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

RSA-5229-2018 (O&M)

Date of Decision: 13.09.2023

ASHA SETH AND ORS

.....APPELLANTS

VS

DHARAM PAL THROUGH LRS.

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. A.P.S.Sandhu, Advocate for the appellants.

Mr. Amit Jhanji, Senior Advocate with
Ms. Eliza Gupta, Advocate and
Ms. Zaheen Kaur, Advocate for the caveator/respondents.

GURBIR SINGH, J.

* * * *

CM-14348-C-2018

This application is filed under Section 151 CPC for condoning the delay of 100 days in re-filling this appeal.

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

Delay of 100 days in re-filling the appeal is condoned.

RSA-5229-2018

1. This appeal has been filed against the concurrent findings recorded by both the Courts below, whereby suit filed by the plaintiffs/appellants was dismissed and the counter claim filed by defendant No. 1 was allowed and decree for declaration was passed in favour of defendant No.1/counter claimant and counter claim filed by defendant No.2 was dismissed in default.

2. The parties are being addressed as per the original plaint.

3. The plaintiffs filed a suit under Section 45 of the Punjab Land Revenue Act to the effect that the entries recorded with regard to Khasra Nos.234 and 235 for the year 1995-96 onward with respect to land measuring 3070.66 square yards as mentioned in the head note of the plaint are incorrect and liable to be corrected as 234 min and 235 min and plaintiffs are owners in possession of the suit land and for consequential relief of permanent injunction restraining the defendants from interfering into the possession of the plaintiffs over the suit property and from alienating the same in any manner on the grounds that earlier suit land was owned and possessed by joint Hindu family as Banarsi Dass and Sons and thereafter, property was inherited and settlement was effected between the parties. The suit property with specific boundaries fell to the share of the plaintiffs and sale deed to that effect was also executed by other co-sharers in favour of the plaintiffs. The entries in the revenue record have been wrongly recorded.

3. Defendant No.2 contested the suit that he is owner of the suit property vide sale deed 27.07.1969 executed by the other members of the Joint Hindu Family regarding land measuring 5681 square yards out of khasra No. 1123/303,304 min out of the area situated in Tungbala Urban, Maqbool Raod, Amritsar and also owner of the land measuring 507.66 square yards out of Khasra No. 234 situated in the area of Village Gumtala, Amritsar. Defendant No.2 also filed counter claim that he is in possession of the land measuring 507.66 square yards and 5681 square yards as mentioned in the counter claim situated in Gumtala. A mutation No. 6410 regarding the land measuring 123 marlas out of the land measuring 130 marlas regarding khasra No. 234 is null

and void and liable to be set aside with consequential relief of permanent injunction. Earlier defendant No.2 filed as suit wherein it was declared that land comprised in khasra No. 234 was not acquired by the Amritsar Improved Trust and the possession of the same was not taken by Amritsar Improvement Trust.

4. Defendant No.1-Dharam Pal Seth contested the suit that the land measuring 3070.66 square yards comprised in Khasra No. 234 situated at Rakba Gumtala Urban and another piece of land measuring 3759 square yards comprised in Khasra No. 1223/301,302 situated in Rakba Tungbala Urban were sold to the plaintiffs vide sale deed dated 02.05.1970 for a valuable consideration of Rs.20,000/- and plaintiff No.1 became the owner of the said land. The land measuring 5 kanals 4 marlas comprising of khasra No. 235 situated at Gumtala Urban is exclusively in the ownership of defendant No.1. Out of this land, he sold 808.88 square yards and defendant No.1 is still owner in possession of remaining land. Plaintiffs have got no right, title or interest in the property comprised in the said khasra numbers. After purchasing of land comprised in khasra No. 234 measuring 3070.66 square yards situated in Rakba Gumtala Urban, Amritsar, the Amritsar Improvement Trust acquired the said land and got possession of the said land. Plaintiff No.1 filed a suit against the Improvement Trust which was decreed on 06.02.1991. The appeal against the said judgment and decree was accepted and thereafter, RSA was filed and the same was also dismissed. Defendant No.1 filed a counter claim with regard to 808.88 square yards comprised in khasra No. 235 situated in Rakba Gumtala with consequential relief of permanent injunction. Plaintiff filed replication and also written statement to the counter claim. Issues were framed.

