



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

207

RSA-416-2013(O&M)

Date of decision: 06.03.2026

Puran

...Appellant(s)

Vs.

Rajesh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. J.P. Sharma, Advocate
for the appellant.
Mr. Baldev Raj Mahajan, Senior Advocate with
Mr. Mayank Vashishth, Advocate
for the respondent No.12.

NIDHI GUPTA, J.

The plaintiff No.3 is in second appeal against the judgment of reversal whereby suit filed by the plaintiffs for declaration and injunction, although decreed by the Civil Judge vide judgment and decree dated 30.03.2007, has been reversed by the learned Additional District Judge, Narnaul vide impugned judgment and decree dated 18.01.2011.

2. Brief facts of the case as pleaded in the plaint are that the plaintiffs had filed instant suit seeking declaration to the effect that the agricultural land total measuring 178 kanal 7 marlas as described in the plaint, is owned and possessed by the parties as per their shares as described in the



plaint. There were total 10 co-sharers as described in Para 1 of the plaint of the total land measuring 178 kanal 7 marla as per Jamabandi for the year 1990-94. It was further averred that after death of one of the co-sharers, namely Sadasukh, who was unmarried, his share was taken by remaining 9 co-sharers. Out of remaining 9 co-sharers, one Kanhi Ram also died. After his death, his LRs sold the share to Ganga Ram son of Ramrattan for sum of Rs.600/- vide registered Sale Deed No.466 dated 20.07.1953. Thereafter, other son of Ram Rattan i.e. Mohan died unmarried; and remaining 8 persons inherited the share. In Jamabandi, share of Kanhi Ram remains as 1/72 but inadvertently, his share was entered as 1/8, which is wrong. It was averred that this clerical mistake is liable to be set aside. It was further averred that shares of plaintiff No.1 were wrongly entered in the Records. Grievance of the plaintiffs was that revenue record depicts wrong shares in the land with regard to the shares of plaintiffs, which are recorded to be less. Accordingly, present suit was filed on 21.09.2005 seeking above declaration.

3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, learned Addl. Civil Judge, Senior Division, Narnaul had decreed the suit of the plaintiffs vide judgment and decree dated 30.03.2007 as follows: -

“8. In the light of findings on above issues, suit succeeds and is decreed with costs. A decree for declaration is passed in favour of the plaintiffs and performa defendants no.19 to 47 and against defendants No.1 to 18 whereby shares of the parties in the suit



property are declared in the manner and to the extent as fully detailed and describe in head note of the plaint, land being situated at Village Sagarpur, Tehsil Narnaul. It is further declared that plaintiffs are entitled to seek correction in the revenue records in the light of above declaration. Mutations No. 627, 628, 629 dated 4.12.1986 are declared illegal and set aside. Concerned revenue officials are directed to make necessary entries in revenue records accordingly. Decree sheet be drawn separately. File be consigned with govt. recorder after due compliance.”

4. Against the said judgment and decree, Omdutt/defendant No.12 son of Ram Swaroop son of Kanha had filed Civil Appeal, which was allowed by the learned Additional District Judge, Narnaul vide impugned judgment and decree dated 18.01.2011. Hence, present second appeal by plaintiff No.3.

5. At the very outset, learned counsel for the appellant/plaintiff No.3 submits that respondent-defendant No.12 is the only contesting party in the present case who is duly represented. It is submitted that the present appeal can therefore be decided in the absence of remaining respondents.

6. Learned counsel for the appellant assails the impugned judgment and decree dated 18.01.2011 by submitting that the learned First Appellate Court has failed to appreciate that when Jamabandi was prepared after consolidation in the year 1961-62, effort was made to rectify the mistake in the Revenue Records. However, the Revenue Authorities had again depicted wrong share of Gopal, Ram Swaroop and Mangal by cutting and interpolating which interpolation is clearly discernible on the record. It is submitted that



somehow or the other mistake occurred in consolidation papers either accidentally or intentionally and the last document prepared by the consolidation authority depicted 8 shares out of 52 shares of Gopal Ram Swaroop and Mangal i.e. predecessor-in- interest of contesting defendants instead of one share out of 45 shares in "Register Gathwar". Similar mistake occurred in "Fashrisht Takseem Khatajat" and Khatoni Paimaish.

