

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

345

RSA-2782-2018 (O&M)
Date of decision: 14.10.2022

Dhani RamAppellant
Versus

Banwari (since deceased) through his LR AnkitRespondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. D.S. Matya, Advocate for the petitioner.

Mr. Ankit, LR of the respondent, in person.

MANJARI NEHRU KAUL, J. (ORAL)

The suit filed by the appellant/plaintiff for declaration with consequential relief of mandatory injunction was dismissed by the learned Trial Court vide judgment and decree dated 27.11.2015. The appeal preferred by the appellant/plaintiff against the aforesaid judgment and decree was also dismissed by the Lower Appellate Court vide order dated 26.03.2018. The appellant/plaintiff is now before this Court in Regular Second Appeal.

Parties to the *lis*, hereinafter shall be referred to by their original position in the suit.

The plaintiff filed a suit for declaration with consequential relief of mandatory injunction seeking declaration to the effect that the revenue entries recorded in favour of the defendant with respect to the land measuring 15 kanal 5 marla viz khewat No.93/42 min, khatoni No.96, rect. No.10, killa Nos.3/2(3-1), 4/1(0-17), 7/2(1-8), 8/1(4-12), 13/2(4-2), 14/1(1-5) (hereinafter referred to as 'the suit property') situated within the revenue estate of Village Bandhwari, Tehsil Sohna, District Gurgaon were wrong, null and void and mutation No.3652 was a result of fraud and thus not binding on the rights, title and interest of

the plaintiff. Besides this, the plaintiff also sought directions to the defendant to get the revenue records corrected as well as permanent injunction to restrain the defendant from interfering in the peaceful possession of the plaintiff over the suit land.

Pleaded case of the plaintiff may be noticed as thus:-

The plaintiff sold one acre of agricultural land out of the land of the plaintiff i.e. 1 Bigha 12 Biswa vide sale deed No.2744 dated 26.02.1998 for a sum of Rs.1,20,000/-. The defendant was neither sold the suit property (detailed at point (B) in para No.4 of the plaint) nor given possession thereof. However, the defendant, after conspiring with the revenue authorities got his name recorded in the column of cultivation in jamabandi for the year 2000-01. The mutation No.3652 was a result of fraud and had been unlawfully sanctioned by the revenue authorities, beyond the sale deed and the same was sanctioned after a gap of 10 years without giving notice to the plaintiff. Thereafter, mutation No.4349 of inheritance of Banwari (defendant) qua the suit property was sanctioned. The above-mentioned mutations being null and void were thus not binding upon the plaintiff. Still further, it was pleaded that the plaintiff had been in peaceful possession of the suit property and defendant had made several attempts to dispossess him of the suit property. Since the plaintiff was left with no other alternative, to get the revenue entries corrected, the suit in question was filed.

In the written statement, the defendant prayed for dismissal of the suit on the following grounds:

- (i) that the suit was hopelessly time barred;
- (ii) that the Civil Court had no jurisdiction under Section 44 of

the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, 'the Consolidation Act') to entertain the suit in question;

(iii) that the suit was not maintainable as the plaintiff was not seeking possession;

(iv) that no cause of action could be said to have accrued to the plaintiff as mutation by itself did not confer any right;

(v) that the plaintiff did not dispute the possession of the defendant over the suit property; and

(vi) that since the plaintiff was not in possession of the suit property, Court fee ought to have been affixed by him as per the market value of land.

On the basis of the material and other evidence led, the Trial Court while dismissing the suit of the plaintiff returned findings that the defendant was the owner in possession of the suit property and in view of the admitted and un-assailed sale deed (Ex.P2), plaintiff was left with no right, title and interest in the suit property. The appeal of the plaintiff before the Lower Appellate Court was dismissed. The cross-objections filed by the defendant on the grounds that the Civil Court had no jurisdiction to adjudicate upon the subject matter and that the suit was time barred, were allowed. Both the Courts below held that the defendant has been duly allotted his share of 15 kanal 12 marla land by observing that the demand of 7 kanal and 12 marla of standard land, to which the defendant was entitled, was satisfied by allotting him 15 kanal 5 marla of lesser value land during the consolidation proceedings.

Both the Courts below held that the plaintiff had admitted to the

possession of the defendant over the suit property and, therefore, since plaintiff was not in possession of the suit property, he was not entitled to the relief of permanent injunction.

