

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****117****CM-18281-C-2018 in/and
RSA-6504-2018 (O&M)
Date of Decision : 10.09.2024**

Dalip Singh Dhillon

....Appellant

VERSUS

Jagdeep Kaur Dhillon & Anr.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jaideep Verma, Advocate for the appellant.

ALKA SARIN, J. (Oral)**CM-18282-C-2018**

1. This is an application for condonation of delay of 394 days in re-filing the present appeal.

2. For the reasons stated in the application, the same is allowed. The delay of 394 days in re-filing the present appeal is condoned.

RSA-6504-2018

3. Present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 06.01.2014 passed by the Trial Court and the judgment and decree dated 25.10.2016 passed by the First Appellate Court.

4. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for declaration that he was exclusive owner in possession of the property measuring 2 Bighas 10 Biswas 0 Biswasi comprised in Khewat No.799, Khatauni No.1045, Khasra No.1884 as per Jamabandi for the year

2004-05 and that the mutation of inheritance No.15094 in favour of the defendant-respondents was illegal, null and void as well as for permanent injunction. The case set up by the plaintiff-appellant was that the plaintiff-appellant is the brother-in-law of the defendant-respondent No.1 and uncle of defendant-respondent No.2. Late Paramjit Singh son of Baldev Singh was the brother of the plaintiff-appellant and husband of defendant-respondent No.1 - Jagdeep Kaur Dhillon - and father of defendant-respondent No.2 - Harnam Singh - who has since expired. Baldev Singh father of Dalip Singh and Paramjit Singh was owner of the land measuring 2 Bighas 10 Biswas comprised in Khasra No.1884 as per Jamabandi for the year 2004-05. The said property was ancestral, coparcenary and Hindu undivided family property. It was further the case set up that in 2002 Paramjit Singh requested the plaintiff-appellant for exchange of land in their respective possession and the plaintiff-appellant agreed to the same and as such the plaintiff-appellant gave land measuring 4 Bighas 7 Biswas 8 Biswasis pukhtha comprised in Khasra No.1216, 2181/1217, 2485/1218, 1220, 53, 54, 55, 56, 57, 58 situated in village Dad, Tehsil and District Ludhiana and in lieu thereof Paramjit Singh gave land measuring 2 Bighas 14 Biswas 18 Biswasis pukhta being 1/3rd share comprised in Khasra Nos.1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891 situated in village Dad, Tehsil and District Ludhiana. It was further averred that the plaintiff-appellant has been enjoying peaceful possession of the property comprised in Khasra No.1884 alongwith properties in the other Khasra numbers. Property comprised in Khasra No.1884 was of inferior quality and needed improvements and as such the plaintiff-appellant spent

Rs.3,92,371/- for improvement of the said property and constructed a room and boundary wall. It was further averred that on death of Paramjit Singh the defendant-respondents started interfering and creating problems for the plaintiff-appellant. It was further the case that in October 2006 the defendant-respondents tried to get the tenant to leave the premises. When the plaintiff-appellant came to India and made enquiries he came to know that mutation No.15094 has been sanctioned in the name of the defendant-respondents. It was further the case that the defendant-respondents were fully aware of the factum of the exchange and that the mutation No.15094 was totally illegal. On notice the defendant-respondents put in appearance. Besides preliminary objections it was admitted that Baldev Singh was owner of land measuring 2 Bighas 10 Biswas comprised in Khewat/Khatauni No.99/1045, Khasra No.1884 as per Jamabandi for the year 2004-05 of village Dad besides other properties. It was further averred that Khasra No.1884 was not a part of the alleged exchange deed between the plaintiff-appellant and Paramjit Singh as is evident from the Jamabandi for the relevant year. It was further pleaded that the land comprised in Khasra No.1884 is abutting the main road and the plaintiff-appellant, because of greed, wanted to lay his hands on the property of the defendant-respondents. Replication was not filed. On the basis of pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for declaration as prayed for ? OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP

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

4. Whether the suit of the plaintiff is time barred ? OPD

5. Whether the suit is bad for mis-joinder and non-joinder of necessary parties ? OPD

6. Relief.

5. The Trial Court dismissed the suit vide judgment and decree dated 06.01.2014. Aggrieved by the same an appeal was preferred which appeal was dismissed by the First Appellate Court vide judgment and decree dated 25.10.2016. Hence, the present regular second appeal.

6. Learned counsel for the plaintiff-appellant would contend that the brothers i.e. plaintiff-appellant and predecessor-in-interest of defendant-respondents, namely, Paramjit Singh, had exchanged their land vide exchange deed (Ex.A4/Ex.DX/2), which has been admitted by the defendant-respondents. However, inadvertently Khasra No.1884 was never mentioned in the exchange deed. It is further the contention that the plaintiff-appellant in exchange has given about 4 Bighas of land whereas Paramjit Singh had only given him 2 Bighas of land and the land comprised in Khasra No.1884 was supposed to be a part of the exchange deed.

7. Heard.

8. In the present case both the Courts have concurrently found that though the exchange deed (Ex.A4/Ex.DX/2) has been admitted by the parties, however, Khasra No.1884 was not part of the exchange deed. Except for the bald statement of the plaintiff-appellant, there is no evidence on the record

that Khasra No.1884 was ever part of the exchange deed. Learned counsel for the plaintiff-appellant has not been able to convince this Court that the Khasra No.1884 was part of the exchange deed (Ex.A4/Ex.DX/2). There is also no cogent explanation for the delay of 92 days in filing the present appeal.

9. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

10.09.2024
jk

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO