

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

113

RSA-1166 of 2022(O&M)
Date of Decision:04.08.2023

GIAN CHAND

....Appellant

Versus

STATE OF HARYANA AND ORS

...Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ashok Kumar Malhotra, Advocate for the appellant.

SANJAY VASHISTH, J.(Oral)

1. Present regular second appeal has been filed by the plaintiff against the concurrent findings of dismissal of suit of declaration.

2. Plaintiff-Gian Chand sought a decree of declaration against the defendants (all four defendants being revenue officials) and built up his case by pleading that earlier the land comprised in *Khewat No.236/210, Khatauni No.306 to 412, Kitta 246* measuring *1957 Kanals 14 Marlas*, situated at Village Sukhdarshanpur, H.B. No.2, Tehsil and District Panchkula was recorded in the name of “*Shamlat Deh Hassab Rasad Zar Khewat*” in Jamabandies for the year 1943-44 to 1955-56 and even prior to 1943-44. The said entry continued till 1955-56, but later on, during the consolidation proceedings, inadvertently, said entry was changed in the revenue record from “*Shamlat Deh Hassab Rasad Zar Khewat*” to “*Shamlat Deh Hassab Rasad Arazi Khewat*”

3. One resident of the village Sukhdarshanpur filed a civil

Suit No.3599 of 2007 titled as **Om Parkash Vs. State of Haryana** and during the proceedings of the suit, the then Civil Judge Junior Division directed defendants No 1 to 4 to divide the suit property as per the revenue record, but defendants No.1 to 4 have divided the said property as per “**Shamlat Deh Hassab Rasad Arazi Khewat**” instead of “**Shamlat Deh Hassab Rasad Zar Khewat**”. The said mistake was pointed out to the defendants No. 1 to 4 by requesting them to correct the entries in Column No.4 of the Jamabandi, which is recorded as “**Shamlat Deh Hassab Rasad Arazi Khewat**” in the Jamabandi and for calculations of his share over the suit property. However, no heed was paid by the defendants and thereafter, plaintiff filed the suit on 07.07.2017.

4. In the written statement filed by the defendants, a preliminary objection has been taken that the suit is bad for non-joinder of the necessary parties, lack of cause of action, maintainability, estoppel etc.

5. It is submitted that the suit land underwent consolidation proceedings way back in the year 1959-60 and during those proceedings, the concerned consolidation department/officer changed the nature of land from “**Shamlat Deh Hassab Rasad Zar Khewat**” to “**Shamlat Deh Hassab Rasad Arazi Khewat**”. Accordingly, entry was made in this regard in the **Misal Hakiat**. Resultantly, entry was further reflected in the Jamabandi for the year 1963-64.

6. Thus, broadly speaking, defendants clearly pleaded that

nature of land was changed during the consolidation proceedings by the concerned authority and it is not the result of any omission on the part of defendants. It is also specifically pleaded that for correction of the said mistake regarding the entry in the Jamabandi, answering defendants are not empowered under the law.

7. However, the factual aspect pleaded by the defendants was not refuted or explained by the plaintiff by way of filing of the replication. Resultantly, vide order dated 08.05.2018, learned trial Court framed total nine issues, which are reproduced hereunder:

“1. Whether the plaintiff is entitled to the relief of declaration against the defendants as prayed for? OPP

2. If issue no.1 is proved, whether the plaintiff is entitled to the relief of mandatory injunction against the defendants as prayed for?OPP

3. Whether the plaintiff is bad for non-joinder of necessary parties? OPD

4. Whether the plaintiff has no cause of action to file the present suit? OPD

5. Whether the suit of the plaintiff is not maintainable in the present form? OPD

6. Whether the plaintiff is estopped by his own act and conduct from filing this suit?OPD

7. Whether the plaintiff has not come in the court with clean hands and concealed true and material facts from the court and if so, its effect? OPD

8. Whether the suit of plaintiff has based on vague and vexatious grounds?OPD

9. Relief.

8. For the purpose of dealing with the objection pleaded by the defendants, findings given by the Courts below in regard to issue No. 1 and 3 would be material.

9. Learned trial Court have concluded in paragraph Nos.9 to 12, while deciding issue No.1 that the consolidation department was a

necessary party, but no witness from the consolidation department has been examined by the plaintiff, thus, while deciding issue No.3 Court held that even suit is bad for non-joinder of necessary party. There is another angle to examine the facts for the purpose of filing of the suit ,that the suit has been filed at much belated stage in the year 2017, whereas as per the plaintiff, the mistake occurred in the year, 1961-62 i.e during the conducting of proceedings by the Consolidation Department.

10. Thus, there is a huge delay of more than 55 years in filing the suit from the time of cause of action arising to the plaintiff for seeking correction of the said mistake. The findings given by the Trial Court are also upheld by the impugned judgment given by the Appellate Court. Thus, there is nothing material to interfere with the well reasoned impugned judgment and decree passed by the Courts below and the **same are maintained**. Accordingly, the present regular second appeal stands **dismissed**.

11. As the appeal has been dealt with on merits, this Court does not find any reason to deal with the issue raised in the application i.e. CM-3800-C-2022 for leading additional evidence at this stage. Thus, application stands dismissed.

[SANJAY VASHISTH]
JUDGE

August 04, 2023

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Whether speaking/reasoned
Whether reportable?

Yes/no
Yes/no