

**CM-14417-C-2014 and RA-RS-45-2022 (O&M)
in RSA-1456-1986**

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

**CM-14417-C-2014 in RSA-1456-1986
CM-8405-C-2022 in/and
RA-RS-45-2022 (O&M)
Decided on : January 05, 2023**

Smt. Sita Devi & Another **.....Applicant**

Versus

Hans Raj **...Respondent/ Review Applicant**

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Satish Goel, Advocate and Mr. Nitin Sherwal, Advocate
for the applicants-appellants in CM-14417-C-2014.

Mr. Tushar Sharma, Advocate for the review applicant -
respondent.

DEEPAK GUPTA, J.

Civil suit No.97 of 1983 for permanent injunction filed by plaintiff Hans Raj (respondent in this RSA) against defendants Raj Kumar and Sita Devi (appellants in this RSA) was decreed by learned Additional Senior Sub Judge, Barnala vide judgment and decree dated 09.12.1985. Appeal filed by the defendants against the said judgment and decree bearing CA No.199 of 1985 was dismissed by the then learned Additional District Judge, Barnala vide judgment dated 10.04.1986. This led the defendants to file second appeal i.e. RSA No.1456 of 1986, which was disposed of by this High Court (*a co-ordinate Bench*) vide judgment dated 28.02.2014, accepting the appeal and setting aside the judgments/decrees of the Courts below as referred above.

2. Thereafter, the appellants moved application (CM-14417-C-2014) under Section 152 of the Code of Civil Procedure for correction of

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mistake in the judgment and decree dated 28.02.2014 passed by this Court by submitting that as per the observations made by this Court, Karamjit Singh was left with 11 Marlas of land only, which was purchased by the plaintiff-respondent vide sale deed dated 25.07.1974, out of which, 10 Marlas of land was acquired by the State of Punjab and thus, respondent was left with only 1 Marla of land in Khasra No.24/1. The appellants then referred to para Nos.9 and 12 of the judgment of this High Court and submitted that rough map placed on record as Annexure A5 represents the correct state of affairs, which reflected that after acquisition of land in Khasra No.24/1 by the State of Punjab for the purpose of construction of road in the year 1979-80, only one Marla of land was left with the respondent out of his 11 Marlas. This fact also gets support on perusal of the rough map Annexure A6 and Jamabandi for the year 1979-80 Annexure A7 . However, while passing the judgment and decree dated 28.02.2014, this High Court inadvertently concluded in para No.12 of the judgment that plaintiff-respondent was bound to give up right in excess over 3.5 Marlas of land in khasra No.24/1, though it should have been mentioned as 1 Marla only. Prayer has been accordingly made to make necessary correction in the judgment dated 28.02.2014.

3. (i) Upon notice of the application to the respondent of the appeal i.e. plaintiff, he opposed the same by filing his reply and submitted that plaintiff had purchased 1 kanal 13 Marlas of land in Khasra No.24/1 vide sale deed dated 25.07.1974. On the other hand, defendant Sita Devi had purchased 18 Marlas of land and defendant Raj

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Kumar had purchased 1 kanal 6 Marla of land out of this Khasra No.24/1 from the same vendor Karamjit Singh vide separate sale deeds dated 30.05.1974. In a separate suit filed by Raj Kumar & Sita Devi i.e. defendants of this case against the respondent-plaintiff alleging forcible dispossession and seeking permanent injunction, a Local Commissioner had been appointed, who had taken measurements at the spot of the respective plots of the parties and it was found that land of the respondent-plaintiff abutted to the new bye pass road.

(ii) Respondent submitted further that initially in the year 1974, when the lands were purchased, there was no confusion. Subsequently, a bye pass was carved out vide Notification under Section 6 of the Punjab Government dated 02.12.1980. Out of 1 kanal 13 Marlas belonging to respondent-plaintiff, 9 Marlas was acquired and thus, he was left with 1 kanal 4 Marla of land, which became expensive being abutting to the road. As the land of the respondent-plaintiff became expensive, defendants got the revenue record fabricated, which compelled the plaintiff to file an application for correction of khasra Girdawari. His application was accepted and the order was upheld till the higher revenue authority.

