272-73 min, 2487/1272-73, 2194/1277 and 2193/1277 are the same as khasra nos. 2485/1272-73, 2486/1272-73 and 2487/1272-73, for asserting that Rectangle No.7 Killa No.5/2 had been carved out of land which he had purchased from the plaintiffs for Rs.4500/- vide Ex.D1. The report of the Additional Director, Consolidation of Holdings, Punjab, Chandigarh, against which, no objections have been filed clearly dislodges the case of the appellant and enables this court to reaffirm the view taken by it on 10.9.1990. No other point has been urged before me. For the reasons recorded above, this appeal fails and is dismissed.”

10. Perusal of the judgment passed by the Civil Court leaves no room for any further controversy, because all the issues raised by the petitioner have been addressed and settled in unequivocal terms by the civil court in its judgment, wherein it has been held that Khasra No.7/5/2, in dispute, was not carved out in lieu of the land comprised in three khasra numbers, which the petitioner and his brother had purchased, rather, some land other than the land in dispute was allotted, during consolidation, in lieu of three khasra numbers purchased by the petitioner.

11. The order dated 03.07.2002 passed by this Court has since

attained finality as no appeal has been preferred by the petitioner.

12. When all these issues were settled in the civil suit, the petitioner, in order to retain his illegal possession, filed an application under Section 42 of the East Punjab Consolidation of Holdings Act, raising the same dispute afresh and claimed that the petitioner and his brother be allotted Khasra No.7/5/2, measuring 5 Kanals 2 Marlas, in lieu of their old area. However, the respondent No.2, while observing that there is considerable delay of 45 years in moving the said application, dismissed the petition being time barred vide order dated 22.02.2007.

13. The petitioner opted not to challenge that order, rather, conveniently filed second application again before the same authority seeking the same relief and this time also, the application was dismissed with the observation that the petitioner has already availed remedy under Section 42 of the Act and now, the review of the order dismissing the earlier application is not within his jurisdiction. It was also observed that the civil litigation between the parties continued up to the Supreme Court and ultimately, concluded in favour of the respondents.

14. Now, the petitioner is before this Court, by way of present writ petition, challenging the order dated 22.02.2007, Annexure P-6, and order dated 04.03.2009, Annexure P-8, passed by the respondent No.2. We have already explained above, the manner in which the entire dispute has been adjudicated and settled in the civil suit, between same parties, and, now the present petition has been filed raising all those issues again, which is certainly barred by principle of *res judicata*, therefore, this

Court, under writ jurisdiction, cannot interfere with the conclusive findings of the Civil Court, which have since attained finality. Therefore, the present writ petition stands **dismissed** being devoid of merits.

15. Since the main petition stands decided, therefore, all connected miscellaneous applications, if any, also stand disposed off accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

12.12.2022
ajay-1/devinder

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