

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA-3698-2019 (O&M)
Date of Decision: July 17, 2023**

Dal Singh

...Appellant

Versus

Ram Phal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

**Present: Mr. Dalip Kumar Tuteja, Advocate,
for the appellant.**

SANJAY VASHISTH, J.

CM-10055-C-2019:

1. This is an application seeking condonation of delay of 7 days in refiling the appeal.

For the reasons mentioned in the application, the same is allowed.

Consequently, delay of 7 days in refiling the appeal, is condoned.

Civil miscellaneous application stands disposed of.

RSA-3698-2019:

2. Appellant (plaintiff No. 2) – Dal Singh has preferred present appeal against the judgment and decree dated 05.12.2018, passed by learned Additional District Judge, Rohtak, in Civil Appeal No. RBT-22 of 2016, whereby while dismissing the appeal, learned lower First Appellate Court has upheld the judgment and decree dated 07.10.2016, passed by learned Additional Civil Judge (Senior Division), Rohtak, vide which Civil Suit No. 477 of 2011, filed by the plaintiffs was dismissed.

3. Suit for declaration and consequential relief for permanent injunction was instituted by plaintiffs, namely, (1) Satbir, (2) Dal Singh, (3) Karambir, (4) Jagbir, (5) Anoop Singh, (6) Om Pati, and (7) Naveen (minor). Thus, against the concurrent findings of facts, only plaintiff No. 2 – Dal Singh has filed present appeal.

4. Pleaded facts in the plaint are that the plaintiffs claimed to have purchased the suit property consisting of land comprised in Rectangle & Killa Nos. 22//25 (7-12) and 27//8 (8-0), total measuring 15 Kanals 12 Marlas, situated within the revenue estate of village Dobh, Tehsil and District Rohtak, vide registered sale deed No. 3261, dated 03.03.1975. Further pleaded that though, on the basis of aforementioned sale deed, mutation was to be sanctioned in favour of the plaintiffs, but inadvertently, vide Mutation No. 2845, dated 28.08.1975, it was sanctioned in the names of Khushi Ram, Khema, Hazari, Hoshiyar Singh and Sube, sons of Sudhan son of Shiv Lal. After sanctioning of said mutation, Khushi Ram expired, who had executed a Will, bearing No. 87, dated 07.08.1975, in favour of his son Zile Singh, qua his part of the suit land, which he (Khushi Ram) had wrongly acquired vide Mutation No. 2845, dated 28.08.1975. On the basis of Will dated 07.08.1975, Mutation No. 3081 was sanctioned.

In this way, Mutation No. 3081, which was wrongly sanctioned, and Will No. 87, dated 07.08.1975, were challenged being null and void because on the date of execution of the Will, Khushi Ram himself had no title or interest over the land in question.

5. It was further averred that one of the brothers of Khushi Ram, namely, Khema died in the year 1978-79 and mutation of inheritance of Khema, including the land in question, was wrongly and illegally sanctioned in favour of his widow – Smt. Nahni, and daughters – Smt. Chander and Smt. Bhanmati, vide Mutation No. 3145, dated 04.06.1980, because name of Khema was wrongly entered in earlier Mutation No. 2845, dated 28.08.1975, and he never purchased the land in question.

6. It was further averred that Zile Singh and others, who had wrongly acquired the suit land, transferred 4/5th share to Ram Chander and others, by claiming themselves to be owners through civil Court decree. Thus, Mutation No. 3159, which was sanctioned on the basis of said decree, is again null and void.

7. It was further averred that the oral exchange, as mentioned in Mutation No. 3270, is wholly illegal because the land in question was actually purchased by the plaintiffs and Mutation No. 2845 was wrongly sanctioned due to collusion with the revenue authorities. No possession was ever handed over to defendant No. 1, allegedly in view of exchange Mutation No. 3270 and the plaintiffs are in actual physical possession over Rectangle and Killa No. 27//8, since the date of purchase, i.e. 03.03.1975.

8. It was further averred that defendant No. 1, i.e. LR of Chander Singh son of Nanha son of Shadi, being employee in revenue department, in collusion with revenue authorities want to act upon the oral exchange and impugned mutation, which is illegal, null and void and not binding on the

rights of the plaintiffs.

9. It was further averred that the land out of Rectangle and Killa No. 28//4/1 was acquired by the Haryana Government, and Rectangle and Killa No. 28//4/1 was bifurcated into Rectangle and Killa No. 4/2 (1-12), 4/1/1 (0-9), 4/1/3 (2-9) in the names of the plaintiffs, without any notice either to them or to any LRs of Khema. Entry to this effect of Rectangle and Killa No. 28//4/1, in the names of the plaintiffs is also illegal and created no right, title and interest in their favour, in view of mutation of exchange, bearing No. 3270, as the same is against the provisions of the Transfer of Property Act, in violation of the Registration Act and further against the provisions of the Punjab Land Revenue Act.