(iii) Respondent-plaintiff submitted further that in the present litigation i.e. civil suit No.97 of 1983 filed by him against the defendants, only decree of permanent injunction was sought to restrain the defendants from taking possession of the plot in dispute by demolishing the walls shown as red in the site plan annexed with the plaint. Said suit was decreed on 09.12.1985 and issue No.1 *“as to whether plaintiff-*

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respondent is in possession of the plot in dispute” was decided in his favour. Appeal of the defendants was dismissed. On the other hand, separate suit No.275 of 1983 for permanent injunction was filed by the defendants, which was dismissed on 28.02.1987 and appeal was dismissed on 20.07.1992.

(iv) Respondent-plaintiff submits further that in the grounds of appeal, it was projected by the appellants-defendants as if it was a suit for declaration of title, for which positive evidence was required to be led but in fact, no suit for declaration was filed by the respondent-plaintiff. This argument was also raised before the Hon'ble Supreme Court against the judgment dated 28.02.2014 passed by this High Court but it was neither considered nor adjudicated upon. It is also submitted that the judgment of this High Court has placed huge reliance upon supplementary registry, though that question was never raised either before the Trial Court or before the First Appellate Court.

(v) With all these submissions, respondent-plaintiff prayed for dismissal of this application.

4. Appellants-defendants filed rejoinder, in which they gave details as to how the total land measuring 5 kanals 5 Marlas falling in disputed Khasra No.24/1 was sold by its owner Karamjit Singh to various persons and that in the last, he was left with only 11 Marlas of land and therefore, he could not sell the land to the extent of 1 kanal 13 Marlas to the plaintiff by way of last sale deed. As Karamjit Singh was left with only 11 Marlas of land, he could convey the title only in respect thereto. Appellants further referred to a supplementary sale deed dated

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24.02.1975, wherein there is clear admission of vendor Karamjit Singh that he was left with only 11 Marlas of land in khasra No.24/1. It is submitted further that plaintiff-respondent has tried to mislead this Court by referring to those aspects, which have already been adjudicated upon and by decided by this High Court vide judgment dated 28.02.2014 and further by the Apex Court vide order dated 25.07.2014 by upholding the decision of this Court and dismissing the Special Leave Petition No.16021/2014 preferred by the respondent-plaintiff. With this stand, appellants reiterated their prayer for making necessary corrections in the judgment dated 28.02.2014.

5. By mentioning the same pleas as taken by respondent-plaintiff in his reply to the application for correction of the judgment, plaintiff-respondent filed review application under Section 114 and Order 47 Rule 1 CPC (RA-RS-45-2022) seeking review of the judgment dated 28.02.2014. Though this review application is projected to be prepared on 30.10.2015 but it was filed in the year 2022.

6. Along with the above said review application, respondent-plaintiff moved an application (CM-8405-C-2022) under Section 5 of the Limitation Act, seeking condonation of delay of 215 days in filing the review application; and another application (CM-8406-C-2022) seeking condonation of delay of 2528 days in re-filing the review application.

7. In CM-8405-C-2022, it is pleaded that under the garb of application under Section 151 CPC seeking correction of the judgment, the appellants-defendants are practically seeking a review of the judgment and not merely correction. It is submitted further by respondent

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that on contacting his Advocate, who was representing him earlier, he refused to take the brief saying that he is not in active practice any more. Respondent-applicant had to engage another counsel, who advised him to file review application. Applicant is 80 years of age and has been suffering from Parkinson's disease for the last several years and due to the effect of said disease, he became forgetful and was unable to obtain the documents sought by his Advocate and it caused delay of 215 days in filing the review application.