5. During pendency of the case, none appeared on behalf of defendant No.2 so he was proceeded *ex-parte* in the main suit and counter claim filed by defendant No.2 was dismissed. Later on, plaintiff was also proceeded *ex-parte* in the counter claim filed by defendant No.1.

6. Plaintiffs failed to lead any evidence. The evidence of the plaintiffs was closed by an order. Defendant No.1 stepped into witness box as DW-1 and tendered documents.

7. The learned Court below dismissed the suit of the plaintiffs under Order 17 Rule 3 CPC. Counter claim filed by defendant No.1 was decreed by passing of decree of declaration that defendant No.1 is only in possession of land measuring 5 kanals 4 marlas minus land measuring 808.88 square yards sold to M/s. Culture Clothings Pvt. Ltd vide sale deed Ex-D5 comprised in Khasra No. 235 situated in Rakba Gumtala, Sub Urban, Circular Road, Amritsar with consequential relief of permanent injunction.

8. The plaintiff filed appeal against the dismissal of the suit and against the judgment and decree whereby suit of the plaintiff was dismissed and counter claim filed by defendant No.1 was decreed. The said appeal was dismissed on 14.09.2017.

9. Learned counsel for the appellants has argued that claim of the plaintiff was accepted by the contested defendants so suit was required to be decreed. The counsel in the trial Court did not inform the plaintiffs about the closing of the evidence of the plaintiffs. Thus, plaintiffs could not produce the evidence due to protracted illness of the attorney holder of the plaintiffs. The plaintiffs are residing in Mumbai so, could not lead evidence. As per provision of Order 17 Rule 3 CPC, the suit is required to be disposed of forthwith but

after closing evidence, the suit was not disposed of forthwith. The judgment passed by the Courts below are required to be set aside. The case be remanded to trial Court for fresh decision after giving opportunity to the plaintiff to lead evidence.

10. I have heard the submissions made by the parties and perused the record.

11. There is no dispute that more than proper opportunities have been granted to the plaintiffs to lead evidence. Even evidence of the plaintiffs was closed by order. Revision petition was filed wherein one opportunity was granted to the plaintiffs to lead evidence on payment of cost of Rs. 20,000/-. Neither cost was paid nor any evidence was led.

12. Since proper opportunity was given to the plaintiffs to lead evidence but plaintiffs failed to lead any evidence so plaintiffs is estopped from saying that the case be remanded back for recording evidence. It is not prerogative of plaintiff to drag the litigation so that the sword of litigation is hanging on the head of other party. The plaintiff failed to show how judgment passed by the Courts below are against the law. The defendant took a definite stand that the land was acquired by the Amritsar Improvement Trust. The plaintiff filed the suit against Improvement Trust, which is decreed but learned First Appellate Court accepted the appeal and suit was dismissed. Thereafter, RSA was filed against the judgment passed in appeal and RSA was also dismissed. The trial Court relying on the judgment Ex.D-7 has given definite findings that land comprised in Khasra No.234, which is subject matter of the suit filed by Ramesh Seth predecessors in interest of the plaintiffs, was acquired by the Amritsar Improvement Trust and the plaintiff have got no concern with

the same. Defendant No.1 has proved the sale deed Ex.D1, copy of Jamabandi for the year 2005-06 as Ex.D2 and Ex.D3 and Khasra Girdawari as Ex.D4 showing him owner in possession of the land measuring 5 kanals 4 marlas comprised in Khasra No. 235. Since the Courts below have rightly held that the plaintiff has no concern with the suit land comprised in Khasra No. 234 and 235 so, plaintiff is not entitled for declaration. So, I am of the view that Courts below have rightly given the finding on the basis of evidence led on the file. There is neither any misreading of evidence nor mis-appreciation of evidence by the Courts below and no question of law much less substantial question of law is involved in the present appeal. This appeal is without merit and the same is hereby dismissed.

13.09.2023
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(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>