

RSA-922 of 2020 (O&M)

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

RSA-922 of 2020 (O&M)
Reserved on: 03.08.2023
Pronounced on: 21.08.2023

Municipal Corporation, Yamunanagar

.....Appellant

Versus

Chaman Lal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Rajesh K. Sheoran, Advocate, and
Mr. Hardeep Singh Poonia, Advocate,
for the appellant.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 15.07.2017 passed by Civil Judge (Junior Division), Yamuna Nagar at Jagadhri, whereby suit for declaration and permanent injunction filed by plaintiff-respondents No.1 to 5 has been decreed as well as against the judgment and decree dated 11.04.2019 passed by District Judge, Yamuna Nagar at Jagadhri, whereby appeal filed by the respondent-appellant against the judgment and decree dated 15.07.2017, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The facts relevant for disposal of this regular second appeal are that plaintiffs filed the suit for declaration to the effect that plaintiffs No.1 and 2 are joint owners in

RSA-922 of 2020 (O&M)

possession in equal shares to the extent of half share whereas plaintiffs No.3 to 5 are owners in possession in equal shares to the extent of half share in land measuring 04 Kanals 09 Marlas comprised in Khasra No.25//14/2, situated at village Nabh, HB No.389, Tehsil Jagadhri, District Yamuna Nagar and the entries of the said land in the name of defendant are wrong and are liable to be corrected in the name of the plaintiffs showing them as owners in possession of the same and with consequential relief of permanent injunction restraining the defendant from interfering in plaintiffs' possession over the suit land in any manner whatsoever. They have also sought the relief of possession in case the court comes to the conclusion that the plaintiffs are not in possession of the suit land. It was pleaded that Central Government was recorded as owner of the suit land as per jamabandi for the year 1986-87. The suit land was put to auction by Rehabilitation Department under the disposal of Surplus Rural Evacue Property Scheme. Chander Shekhar son of Bal Kishan purchased the suit land in open auction and sale deed No.5403 dated 27.01.1993 was executed by Rehabilitation Department in favour of Chander Shekhar and mutation No.422 was sanctioned in his favour. Vide sale deed dated 929 dated 17.05.1993, Chander Shekhar further sold the suit land to the plaintiffs for a sale consideration of Rs.24,000/- and mutation No.425 was sanctioned in their favour. Since then, the plaintiffs are owners in possession of their respective shares in the suit land. On 19.02.2007, mutation No.550 was sanctioned in favour of Gram Panchayat, Nabh, by the revenue authorities. The suit land was also included in the mutation whereas the

same was not involved in the litigation on the basis of which mutation was sanctioned. No notice was given by the revenue authorities to the plaintiffs regarding the said mutation. Vide notification dated 18.03.2010, area of village Nabh was included in the limits of Municipal Corporation, Yamuna Nagar/Jagadhri. Mutation No.667 was sanctioned in favour of Municipal Corporation, Yamuna Nagar, but the suit land neither belonged to Gram Panchayat, Nabh at any point of time nor it vested in Municipal Corporation, Yamuna Nagar. When mutation No.667 was sanctioned, no notice was served upon the plaintiffs. The defendants have now started asserting their rights of ownership over the suit land on the basis of mutation No.667. Legal notice under Section 389 of Haryana Municipal Corporation Act, 1994 was issued to the defendant, but no effort was made to correct this entry. Defendant No.2 sanctioned mutation No.550 dated 19.02.2007 without any basis as the plaintiffs were neither party to proceedings dated 12.10.2004 and mutation No.667 sanctioned on 18.06.2011 in favour of defendant No.1 are null and void as the suit land was not involved in that litigation.

3. On issuance of notice of the suit, defendant No.1 appeared, however, it did not file written statement and as such, its defence was struck off vide order dated 06.05.2014 by the trial court. State of Haryana was impleaded as defendant No.2 in the suit by the trial court vide order dated 12.02.2016. Defendant No.2 submitted that vide notification No.6653/Rev/61-62/39/57 dated 22.09.1961, the suit land was mutated in the name of Panchayat Deh, Nabh. The total land

measuring 526 Kanals 17 Marlas including the suit land was part of Shamlat Patti Jagiri as per jamabandi for the year 1962- 63. The plaintiffs were not co-sharers and had no right therein. Mutation No.667 was sanctioned in *Jalsa-e-aam* and it was itself a notice to general public and all interested persons. Rest of the averments made in the plaint have been denied and dismissal of the suit was prayed for.