10. It was further averted that LRs of Chander Singh son of Nanha, i.e. defendant Ramphal, illegally mortgaged the land in dispute i.e. 27/8, as mentioned in the jamabandi for the year 2008-09, which he allegedly acquired from his father and his father acquired through oral exchange Mutation No. 3270.

11. It was further averred that the plaintiffs came to know about the said illegal and wrong entry, when they approached the Patwari for revenue record of the land in question in order to get demarcated their land, then Halqa Patwari told them all the facts. The plaintiffs requested the defendants and Halqa Patwari to correct the entry of disputed Killa number in their favour, to the extent of their respective shares, in view of land purchased by them vide sale deed No. 3261, dated 03.03.1975. But the Halqa Patwari said that the

wrong entry has culminated in jamabandi and now as per settled law, when the entries are incorporated in the jamabandi, may be wrongly and rightly, only the civil court has got jurisdiction to entertain and try the present suit.

12. In response to the plaint, defendant No. 1 filed his written statement-cum-counter claim saying that oral exchange bearing Mutation No. 3270, is legal and it was sanctioned & entered with the consent of the parties. Accordingly, possession over the respective land stood exchanged at that very time. In the written statement filed by defendant Nos. 8 and 9, it was specifically pleaded that they have no concern with the land in dispute, and the plaintiffs have wrongly impleaded them. Their names are not reflected in the jamabandi for the year 2008-09, which was filed by the plaintiffs. Defendant Nos. 8 and 9 claimed themselves as co-sharers of the land compromised in Khewat No. 386//377, Khatoni No. 449, Rectangle and Killa No. 22//3 (4-14), 28//4/2 (1-2), total Kitte 2, measuring 5 Kanals 16 Marlas, situated in the revenue estate of village Dobh, Tehsil and District Rohtak, vide jamabandi for the year 2008-09, and mutation No. 2846, dated 28.08.1975, was also sanctioned in their favour.

13. No replication was filed, and on the basis of pleadings available in the shape of plaint and written statements, vide order dt. 7.7.2015 learned Trial Court framed the following five issues:-

- “1) Whether the plaintiff is entitled to a decree for declaration as prayed for? OPP*
- 2) Whether the defendant No. 1 is entitled to declaration as prayed for? OPP*

- 3) *Whether the suit is not maintainable in the present form? OPD*
- 4) *Whether the counter claim is not maintainable in present form? OPP*
- 5) *Relief.”*

14. In paragraph No. 27 of the judgment of learned Trial Court, while noticing the argument advanced by counsel for the plaintiffs, it is observed as under:-

“27. Once the court comes to the conclusion that mutation No. 2845 is liable to be declared illegal, null and void, all the subsequent transactions i.e. Will of Khushi Ram No. 87 dated 07.08.1975, the mutation of inheirtance of Khema bearing No. 3145, mutation on the basis of Will in favour of Zile Singh, the consent decree by the Zile Singh and others and subsequent mutation No. 3159 and mutation No. 3207 of oral exchange, all being deriving their validity from the impugned mutation No. 2845 are liable to be declared illegal, null and void.”

15. On the other hand, case of the defendants is that land of the plaintiffs was wrongly entered in the name of their father and his brothers. They received 1/5th share of their father through mutation and 4/5th share of his brothers through consent decree. Thus, the land reverted back to where it belonged. In fact, plaintiffs being owners of land bearing Rectangle and Killa No. 27//8 (8-0), exchanged the same with land bearing Rectangle and Killa No. 28//4/1 (6-18).

16. Considering the fact that plaintiffs had also filed a suit earlier against the present defendants, which was decided on 31.07.1982, it was held that the present suit was hit by the principle of *res judicata*. The findings recorded in paragraph Nos. 39 and 40 of the judgment passed by the learned

Trial Court says as under:-

“39. A perusal of the record shows that earlier also the plaintiffs No. 1 to 5 and predecessors-in-interest of plaintiffs No. 6 and 7 Ram Chander had filed a suit against the present defendant No. 17 Hoshier and present defendant No. 20 Zile Singh alongwith predecessors-in-interest of defendants No. 13 to 16 namely Hazari son of Sudhan and predecessor-in-interest of defendant No. 19 Baljeet namely Sube son of Sudhan. Thus, clearly the parties in the present suit were either parties in the previous suit or are claiming through persons who were parties in the earlier suit.

