



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3581-2018 (O&M)

Reserved on: 02.07.2025

Pronounced on : 08.07.2025

**DHARAMBIR SINGH @ DHARAM SINGH
(NOW DECEASED) THROUGH LRS AND OTHERS**

. . . . PETITIONERS

Vs.

CHANDGI RAM @ CHANDI RAM AND OTHERS

. . . . RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Arun Gupta, Advocate, for the petitioners.

DEEPAK GUPTA, J. (ORAL)

It is contesting defendant No.1's Regular Second Appeal against the reversal, in as much as suit for declaration and permanent injunction filed by sole plaintiff-Chandgi Ram to be owner in possession of the suit land along with proforma defendants against defendant No.1-Dharambir Singh, was dismissed by the Trial court. However, the appeal filed by the said plaintiff was accepted by the First Appellate Court and the suit was decreed.

2. Assailing the aforesaid reversal, it is contended by learned counsel for the appellant-defendant No.1 that the First Appellate Court has wrongly reversed the well-reasoned judgement passed by the trial Court and that the suit should have been dismissed.

3. This court has considered submissions of learned counsel for the appellant and has also gone through the paper-book as well as trial Court record.

4. Perusal of the entire record would reveal that one Bhulli son of Ramphal had sold the suit property along with other land to Budha and Chander, the predecessors-in-interest of the plaintiff and proforma defendants way back in 1938 by way of oral sale for consideration of ₹1400/- regarding which mutation No.549 dated 03.08.1938 was sanctioned. The disputed land at that time comprised in Khasra No. 417 (3 bigha 1 biswa). In consolidation, new Khasra No. 456 (1 bigha 7 biswa) and 457 (1 bigha 15 biswa) were allotted. In further consolidation which took place in 1961-62, the abovesaid disputed land was changed to 16 kanal 5 marla, now comprised in Khewat No.9/11, Rectangle No. 45, Killa No. 17/2 (6-12), 23/2 (3-0) and 24/1 (6-13), recording Chander and Budha, the predecessors-in-interest of the plaintiff to be owner of the suit land.

5. Plaintiff assailed mutation No.403 dated 07.06.1963 sanctioned on the basis of judgement & decree dated 07.11.1960, whereby defendant No.1-appellant had allegedly got incorporated his name in the column of ownership, despite oral sale of the suit land to the predecessors-in-interest of the plaintiff way back in 1938. The entire previous revenue record reflected the plaintiff and his predecessors to be owner of the suit land. By way of the impugned mutation sanctioned in June 1963, the status of plaintiff and proforma-defendants was shown as mortgagee in possession.

6. Defendant No.1 contested suit and pleaded that he was owner of the suit property in view of the judgement & decree dated 07.11.1960, regarding which mutation No.403 dated 07.06.1963 had been sanctioned. He prayed for dismissal of the suit by refuting all other contentions of the plaintiff.

7. Necessary issues were framed. Evidence produced by both the parties was taken to court. Trial Court dismissed the suit by way of judgement & decree dated 28.07.2016 by observing that plaintiff had

failed to connect the suit land with the earlier khasra number and had also failed to prove his title.

8. The appeal filed by the plaintiff against the aforesaid judgement and decree was accepted by the First Appellate Court and the suit was decreed on 18.09.2017.

9. It is the contention of the learned counsel for the appellant that no oral sale for immoveable property of the value of more than ₹100/- was legally permissible and therefore, the alleged sale as relied by the plaintiff was illegal and void.

10. There is no merit in the contention. No doubt that the oral sale of immoveable property for an amount of ₹1400/- i.e. more than ₹100/- took place, but it was in the year 1938 and regarding this, mutation No.549 dated 03.08.1938 was sanctioned in favour of Budha son of Ram Sahay, and Chander son of Yad Ram son of Ram Sahay, the predecessors-in-interest of the plaintiff and proforma defendants.

11. As has been observed by this Court in ***Sant Ram and another Vs. Kulwant Singh and another, 2009 (3) CCC 633***, the provisions of Sections 54, 107 and 123 of the Transfer of Property Act had been extended to the then State of Punjab w.e.f. 01.04.1955 and to Pepsu area of State of Punjab w.e.f. 15.05.1957 and therefore, at the time when property in dispute was sold to the predecessors-in-interest of the plaintiff, the provisions of Section 54 of the Transfer of Property Act were not applicable. As such, oral sale prior to 1955 was permissible in the State of Punjab.