4. From the pleadings of the parties, following issues were framed by the trial court:-

1. *Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP.*
2. *Whether the plaintiff is entitled for the relief of permanent injunction as prayed for? OPP.*
3. *Whether the suit is not maintainable in the present form? OPD.*
4. *Whether the plaintiff has no cause of action to file the present suit? OPD.*
5. *Whether this court has no jurisdiction to entertain the present suit? OPD.*
6. *Whether the suit is barred by limitation? OPD.*
7. *Whether the suit of the plaintiffs is bad for mis-joinder and non-joinder of cause of action? OPD.*
8. *Relief.*

5. Parties led oral as well as documentary evidence in support of their respective contentions.

6. After hearing learned counsel for the parties and evaluating material on record, trial court vide impugned judgment and decree dated 15.07.2017 decreed the suit of the plaintiffs.

7. Feeling aggrieved against the judgment and decree of the trial Court, defendant No.1-Municipal Corporation preferred appeal

before the lower appellate Court, which has been dismissed vide judgment and decree dated 11.04.2019.

8. Learned counsel for the appellant contended that judgments and decrees passed by the both the Courts below are illegal and not sustainable in the eyes of law as both the Courts have ignored the revenue record while appreciating the evidence on record. He further contended that the land was sanctioned in favour of the appellant vide mutation No.667. The suit of the plaintiff-respondents was not maintainable because they filed a simple suit for declaration without seeking relief of possession. He further contended that both the Courts below failed to appreciate that plaintiffs could not prove their possession over the suit land and the same was owned and possessed by the appellant as per Govt. notification No.6653/REV/61-62/39/57 dated 22.09.1961. He further contended that both the Courts below have not appreciated the evidence on record in a right perspective and have wrongly recorded the findings, therefore, the same are liable to be reversed.

9. I have heard learned counsel for the appellant and perused the record.

10. Admittedly, the Central Government was earlier recorded as owner and was in possession of the suit land which was purchased by Chander Shekhar, the vendor of the plaintiff-respondents, vide sale deed dated 27.01.1993 and mutation No.422 was sanctioned in his favour. Thereafter, Chander Shekhar sold the suit land to the plaintiff-respondents vide sale deed dated 17.05.1993 and mutation No.425 was

sanctioned in their favour. The respondents-plaintiffs were not party with Municipal Corporation in any previous proceedings whereby mutation was sanctioned in favour of Municipal Corporation, Yamuna Nagar. Moreover, appellant-Municipal Corporation failed to file any written statement to the suit and consequently its defence was struck off by the learned trial court vide order dated 06.05.2017 and the said order was never challenged by it. Perusal of the record further shows that plaintiff-respondents were also not parties in the litigation whereby mutation No.550 was sanctioned in favour of Gram Panchayat, Nabh. It was for the appellant-defendant No.1 to prove that the suit land was part of the Shamlat Patti Jagiri, but no document has been placed on record by the appellant-defendant No.1 to prove this fact. DW1 Mahinder Singh did not even know whether Gram Panchayat had any right over the suit land when it was sold to Chander Shekhar and he had not brought any record in this regard. Jamabandi for the year 1966-67 relied upon by the appellant has not been placed on record. Further, jamabandis from the year 1972 to 1986 have also not been produced to prove the exact factual position. Appellant-defendant No.1 also failed to prove that the suit land was included in the disputed land which was subject-matter of the litigation. As per jamabandi for the year 1986-87 Central Government was the owner of the suit land but the possession of Chaman Lal and Gian Chand sons of Ram Singh is recorded therein. Even in jamabandi for the year 2011-12, the name of Municipal Corporation, Yamuna Nagar has been mentioned in the column of ownership, but the names of Gian Chand and Chaman Lal are still

RSA-922 of 2020 (O&M)

recorded in the column of possession. Appellant did not lead any cogent evidence to prove that plaintiff-respondents were not in possession of the suit land. The respondents received the possession of the suit land from their vendor, who were recorded in possession of it. Moreover, there is delay of 82 days in filing the present appeal for which no plausible explanation has been given by the appellant, therefore, the appeal is also barred by limitation.

11. Concurrent findings have been recorded by both the Courts below that plaintiff-respondents are owners in possession of the suit land. Learned counsel for the appellant has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

12. No question of law, muchless substantial has been raised or arises for consideration in the present appeal. No other point has been urged.

13. In view of the above, present appeal is dismissed on merits as well as on the ground of limitation.

14. Pending application(s), if any, stand disposed of accordingly.

21.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No