7. Ld. Counsel clarifies that the case of plaintiffs is that since the contesting defendants after selling their shares to the predecessor-in-interest of the plaintiffs (vide Sale deed No. 466 dated 20.07.1953) and Mutation Gopal etc. had left the village Sagarpur for good and settled in village Mundikhera, so the remaining co-sharers remained in occupation of the entire land in dispute and at no point of time the controversy regarding wrong shares came to the notice of the plaintiffs and their predecessors-in-interest of any other co-sharer. The wrong entry of share came to the knowledge of the plaintiff in June 1989 when the contesting defendants got attested mutation No. 627, 628 and 629, regarding inheritances of Gopal, Ram Swaroop and inheritance of Mangal respectively.

8. It is submitted that the Ld. Appellate Court had wrongly and illegally ignored the Sale deed No. 466 dated 20.07.1953 while deciding the appeal of Om Dutt defendant and had, thus, gravely erred in setting aside the judgment and the decree of the Ld.Trial Court and in dismissing the suit of the plaintiffs. Thus, the impugned judgments and the decree of the Id. ADJ,



Narnaul, are based on surmise and conjectures and the Ld. ADJ, Narnaul had illegally ignored the admissible evidence and had gravely erred in dismissing the suit of the plaintiffs.

9. It is accordingly prayed that present appeal be accepted and the judgment and decree dated 18.1.2011 passed by Ld. Additional District Judge, Narnaul be set aside and well-reasoned judgment and decree dated 30.3.2007 passed by Ld. Addl. Civil Judge, (Sr. Division) Narnaul be upheld, in the interest of justice.

10. Per contra, learned Senior Counsel for the respondent No.12 opposes the submissions advanced on behalf of the appellant and submits that the learned trial Court had decreed the suit of the plaintiff only on account of the fact that one defendant i.e. defendant No.3 had appeared and admitted the case of the plaintiffs. It is submitted that the learned trial Court has failed to appreciate the material issues, facts and evidence involved in the matter; which errors have been corrected by the learned First Appellate Court in the impugned judgment and decree dated 18.01.2011. It is contended that therefore, the present appeal is meritless and deserves to be dismissed.

11. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the record in detail. I find merit in the submissions advanced on behalf of respondent No.12.

12. It is to be seen that the learned trial Court had decreed suit of the plaintiffs by holding that the sole contesting defendant No.3 Sunita @ Ghalet



had admitted that previously 10 persons were owners in possession in equal shares of the suit property. However, as one co-sharer namely Sadasukh had died unmarried and issueless, the land was divided into 9 equal shares. Upon death of another co-sharer namely Kanhi Ram, one of the 9 co-sharers had purchased whole of land of deceased Kanhi Ram from his LR's for sum of Rs.600/- through registered Sale Deed No.466 dated 20.07.1953 (Ex.P24). Learned trial Court had held that although defendant No.3 had denied this fact, however, the factum of said sale stands established from the factum of registered Sale Deed No.466 dated 20.07.1953 which remained uncontroverted and uncontradicted on part of the defendants as well as defendant No.3.

13. Learned trial Court had further held that the relevant shares of the parties were to be entered as inherited; and, as per Sale Deed dated 20.07.1953 (Ex.P24). However, as the Revenue Records depicted less shares of the plaintiff, the said entries were incorrect. Consequentially, the plaintiffs were held to be owners in possession of the suit property; and mutation No.627, 628, 629 dated 04.12.1986 were set aside.

