

Jaswant Kaur and others Vs Faquiria

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 20, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 100
Limitation Act, 1963 â€” Section 5
Punjab Land Revenue Act, 1887 â€” Section 45

Citation: (2012) 168 PLR 713

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Advocate: H.N.S. Gill, for the Appellant;

Final Decision: Dismissed

Judgement

Tejinder Singh Dhindsa, J.

CM No. 1776-C of 2012:

This is an application u/s 5 of the Limitation Act seeking condonation of 21 days delay in filing the present second appeal. The application is duly

supported by an affidavit.

In view of the averments made in para No. 2 of the application sufficient cause has been shown to condone the delay. Prayer is allowed, delay of

21 days in filing the appeal is condoned.

CM disposed of.

R.S.A. No. 626 of 2012

1. The defendants/appellants are in second appeal before this Court impugning the judgments and decrees of the Courts below whereby, the suit

for declaration filed by the plaintiff has been decreed. Plaintiff-Faquiria s/o Baja filed a suit for declaration in terms of pleading that initially, one

Kala s/o Sobha had sold some land to Jiwan Singh father of defendant-Jeet Singh in the year 1945. Such sale deed had been challenged by Baja

on the ground of pre-emption being a collateral and co-sharer. The suit filed by Baja was decreed vide judgment and decree dated 07.02.1948. It

was pleaded that on the basis of such judgment and decree, possession was delivered at the spot to Baja in the execution proceedings and

mutation No. 648 relating to the land pertaining to village Rajgarh had been entered in his name. The present suit land pertains to the village Majra

and on the basis of warrant of possession issued in the execution proceedings mutation No. 2006 had also been sanctioned on 06.04.1965

pertaining to the land of village Majra in the name of Baja s/o Hira. The appeal had been filed against the sanctioning of mutation No. 2006 but the

same was dismissed on 25.01.1966. The revision filed against the order dated 25.01.1966 had been decided in favour of the plaintiff on

15.04.1968. As such, the order of mutation dated 06.04.1965 had not been implemented in the earlier jamabandis. Baja father of plaintiff had

remained in possession of the suit land and after his death, the plaintiff had become owner in possession of the same. Baja during his life time had

mortgaged his 1/2 share in the suit land with certain muslim mortgagees whereas, the plaintiff continued to be owner in possession of the suit land to

the extent of remaining 1/2 share. However, on account of a mistake at the hands of the Revenue Authorities, name of the plaintiff had not been

incorporated in column No. 4 pertaining to the ownership in the jamabandi. As such, it was pleaded that on account of the wrong entries in the

revenue record, the defendants had been threatening to take steps to alienate the suit property and as such the suit had been instituted.

2. The suit was contested and in the written statement filed by the defendants, it was stated that the suit land was standing in the name of Jiwan

Singh father of the defendant-Jeet Singh in the revenue record from the year 1960-61. It was stated that the suit land was belonging to some

muslims, who had left for Pakistan and as such, the suit land is in possession of the defendants as owner. It was further stated that the judgment

and decree relied upon by the plaintiff does not relate to the suit land and even it is proved that the decree pertains to the suit land even then

limitation for execution of the decree had elapsed. The plaintiff remained silent over a period of 37 years as regards the implementation of such

mutation in the revenue record. The defendants himself came to be in possession as owner of the suit land and even set up a plea of adverse

possession over the suit land in dispute.

3. The trial Court after having heard respective counsel for the parties and having scanned the evidence led on record, decreed the suit and held

the plaintiff and declared him to be the owner in possession of the suit land to the extent of 1/2 share in place of defendant-Jeet Singh in land

measuring 1 kanal, 12 marlas situated in village Majra, Tehsil Kharar and held the entries in column No. 4 and of the jamabandi showing the

defendants to be the owner to the extent of 1/2 share pertaining to the suit land to be wrong and against the record. The defendants were also

restrained from alienating the suit property by way of sale, gift or in any other manner and were further restrained from interfering in the possession

of the plaintiff. The civil appeal preferred by the defendants/appellants has been dismissed by the Additional District Judge, SAS Nagar, Mohali

vide impugned judgment dated 30.08.2011.