8. In CM-8406-C-2022, seeking condonation of delay of 2528 in re-filing the review application, it is submitted by the respondent – plaintiff that while filing the review application on 31.10.2015, some objections were raised by the Registry and the file was returned. The Advocate of the respondent-plaintiff had informed him that review application was under objection but he (applicant) assumed that same had been filed. Due to his Parkinson's disease for the long time, applicant could not regularly travel to Chandigarh, though remained in touch with his Advocate on phone. When he came to discuss the matter to his Advocate at Chandigarh, it came to his knowledge that the review application has not been re-filed. He then engaged another Advocate and now has filed the review application after a delay of 2528 days, which is neither intentional nor deliberate. Prayer is made to condone the delay,

9. I have considered the submissions of learned counsel for both the parties and have perused the record.

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10. Dispute is regarding portion of land comprised in khasra No.24/1 of Rectangle No.433. It is undisputed that total area of this khasra No.24/1 was 5 kanal 5 Marlas, which was owned by one Karamjit Singh. It was noticed by this High Court in the judgment dated 28.02.2014 that out of 5 kanal 5 Marlas of land, Karamjit Singh had executed various sale deeds from time to time in respect of Khasra No.24/1 and other land. The area sold by said Karamjit Singh out of khasra No.24/1 by way of different sale deeds is as under:-

Name of Vendee	Date of sale deed	Area sold out of khasra No.24/1 (K-M)
Sita Devi	30.05.1974	0-18
Raj Kumar	30.05.1974	1-6
Balbir Singh	05.06.1974	1-13
Desh Bandhu	03.07.1974	0-17
Area sold so far:		4-14
Hans Raj	25.07.1974	1-13

11. It was further noticed that apart from executing the sale deeds to the extent of 4 kanal 14 Marlas in the land of khasra No.24/1, Karamjit Singh had also carved out a private passage in the said khasra number, which consumed 7.5 Marlas of land. Thus, on 25.07.1974, when Karamjit Singh executed last sale deed in favour of plaintiff-respondent Hans Raj, only area left with Karamjit Singh was 3.5 Marlas (5K-5M minus 4k-14M & 7.5M i.e. 5K-1.5M). However, it was further noticed by this High Court that partial consumption of 7.5 Marlas of land through a private *Rasta* had not been brought in the revenue record, which made possible for Karamjit Singh to make it to appear as though he still had 11 Marlas of land left with him to sell in favour of the plaintiff.

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12. Above said observations find mention in para No.9 of the judgment dated 28.02.2014, which reads as under:-

“9. The appellant explains as to how the various extents conveyed by the vendor could be illustrated through a plan. The rough sketch shown by him illustrates the location of the property comprised in khasra No.24/1 as situate south of the property in khasra No.17/3/2. Right across the property is from North to South there is a private Rasta which had been made by the vendor Karamjit and this Rasta consumes 13 ¼ Marlas in khasra No.17/3/2 and consumes 7 ½ Marlas in khasra No.24/1. The partial consumption of 7 ½ Marlas through a private Rasta had still not been brought in the revenue records and therefore, this made possible for Karamjit to make it appear as though he still had 11 Marlas of land left with him to sell in favour of the plaintiff. The description of the property in the sale deed made in favour of the defendants which was anterior in point of time to the plaintiff's document showed that the property sold in favour of Sita Devi and Raj Kumar even referred as the property west of the Rasta. Even the plan filed by the plaintiff after the suit was instituted under Ex.P2 shows the existence of a Rasta. The counsel points out that the plaintiff had committed a deliberate fraud by not referring to the supplementary sale deed that had delimited the extent of property under khasra No.24/1 only to 11 Marlas. Although the suit had been filed on 16.04.1983, the plan had been prepared by the plaintiff only on 29.04.1983 to suit his own convenience.”