40. As regards the suit property involved in both the cases, it is crystal clear that the present suit pertains to agricultural land comprised in Rect. and Killa No. 22//25 (7-12) and Rect. & Killa No. 27//8 (8-0) total measuring 15 Kanals 12 Marlas. The suit property in the earlier suit was agricultural land comprised in Rect. & Killa No. 27//8 (8-0) and Rect. & Killa No. 22//25 (7-12) total measuring 15 Kanals 12 Marlas. Thus, the suit property involved in both the suits is identical.”

Thus, the suit of the plaintiffs was dismissed on the ground of *res judicata*.

17. Not only this, learned Trial Court also held that under Article 58 of the Limitation Act, 1963, limitation to file suit for declaration is three years from the date when right to sue first accrues. Learned Trial Court found that cause of action, if at all, had arisen to the plaintiffs on 01.06.1982 and the present suit was instituted on 17.05.2011. Thus, the suit was held to be *hopelessly time barred*. Finding in this regard, recorded by learned Trial Court, in paragraph Nos. 48 and 49 of its judgment, reads as under:-

“48. The proposition of law laid down in Harnam Kaur’s case (Supra) deals with suit for possession on the basis of title wherein the plea of adverse possession was involved whereas the present suit is not for possession on the basis of title rather it is a suit for declaration with consequential relief of permanent injunction. As per Article 58 of the Limitation Act, 1963, the limitation to file a suit for declaration is three years from the date when the right to

sue first accrues.

49. From a bare perusal of the plaint Ex. PW2/A filed on 01.06.1982 it is amply clear that the revenue record with regard to land bearing Rect. & Killa No. 27//8 (8-0) and Rect. & Killa No. 22//25 (7-12) which was owned by the plaintiffs, was not correct. This fact had come to the notice and knowledge of the plaintiffs, therefore, the right to sue had first accrued if not earlier, at least on 01.06.1982. The present suit being filed on 17.05.2011 is hopelessly time barred.”

18. Still further, learned Trial Court also held that the suit filed by the plaintiffs was also hit by the principle of ‘*splitting of claims*’ and, thus, present suit was barred under Order II Rule 2 of the C.P.C. The finding recorded in this regard, in paragraph No. 52 of the judgment passed by learned Trial Court, is reproduced as under:-

“52. Apparently, having filed the earlier suit on 01.06.1982, the plaintiffs were well aware of the irregularity that had crept in the revenue record. They filed a suit to get corrected the said irregularity and on the basis of admission of the defendants, succeeded in getting a decree in their favour. They received the entire 4/5th share which was recorded in the names of brothers of their father. The 1/5th share of their father devolved upon the plaintiffs alongwith the widow and daughters of Late Khema. The plaintiffs having chosen not to challenge devolution of 1/5th share also upon widow and daughters of Khema are barred from challenging the same now by operation of principle of splitting of claims contained in Rule 2 of Order 2 of CPC. Thereafter, no cause of action remained to challenge the same very entries in the revenue record again by way of the present suit. As such, the plaintiffs have no cause of action.”

19. Feeling aggrieved against the judgment and decree, dated 07.10.2016, passed by learned Trial Court, plaintiffs approached the learned lower First Appellate Court, by filing Civil Appeal No. RBT-22 of 2016. Dismissing the said appeal, while concurring with the findings and upholding

the judgment and decree dated 07.10.2016, passed by learned Trial Court, in paragraph Nos. 17 to 22 of the impugned judgment and decree dated 05.12.2018, learned Additional District Judge, Rohtak, has observed as under:-

“17. In the present case, the suit property is comprised in Rect. No. 22 Killa No. 25 (7-12) and Rect. No. 27 Killa No. 8 (8-0). It measures 15 Kanals 12 Marlas. It was purchased by the appellants-plaintiffs, vide sale deed No. 3261 dated 03.03.1975 Mark-B. On the basis of the said sale deed, mutation No. 2845 dated 28.08.1975, has been sanctioned in favour of the father of the appellants-plaintiffs and his brothers in place of appellants/plaintiffs. Since the suit land was purchased by the appellants/plaintiffs and therefore, sanctioning of mutation no.2845 dated 28.8.1975 in favour of the father of the appellants-plaintiffs and his brothers is not as per sale deed No. 3261 dated 03.03.1975 Mark-B. As such, the said mutation bearing no.2845 dated 28.8.1975 is declared null & void being against the record. Therefore, it does not affect the rights of the appellants-plaintiffs qua the suit property. Consequently, all the subsequent transactions i.e. Will of Khushi Ram No. 87 dated 07.08.1975, the mutation of inheritance of Khema bearing No. 3145, mutation on the basis of Will in favour of Zile Singh, the consent decree by the Zile Singh and others and subsequent mutation No. 3159 and mutation No. 3207 of oral exchange, all being deriving their validity from the impugned mutation No. 2845, are also declared illegal, null and void.