12. Moreover, the above said mutation No.549 dated 03.08.1938 in favour of Chander Singh and Budha Ram, on which basis the plaintiff claimed title, was challenged by Badri, the other son of Bhulli i.e. the brother of contesting defendant No.1 on the ground that the sale was without legal necessity and consideration. As found by the First Appellate Court, the aforesaid suit as filed by Badri, was decided by judgement and decree dated 20.07.1939, whereby 3 bigha of land bearing

Khasra No.396, which was other than the suit land, was given to Badri and the suit was decreed only to the extent of this 3 bigha and regarding the remaining land, the suit of Badri was dismissed.

13. It is thus clear that sale of the suit land, which was part of the remaining land, regarding which the suit of the Badri was dismissed, remained under the ownership of Chander Singh and Budha Ram. Thus, brother of the plaintiff had admitted the mutation No.549 in respect of the disputed khasra No.417, which later on, became the suit property.

14. Another contention raised by learned counsel for the appellant-defendant No.1 is that in the Jamabandi prior to 1938, suit property was recorded to be owned by *Shamlat deh* and therefore, Bhulli could not have sold the suit property.

15. The said contention was discussed at length by learned First Appellate Court and it was observed, based upon the evidence, as under:

“16. Learned counsel for the defendant no.1 has contended that in this mutation no.549, two types of land were described, one is bearing khatoni no.5, khata no.96 and khasra no.399, 397, 308, Khata no.6, khasra no.408 and in this land, 7/12th share has been shown to be owned by Bhulli in the column no. 4 of the said mutation. However, this land was in possession of Ram Sahai as mortgagee and owned by Bhulli as mortgagor. Thus, the land was not in possession of Bhulli at the time of sanction of alleged mutation as it was under cultivation of Ram Sahai mortgagee. He contended that thus, the sale claimed by the plaintiff for getting himself declared as owner in possession of the suit property is wrong. However, this contention of the defendant no.1 is also devoid of any merits. The plaintiff and proforma respondents have inherited the rights from their common ancestor Ram Sahai. Thus, even if Ram Sahai was mortgagee in possession of the said land, it came to the possession of his descendants after oral sale in favour of Budhram and Chander Singh.

17. It was also contended by the learned counsel for the defendant no.1 that as per this mutation no.549, some of the property was owned by "shamlat deh" as shown in the column of ownership and was shown to be in possession of Bhulli as co-sharer/mortgagor and Ram Sahai as mortgagee. He contended that this entry established that the land was not owned by Bhulli and it could not have been sold by Bhulli to anyone. He contended that the ancestors of the plaintiff had got entered the mutation of the suit property illegally in collusion with revenue officials. However, again I disagree with the contentions of the learned counsel for the defendant no.1. Further perusal of the mutation no.549 shows that khata no.5,6,7/12, was recorded under the ownership of Bhulli and he had every right to sell the same to Chander Singh and Budhram. As regards Khasra no.94/397, the land was recorded in the name of 'shamlat deh Hasab Rasab Kabja Araj', but Bhulli was shown as co-owner/mortgagor in the capacity of proprietor of said shamlat deh. If he would have received ownership rights in the said land, he had every right to sell the same. Even if it is presumed that at the time of oral sale, Bhulli was not declared owner of the said land, then he was declared so after passing of decree dated 7.11.1960 and by applying the principle of feeding estoppel, the predecessors-in-interest of plaintiff had become owners of the said land. Thus, there is no force in this contentions of the learned counsel for the defendant no.1."

16. It is thus clear that Bhulli, the predecessor-in-interest of the defendant was owner of the suit property prior to 1938 and he had every right to sell the same to the predecessors-in-interest of the plaintiff and proforma defendants.

17. The last submission made by learned counsel for the appellant is that appellant-defendant No.1 had been declared owner of the suit land by virtue of the judgement and decree dated 07.11.1960 regarding which mutation No.403 dated 07.06.1963 was sanctioned and therefore, plaintiff cannot claim to be owner of the suit property.