14. However, in holding as above, the learned trial Court has ignored several important aspects of the matter. The learned trial Court has failed to take into consideration that in the intervening period, in the year 1962, consolidation had taken place; during which 52 shares were calculated by the Consolidation Officer. The learned trial Court has however changed the



number of the said 52 shares to 45 shares without affording any explanation in this regard. Clearly, learned trial Court could not have changed the number of shares to 45. A perusal of record reveals that calculation of 45 shares is without any basis or reasoning. Further, even if it is presumed that calculation of 45 shares was done on the basis of Sale Deed dated 20.07.1953 (Ex.P24), the same could not have been done as Ex.P24 does not speak of the same numbers and area which were considered at the time of consolidation. Moreover, Ex.P24 was not admissible in evidence.

15. Furthermore, the learned trial Court also ignored the fact that the Civil Suit of the plaintiffs is barred by limitation; and also under provisions of Order 2 Rule 2 CPC. Admittedly, the consolidation proceedings had taken place in the year 1962; whereafter the first Civil Suit No.157 dated 15.06.1989 was filed by the plaintiffs. The said Civil Suit No.157 dated 15.06.1989 was got dismissed as withdrawn vide order dated 13.06.1996 without liberty to file fresh suit; whereafter present suit was filed on 26.08.1996. Thus, the suit of the plaintiffs was barred not just by limitation but also under Order 2 Rule 2 CPC.

16. Relevant findings of the learned First Appellate Court as contained in Para 22 of the judgment dated 18.01.2011 are as follows: -

“22. As for as the merits of the appeal is concerned, the arguments raised on behalf of the appellant are that during the period of Consolidation which took place in the year 1962, 52 shares were calculated by the Consolidation Officer and the learned trial court



could not have changed the number of shares to 45. Its not known as to how the learned trial court directed the rectification of the revenue record while declaring the mutations No. 627, 628 and 629 dated 4.12.1986 to be null and void. It cannot be understood as to how a decree for declaration was passed in favour of the respondents and proforma respondents against the appellant and others whereby the shares of the parties in the suit was declared in the manner and extent provided in the head note of the plaint. The claim made by the respondents is not genuine and the shares taken out at the time of Consolidation should not be changed without authentic and substantive evidence. The 45 shares declared by the learned trial court instead of 52 shares taken out at the time of Consolidation in the year 1962 are without any reasoning and even if it is presumed that the calculation of 45 shares has been done on the basis of be sale deed dated 20.7.53 Ex. P24, it cannot be done for the reason that the sale deed Ex.P24 is inadmissible in evidence and cannot be read in favour of the case of the respondents. Moreover, the sale deed dated 20.7.53 Ex. P24 does not speak of the same numbers and area considered at the time of the Consolidation. The respondents have been acting upon the shares taken out during Consolidation in getting civil court decree passed in family arrangements and there is no evidence on the record of the case by virtue of which the shares taken out during Consolidation can be changed keeping in view the evidence available on the record of the case. Moreover, the civil suit is barred by the period of limitation of time and also the provisions of Order 2 Rule 2 Discussed in the judgment above, and the learned trial court went beyond its jurisdiction in arriving at the conclusion that there are 45 shares instead of 52 shares and



should not have granted a decree for declaration as prayed by the respondent in a vague and ambiguous manner. Thus while accepting the appeal with costs the impugned judgment and decree stands set-aside as co-sharer-appellant is sufficient to do so in his representative capacity and the civil suit being devoid of any merit stands dismissed. Decree sheet be prepared. Trial court record be sent back. File be consigned to the record room."

17. It is no longer res Integra that this Court in second appeal has limited jurisdiction to interfere in the concurrent findings of fact rendered by the Courts below; as held by the Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC) : Law Finder Doc ID # 2034559**, as under:-

*"14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."



15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force.”

18. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings, as also the legal position noted above.

19. In view of the above, present Second Appeal stands **dismissed**.

20. Pending application(s) if any also stand(s) disposed of.

06.03.2026
Sunena

(Nidhi Gupta)
Judge

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