Learned counsel for the appellant/plaintiff has vehemently argued that both the Courts below had failed to appreciate that mutation No.3652 (Ex.PW2/18) had been sanctioned on 18.08.2008 beyond the scope of registered sale deed, Ex.P2, and after a period of 10 years in favour of the defendant, without giving notice to the plaintiff, and hence it was not binding upon the right, title and interest of the plaintiff. He has further argued that the Courts below still further failed to appreciate that the last cause of action had arisen in the year 2008 when the impugned mutation was sanctioned during the pendency of the suit. He has submitted that the plaintiff had been successful in proving by way of cogent evidence that the suit land had been allotted in lieu of land bearing khasra No.607 khata No.42 khatoni No.135 of jamabandi for the year 1984-85 in favour of the plaintiff wherein his name stood clearly reflected as owner of the suit land in the jamabandi for the year 2000-01, which was the first jamabandi after consolidation. He has urged that the name of the defendant had been wrongly mentioned in the column of cultivation qua the suit property and hence these wrong entries including mutation No.3652 (Ex.PW2/18) along with subsequent mutations were liable to be rectified in favour of the plaintiff on the basis of the suit so instituted. Learned counsel has vehemently argued that it was clearly a case wherein the revenue authorities had colluded with the defendant and wrongly got recorded his possession in the suit property measuring 15 kanal 5 marla as even

after consolidation, defendant could not have been granted more than the area purchased by way of sale deed. Learned counsel has further argued that revenue authorities should have sanctioned the mutation of defendant's land as per sale deed No.2744 and excess 7 kanal 5 marla should have been reverted in the name of the plaintiff. He has submitted that since the defendant was neither in possession nor owner of the suit property, it was evident that the Courts below had erroneously ignored and turned a blind eye to the fraud which had been played upon the plaintiff.

Per contra, LR of the respondent appearing in person has vehemently opposed the prayer and submissions made by the counsel opposite. He has argued that at the time of the consolidation, the land was allotted by the Consolidation Department to different owners, including the defendant, after assessing the quality and valuation of the land and, if any, person had any grievance or objection regarding allotment of the land in lieu of his original khasra numbers, the only remedy available to such aggrieved person was to approach the Consolidation Department. He has argued that the plaintiff too had been allotted land, though a different portion, which stands duly reflected in the jamabandi for the year 2000-01. He has further argued that ever since the allotment of the suit property by the Consolidation Department, the defendant had been exclusive owner in possession of the same. It was a matter of record that the plaintiff never filed any objections in the said regard and it was only when he realized that the price of the land had skyrocketed, he became dishonest and greedy, and with an intention to grab the land of the defendant, filed the suit in

question. He has submitted that since the plaintiff had chosen not to challenge the order of the Consolidation Authorities vide which the suit property stood allotted in defendant's favour, the plaintiff could not now and that too after a period of 07 years, at a highly belated stage challenge it. In support, he has placed reliance upon ***Civil Appeal No.2815 of 2008 titled as Kamlesh Babu and others Vs. Lajpat Rai Sharma and others' decided on 16.04.2008 and Civil Appeal No.4599 of 1989 titled as 'Sushil Kumar Mehta Vs. Gobind Ram Bohra' decided on 10.11.1989.***

I have heard learned counsel for the parties and perused the relevant material on record.

This Court does not find any error in the impugned judgment and decree passed by the Trial Court and later affirmed by the First Appellate Court for the reasons to follow:

The contention of the learned counsel for the plaintiff that the Courts below erred in holding that the suit was barred by limitation, in the opinion of this Court is devoid of any merit. It is the bounden duty of the Court to satisfy itself qua the questions of jurisdiction and limitation as both these issues go to the very root of the jurisdiction of the Court to entertain and decide the *lis*. It is well settled that a judgment without jurisdiction is a nullity and still further, if it appears that the suit of the plaintiff is beyond limitation, the plaint should not be entertained and should be dismissed. The First Appellate Court has rightly held that the suit in question was hopelessly time barred as admittedly the plaintiff filed the suit after six years as per his own admission and nine years after the consolidation as per record. It has

been admitted by the plaintiff that the defendant had been in possession of the suit land since the execution of the sale deed dated 26.02.1998. Not only this, he also admitted during his cross-examination that their khewats were separated by the Consolidation Department (Ex.DX and DY) in the year 1998 itself and still further the plaintiff and the defendant were in possession of their respective land ever since then. The plaintiff has, thus, admitted to the defendant's ownership and enjoyment of the suit property from the very beginning.

As per the plaintiff's own case, consolidation proceedings culminated in the year 2000-2001, however, it is a matter of record that the suit in question was instituted after seven years i.e. in the year 2007. The Consolidation Act categorically stipulates that a person can challenge an order passed by the Consolidation Authorities within six months thereof. Still further, Section 100 of the Limitation Act stipulates that a suit challenging the validity of any order passed by any authority has to be within one year thereof. In the case in hand, it is a matter of record that separation of the khewats came to the notice of the plaintiff in the year 1998. It needs to be noted that though a suit can be filed within three years from the accrual of the initial cause of action, however, any successive violation of rights after institution of the suit would not give fresh cause of action to file a suit. It would be pertinent to point out that if the suit is based on multiple causes of action, the period of limitation would commence from the date when the right to sue first accrued.

In the case at hand, the grievance of the plaintiff pertains to suit property, which admittedly has been in possession of the defendant

after the khewats had been separated by Consolidation Authorities in the year 1998. The period of limitation would commence therefrom or at the most from the culmination of consolidation proceedings in the year 2001. Therefore, no right could be said to have accrued to the plaintiff to file suit as per mutation No.3652 because the same was sanctioned on the basis of the sale deed in favour of the defendant. In the above circumstances, this Court has no hesitation in observing that the suit in question was hopelessly time barred and beyond limitation.

Furthermore, it has been proved on record that the Consolidation Authorities had allotted 15 kanal 5 marla land of lesser value to the defendant as per his entitlement in lieu of 7 kanal 12 marla of standard land during consolidation proceedings under the Consolidation Act and the defendant had ever since then been in possession thereof. The plaintiff till date has not challenged the order of Consolidation Authorities. In case, the plaintiff was aggrieved by any such order, he should have challenged it before the authorities empowered under the Consolidation Act, which admittedly was not done. The Appellate Court rightly observed that the jurisdiction of the Civil Court was clearly barred to adjudicate upon this issue under Section 44 of the Consolidation Act. This Court, therefore, concurs with the findings recorded by the First Appellate Court that a Civil Court cannot derive jurisdiction beyond the statute by merely giving it a colour for a suit of declaration.

It would be apposite to reiterate that mutation is only entered to update the revenue records and it not being a document of title does not confer any right on any person whatsoever. Hence, the

reliance placed upon the mutation entries by the counsel for the plaintiff would not come to his rescue. Still further, the correctness of mutation cannot be challenged by plaintiff in a civil suit.

No doubt, the learned counsel for the plaintiff vehemently argued and alleged that a fraud had been played upon the plaintiff, however, except for his bald submissions, no evidence whatsoever was brought on record with respect to the alleged collusion and conspiracy between the defendant and the revenue authorities.

At the cost of repetition, it is stated that the plaintiff did not even challenge the sale deed and in fact admitted it in its entirety and hence the plaintiff cannot claim his title qua the suit property. The Appellate Court has rightly observed that the jamabandi and mutation No.3652 are mere conclusions drawn by the Consolidation Authorities while dealing with the suit land. It is evident that the plaintiff is just trying to give the dispute a colour of question of title without even challenging the order of the Consolidation Authorities.

It is important to note that the question, whether a simpliciter suit for declaration is maintainable or not when the plaintiff is not in possession of the suit property, has been answered in the negative by the Hon'ble Supreme Court in ***Mehar Chand Das Vs. Lal Babu Siddique and others : AIR 2002 SC 1499.***

It is thus a well settled proposition of law that if the plaintiff is not in possession of the suit land, he cannot file a simpliciter suit for declaration and injunction without claiming possession thereof. In the case in hand, the plaintiff has admitted in the sale deed dated 26.02.1998 that the possession of the land was delivered to the vendee

(defendant) at the time of sale. He has also admitted in cross-examination that during consolidation proceedings, the authorities concerned gave possession to the parties at the time of culmination of the consolidation proceedings and the possession had been given in the year 2000-01 to all the respective owners including the defendant Banwari. The plaintiff has further admitted that defendant is in possession of the suit property ever since then.

On being pointedly asked, learned counsel for the plaintiff failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by both the Courts below were either contrary to record or suffered from any material illegality. In the circumstances, this Court does not find any error in the concurrent findings recorded by both the Courts. The appeal being devoid of merit is accordingly dismissed.

14.10.2022

(MANJARI NEHRU KAUL)

Vinay

JUDGE

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