18. This contention was also discussed at length by learned First Appellate Court and it has been observed as under: -

“18. After passing of the mutation no.549, the suit property was recorded in the names of Chander Singh and Budhram, which is clear from Jamabandies for the year 1938-39 Ex.P16, 1942-43 Ex.P15, 1950- 51 Ex.P14 and 1954-55 Ex.P13. The description of the property in these Jamabandies is khasra no.456 (1 bigha 7 biswa), 457 (1 bigha 15 biswa), total measuring 3 Bigha 1 Biswa. Thereafter, the consolidation of holdings took place in village and new khasra numbers 45/17/2(6- 12), 23/2(3-0), 24/1(6-13), total measuring 16 Kanals 5 Marlas, were allotted, which is clear from copy of jamabandi for the year 1961-62 Ex.P12. Thereafter, this disputed mutation no.403 Ex.P2 was sanctioned on the basis of decree dated 7.11.1960. This decree was under challenge in the present suit. A perusal of the said decree shows that a suit was filed by Dharamvir son of Shri Bhulli (Ex.P17) against the Gram Panchayat claiming that he is owner in possession of the suit property and the said suit was decreed by the Court of the learned Senior Sub Judge, Gurgaon. On the basis of said decree Ex.P20), mutation no.403 was sanctioned. At this juncture, it is observed that as the predecessor-in-interest of the defendant no.1 had already sold the suit property to Chander Singh and Budhram and on the basis of an oral sale, some of the property which was earlier recorded in the name of Bhulli was mutated in favour of Chander Singh and Budhram and the other property which was earlier recorded in the name of shamlat deh (which later on was mutated in the name of Gram Panchayat and then was declared ownership of Dharamvir son of Shri Bhulli, on the basis of decree dated 7.11.1960), was also mutated in favour of the predecessors-in-interest of the plaintiff who became owners of such land also on the principle of feeding estoppel. In case titled as Gurmej Singh vs. Makhan Singh and others, 1986 RRR 22 (P&H), it was held that in case of a dispute or defect of title, if title is made good later, after sale or transfer, the subsequent transfer is subject to prior one. In another case law titled as Hardev Singh vs. Gurmail Singh (Dead) by L.Rs. 2007(I) RCR (Civil) 877 (SC), it was held that in case of transfer by unauthorized person who subsequently acquires interest in terms of transfer section 54 of the Transfer of Property Act came into picture, as per which benefit of his subsequent acquisition goes automatically to the earlier grantee on the doctrine of feeding of estoppel. Thus, the decree dated 7.11.1960, does

not affect the rights of the plaintiff and rather, it helps the case of the plaintiff and on the basis of said decree, title of Bhulli was perfected and on the basis of oral sale, the property had gone to Chander Singh and Budhram. Hence, the mutation no.403 sanctioned in favour of Dharamvir did not affect the rights of the plaintiff and the entry incorporated in the subsequent Jamabandies on the basis of this mutation no.403 also does not affect the rights of the plaintiff. The plaintiff had become owner on the basis of oral sale and his rights could not have been snatched by passing of mutation no.403.”

19. It is clear from the aforesaid observations, based upon the evidence on record that in the suit filed by defendant No.1-Dharambir against Gram Panchayat, the plaintiff or his predecessors-in-interest or the proforma defendants were not impleaded as party. Besides, the decree was obtained by concealment of the material facts to the effect that predecessor-in-interest of defendant No.1 had already sold the suit property to the predecessors-in-interest of the plaintiff and proforma defendants way back in 1938. As such, judgement and decree dated 07.11.1960 and consequent mutation No.403 dated 07.06.1963, have rightly been held to be not binding on the rights of plaintiff.

20. The last submission made by learned counsel for the appellant is that suit was barred by limitation, as the mutation sanctioned way back in 1963 was being assailed, by filing the suit in January, 2009.

21. It has been rightly observed by the First Appellate Court that suit being based upon title and the possession of the plaintiff being threatened now, therefore cause of action had not arisen in favour of the plaintiff earlier. It may be noted here itself that possession of the plaintiff and proforma defendants was being recorded in the revenue record, though in the capacity of mortgagee in possession after the passing of the impugned mutation. Plaintiff's possession was never threatened and therefore, he could have filed the suit, as and when his possession was threatened.

22. As such, the first appellate court rightly held that the suit was within limitation.
23. No other point has been raised.
24. Having regard to all the entire discussion as above, this Court finds no scope warranting any interference in the well-reasoned judgement passed by the First Appellate Court, which is based upon proper appreciation of evidence available on record.
25. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

08.07.2025

Vivek

Whether speaking/reasoned
Whether reportable

(DEEPAK GUPTA)

JUDGE

: Yes
: No