13. It was noticed further that in view of the sales already made

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by Karamjit Singh and consumption of 7.5 Marlas of land in the private *Rasta*, it was just not possible for Karamjit Singh to convey title to the extent of 1 kanal 13 Marlas of land in favour of the plaintiff by way of sale deed dated 25.07.1974, which was last sale deed executed by said Karamjit Singh regarding khasra No.24/1. As Karamjit Singh was left only with 11 Marlas of land (because 7.5 Marlas of land consumed in the private passage was not reflected in the revenue record), so Karamjit Singh was aware that he was left only 11 Marlas of land and not 1 kanal 13 Malras, which he purported to have sold to plaintiff Hans Raj vide sale deed dated 25.07.1974. This becomes manifest from his supplementary sale deed, which was executed by Karamjit Singh in which he clearly mentioned that actual area of khasra No.433//24/1 was 11 Marla, of which he was in possession and the sale deed in favour of Hans Raj be considered as such. Supplementary sale deed was executed on 24.02.1975 by making necessary correction in the earlier sale deed dated 25.07.1974.

14. It is, thus, clear that even if the area of 7.5 Marlas consumed for private passage is ignored because it was not reflected in the revenue record, Karamjit Singh was left only with 11 Marlas of land, which fact as noticed above is clear even by the supplementary sale deed executed by him and therefore, only title to the extent of 11 Marlas of land could be conveyed to plaintiff Hans Raj by virtue of sale deed dated 25.07.1974.

15. It has not been disputed before this Court that out of 11 Marlas of land in khasra No.24/1, in which only the title could be

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conveyed to plaintiff-Han Raj, 10 Marlas of land was acquired by the State of Punjab for the construction of the road. Even 8 Marlas of land out of 18 Marlas of defendant Sita Devi was acquired; and 3 Marlas out of 1 kanal 6 Marlas of the land of defendant Raj Kumar of this khasra No.24/1 was acquired. This way, plaintiff-respondent Hans Raj was left only with 1 Marla in khasra No.24/1. These facts are evident even from Jamabandi for the year 1979-80 (Annexure A-7) placed on record by the appellants by way of CM-1506-C-2014. In the said Jamabandi, the position of the ownership of khasra No.433//24/1 is reflected as under:-

Name of owner	Area in khasra No.24/1 (K-M)	Remarks (K-M)
Sita Devi	0-18	0-8 has been acquired
Raj Kumar	1-6	0-3 has been acquired.
Hans Raj	0-11	0-10 has been acquired.

16. The above position was reflected by the appellants in the rough map Annexure A-5 showing therein the blue dotted portion of the boundaries of 1 Marla of land of Hans Raj in khasra No.24/1; violet colour dotted portion showing the joint portion of land of Sita Devi and Raj Kumar. It is this sketch Annexure A-5, which was directed to be made part and parcel of the decree issued by this High Court in the judgment dated 28.02.2014. As evident from another rough map Annexure A-6, the entire area as was purchased by Balbir and Desh Bandhu in khasra No.24/1, had come in acquisition for the construction of road.

17. It is, therefore, clarified that in the concluding para no.12 of the judgment dated 28.02.2014 of this High Court, the reference to the plaintiff bound to give up right, be considered in excess over 1 Marla

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land in khasra No.24/1 and not 3.5 Marlas.

18. To make the things clear, para 12 of the judgment be read as under:-

“12. The judgments of the two Courts below are set aside and the appeal filed by the defendants is allowed. There have been certain constructions which have been made over a period of time and the plaintiff cannot take advantage of such constructions. The dismissal of the suit and allowing the appeal might give rise to the situation of a fresh bout of struggle between parties one trying to take the property from another. If I must hold that the plaintiff had not established his right but he had allowed some construction to be brought on his land, by a seamless procedure that would allow for proper adjustment of rights between the parties, the plaintiff is bound to give up right **in excess over 1 Marla of land** in khasra No.24/1. Any construction which he had raised would require to be removed. The rough copy of the plan as drawn by the appellant and produced before this Court as Annexure A-5 shall be taken to represent the correct state of affairs and it shall form part of the decree and the plaintiff shall cede the extent retained by him through boundary walls constructed by him in the property in khasra No.24/1. If there is any obstruction which is caused by the plaintiff, the defendants shall be at liberty to seek the assistance of the Court and cause for removal of the construction without having to

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institute a fresh suit. This direction is given in the interest of justice to quell the continuance of dispute after three decades.”