18. Appellants-plaintiffs have further claimed that the oral exchange as mentioned in mutation No. 3270 has been cancelled. The perusal of said mutation No. 3270 Ex. P23 reveals that it was the present appellants/plaintiffs and predecessor-in-interest of present appellants/plaintiffs No. 6 and 7 namely Ram Chander who had exchanged the land bearing Rect. No. 27 Killa No. 8 with land bearing Rect. No. 28 Killa No. 4/1 with Chander Singh son of Nana son of Shadi. However, on correction of revenue record, vide mutation No. 2845, suit land has reverted back to the present appellants/plaintiffs and it is the present appellants/plaintiffs, who have exchanged the land with Chander Singh. As such, the plea taken by the appellants/plaintiffs that they were not owners of the land bearing Rect. No. 27 Killa No. 8 on the date of oral exchange is not sufficient to set aside the said oral exchange. As discussed above, at the time of oral exchange, appellants-plaintiffs were not having any right in the land bearing Rect. No. 27 Killa No. 8, however, subsequently, they have

acquired the rights in the said land being LR.s. of Chander Singh. In that eventuality, it can be said that the appellants/plaintiffs were not competent to exchange the land bearing Rect. No. 27 Killa No. 8 at the time of oral exchange being, LR.s of Khema son of Sudhan and they have acquired the same later on in their own right, at the instance of the transferee i.e. LR.s. of Chander Singh, the said transfer shall operate on the interest that the appellants/plaintiffs have acquired. Consequently, the oral exchange is not liable to be set aside on that ground also. As such, it can be said that findings recorded by the learned lower court on this issue are legal and valid and are hereby affirmed. Hence, issue No.1 is decided against the appellants/plaintiffs and in favour of the respondents-defendants.

ISSUE NO.2

19. *This issue pertains to the counter-claim filed by the respondent/defendant no.1 In the counter-claim, the relief has been sought to the effect that a mutation No. 3270 dated 08.01.1986 of oral exchange and other subsequent entries in the revenue records based on the same are declared illegal, null and void, then whether the appellant/defendant No. 1 is liable to be declared as owner in possession of Killa No. 28/4/1 (16-8). Further, relief has been sought to the effect that respondent/defendant no.1 is liable to be declared entitled to receive the compensation amount of the acquired land out of said killa number. As discussed above, it can be said that the relief claimed in the counter-claim, depends upon the situation, when the mutation no.3270 is declared as null & void. Since the mutation no.3270 has not been declared as null and void and as such, the relief sought by the respondent/defendant no.1 in counter-claim cannot be granted to him. As such, it can be said that findings recorded by the learned lower court on this issue are legal and valid and are hereby affirmed.*

ISSUE NO.3

20. *Learned lower court has decided this issue in favour of the respondents/defendants and against the appellants/plaintiffs. The findings recorded by the learned lower court on this issue has not been assailed by the respondents/defendants by way of filing the counter appeal and as such, it can be said that findings recorded by the learned lower court on this issue are legal and valid and are hereby affirmed. Hence, issue No.3 is decided against the appellants-plaintiffs and in favour of the respondents-defendants.*

ISSUE NO.4

21. *In view of my discussion under issue No. 2, the declaration sought by respondent-defendant No. 1 being conditional, said declaration cannot be granted. As such, it can be said that findings recorded by the learned lower court on this issue are legal and valid and are hereby affirmed. In view of the above discussion it can be said that findings recorded by the learned lower court on issue these issues are legal and valid and are hereby affirmed. Hence, issues No. 1 & 2 are decided against the appellants-plaintiffs and in favour of the respondents-defendants.*

22. *In view of the above discussion, the learned trial court has rightly dismissed the case of appellants/plaintiffs and I find no illegality, irregularity & perversity in the impugned judgment and decree passed by the learned trial court and hence, the same are not liable to be reversed.”*

20. At the time of hearing of the present appeal, on being asked by this Court also, learned counsel for the appellant could not address any satisfactory argument on the point of law regarding limitation; principle of *res judicata*; and splitting of claim being barred under Order II Rule 2 CPC, as has been recorded by the learned Trial Court. Even no illegality or perversity in specific has been pointed out by the learned counsel for the appellant from the impugned judgment passed by learned lower First Appellate Court.

21. Finding no substantial question of law or ground to interfere in the well reasoned judgment & decree passed by learned Courts below, while maintaining the same, this appeal fails and the same is hereby dismissed.

(SANJAY VASHISTH)
JUDGE

July 17, 2023
Pkapoor

Whether Speaking/Reasoned: ✓YES/NO-
Whether Reportable: YES/NO✓