

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

**CR-127-2021 (O&M)
Date of decision: 31.05.2023**

STATE OF HARYANA AND ANOTHER ...Petitioners

VS

VIRENDER ...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashish Yadav, Additional A.G., Haryana.
For the petitioners.

Mr. O.P.Goyal, Senior Advocate with
Mr. Kartar Singh Malik-I, Advocate and
Ms. Parul Aggarwal, Advocate
For the respondent.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside the impugned order dated 12.10.2017 (Annexure P-2) passed by learned Additional District Judge Rohtak, whereby appeal filed by petitioners against the judgment and decree dated 17.03.2016 (Annexure P-1), was dismissed on the ground of limitation and an application under Order 1 Rule 10 CPC and application for additional evidence filed by petitioner-defendants, was also dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1 Respondent-plaintiff/Virender filed a suit for declaration to the effect that mutation No.3410 and subsequent entries pertaining to the suit land and a consequential relief of being recorded as owner in possession of the suit property are illegal and sought a direction to defendant/petitioners (State of Haryana) to correct the revenue record.

2.2 Suit of plaintiff-respondent was decreed vide judgment and decree dated 17.03.2016 (Annexure P-1) and decree of declaration was passed in favour of plaintiff that mutation no. 3410 regarding the suit property to be null and void. A further decree of mandatory injunction was passed in favour of plaintiff and against defendants directing defendants to delete the said entry and subsequent revenue record on the basis of said entry within two months.

2.3 Appeal against the judgment and decree dated 17.03.2016 (Annexure P-1) was filed on 05.08.2016 which was also dismissed on the ground of delay of 134 days in filing the first appeal.

3. Learned counsel for the petitioners submits that respondent-plaintiff did not disclose before learned Trial Court that the land in question was declared surplus by the competent authority vide order dated 22.12.1959 and mutation was recorded in favour of State of Haryana on the basis of Govt. letter dated 21.06.1976. Respondent has deliberately not impleaded Naib Tehsildar as necessary party. He submits that learned Appellate Court fell in grave error by not allowing the application moved by petitioner/defendants to adduce additional evidence with regard to declaration of surplus land, mutation in the name of State of Haryana and further *Jamabandis* and also not allowing the application of the defendants under Order 1 Rule 10 of CPC for impleading Naib Tehsildar, Surplus Rohtak as necessary party.

3.1 Learned counsel for petitioners would canvass that the impugned

order has resulted into grave miscarriage of justice and for effective adjudication of the case, petitioners may be permitted to file fresh appeal in the interest of justice and equity.

4. Per contra, learned Senior counsel for respondent strenuously opposes the civil revision and supports the impugned order being based on correct findings.

5. I have heard learned counsel for parties and perused the case file.

6. This Court is ordinarily wary of interfering in revisional jurisdiction. In the instant case the lackadaisical approach of causing delay and on top of it assigning reasons of procedural red tapism in the process while filing the application before learned Appellate Court to seek condonation does not inspire any confidence. However, I am of the view that rights in the land as are being asserted by the State would stand forfeited and result in irreversible damage to petitioners herein, if their appeal is not considered on merits.

6.1. *Qua* other applications; first Under Order 1 Rule 10 CPC for impleading Naib Tehsildar as necessary party and second for additional evidence, trite law it is that procedure is the handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. The procedural provisions cannot be allowed to thwart real and substantial justice between the parties. The valuable right of litigants to establish their cases by adducing evidence ought not to be taken away by the Court except in a case of their deliberate omission/ failure to produce evidence more so if the other side can be compensated by costs. Prejudice would indeed be caused to petitioners herein, unless afforded an opportunity to implead Naib

Tehsildar Surplus, Rohtak and also to adduce additional evidence with regard to declaration of surplus land, mutation in the name of State of Haryana and further *Jamabandis*.

7. In the peculiar premise, instant revision is accepted and impugned order dated 12.10.2017 (Annexure P-2) is set aside subject to payment of costs of Rs.50,000/- to be paid to respondent herein. Furthermore, it is made clear that status quo *qua* in respect of mutation as already entered in the revenue records shall be maintained during pendency of the first appeal till its final disposal.

8. First appeal shall not be entertained without furnishing the proof of payment of costs.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

31.05.2023
vandana

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