19. One of the objections raised by the respondent-plaintiff to the application for correction is, which in fact is also the basis for his review application that suit filed by the plaintiff-respondent was only for permanent injunction and not for declaration of title and therefore, no direction as issued by this Court in judgment dated 28.02.2014 in para No.12 of the judgment, could have been issued.

20. There is no merit in the contention for the simple reason that respondent-plaintiff has himself mentioned in the reply to the application for correction that said contention was raised by him even before Hon'ble Supreme Court in Special Leave Petition No.16021/2014 but the same was not considered and adjudicated upon. Once the Hon'ble Supreme Court did not find it appropriate to consider the aforesaid contention despite being raised, it is evident that the Hon'ble Supreme Court did not find merit in the said contention.

21. Lest it remains in the mind of the respondent-plaintiff that his plea is not considered on merit, it is liable to be noticed that specific issue No.1 was framed in the suit by the Trial Court to the effect that *“whether plaintiff is owner and in possession of the plot in dispute?OPP”*

22. Although in a suit for permanent injunction, the aspect of the title is not required to be gone into but if the finding in the injunction suit is dependent upon the decision of the title and finding is returned, then

that finding will become final even for the subsequent suit. Reliance in this regard can be placed upon *Sulochana Amma Vs. Narayanan Nair, 1994(1) Civil Court Cases 383(SC)*, wherein it has been held that a finding as to title given in an earlier injunction suit can operate as res-judicata in a subsequent suit for declaration of title. This is based on a premise that in a suit for injunction, where a finding of possession is solely dependent upon the finding of issue of title, it can be said that issue of title was directly and substantially in issue for consideration of the case. In *Gram Panchayat of Village Naulakha Vs. Ujagar Singh and others case 2001 (1) CCC 1*, it has been held by Hon'ble Supreme Court that where it is established that finding on title was necessary in an earlier suit for granting or refusing the injunction, then the said finding on the title would operate as res-judicata.

23. In the present case, plaintiff – respondent Hans Raj was seeking decree of permanent injunction on the basis of his title to the property. It has been noticed by this High Court in the judgment dated 28.02.2014 and as has also been noticed that his vendor Karamjit Singh was left only with 11 Marlas of land in khasra No.24/1, of which he could convey the title and not 1 kanal 13 Marlas of land, which plaintiff alleged to have purchased. Thus, title of the plaintiff was directly an issue to be decided, as he could not acquire a title better than his vendor and in the land more than his vendor held. As such, contention of respondent-plaintiff that title was not required to be decided and that no direction as mentioned in para No.12 of the judgment dated 28.02.2014 could be issued, has absolutely no merit.

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24.. Consequent to above discussion, CM-14717-C-2014 is hereby allowed. Necessary correction in para No.12 of the judgement dated 28.02.2014 as per above direction (given in para N: 17 & 18 of this order) is hereby made.

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25. There is no merit in any of the applications, particularly CM-8406-C-2022 seeking to condone the delay of more than 2500 days in re-filing the review application. Respondent-plaintiff sought his remedy by way of SLP before the Hon'ble Supreme Court. Reply is being filed to the application for correction in the judgment passed in this appeal. Respondent is duly represented by his counsel and therefore, his contention that review application could not be re-filed within time, due to old age and Parkinson's disease, have absolutely no merit so as to condone the huge delay. Both the applications are dismissed.

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26. Since the applications for condonation of delay in re-filing and filing the review application have been dismissed, so on this ground alone, review application deserves to be dismissed to be barred by time. Apart from this, as has already been noticed that the pleas as raised in the review application, were raised by the respondent-plaintiff before the Hon'ble Supreme Court in his Petition for SLA (C) No.16021/2014, which has already been dismissed vide order dated 25.07.2014. Once Hon'ble Supreme Court has dismissed his special leave to appeal, there is

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no question of considering the review application by this court on the same grounds.

As such, RA-RS-45-2022 (O&M) is hereby dismissed.

January 05, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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