4. I have heard Mr. Har Naresh Singh Gill, Advocate for the appellants at length.

5. Learned counsel would vehemently argue that the suit filed by the respondent/plaintiff was barred by limitation inasmuch as the plaintiff had

remained silent from the year 1965 onwards. Learned counsel would further contend that the judgment and decree dated 07.02.1948 relied upon

by the plaintiff does not pertain to the land in dispute. It is further argued that the findings of the Courts below are perverse inasmuch as there has

been a mis-appreciation of evidence adduced on record.

6. I have given my thoughtful consideration to the submissions made by the learned counsel appearing for the appellant and have perused the case

file minutely.

7. The concurrent findings recorded by both the Courts below upon due appreciation of evidence led on record is to the effect that one Kala s/o

Sobha had sold some land to the father of defendant-Jeet Singh in the year 1945. Such sale transaction had been challenged in terms of a suit

having been filed by Kala, which had been decreed vide judgment and decree dated 07.02.1948 Ex. P.2. In such suit land pertaining to village

Rajgarh as also the present suit land pertaining to village Majra had also been included. On the basis of the decree dated 07.02.1948, the mutation

pertaining to the land of village Rajgarh had been duly sanctioned and the entries in the jamabandis had also been made. On the basis of decree

dated 07.02.1948, mutation No. 2006 pertaining to the suit land of village Majra had been sanctioned on 06.04.1965 Ex. P4. Such mutation had

been sanctioned in the execution proceedings having been initiated on the basis of decree dated 07.02.1948. However, the implementation of such

mutation had not been reflected in the later jamabandis and as such, the entries in the jamabandis continued to be wrongly done. The Courts below

have taken into account the khatauni ishtemal and khatauni pamaish, which had been placed on record to connect the old khasra numbers as

mentioned in the decree dated 07.02.1948 with the present khasra number pertaining to the suit land for which the relief had been sought. Such

finding of fact do not warrant any interference in exercise of jurisdiction by the High Court u/s 100 of the Code of Civil Procedure.

8. u/s 45 of the Punjab Land Revenue Act, 1887 (hereinafter to be referred as "the Act") the jurisdiction is specifically barred of the civil Court to

grant a declaration of the rights of the parties, who may be aggrieved by an entry made in a record of rights. Section 45 of the Punjab Land

Revenue Act, 1887 reads in the following terms:

45. Suit for declaratory decree by persons, aggrieved by an entry in record: If any person considers himself aggrieved as to any right of which he is

in the possession by an entry in a record of rights or in an annual record, he may institute a suit for a declaration of his right under chapter VI of the

Specific Relief Act, 1877.

9. In the present case, the plaintiff/respondent had felt aggrieved by the entries in the revenue record and record of rights and therefore, u/s 45 of

the Act, the plaintiff was entitled to institute the suit in a civil Court for declaration of his rights. As such, it is held that the civil Court would certainly

have jurisdiction to adjudicate upon a suit regarding declaration of rights of the plaintiff in the suit land. Although, the civil Court would have no

jurisdiction to direct Revenue Authorities to make corrections in the revenue entries.

10. Learned counsel appearing for the appellants has raised a specific argument to contend that the suit filed by the plaintiff/respondent was barred

by limitation. It is now well settled that in a suit for declaration as well as permanent injunction, the limitation will not start with effect from the date

an adverse entry is made in the revenue record but when the actual possession of the plaintiff is threatened by the other party under article 58 of

the Limitation Act. Time would begin to run not from the date of such an adverse entry made in the revenue record but from the date on which

there is sufficient denial of the plaintiffs right. If an adverse entry is made against the person, who is in actual physical possession of the property

and if he continues to restrain possession of such property despite such entry in the revenue record, he is under no obligation to bring a suit. If,

however, the rights of such plaintiff are actually jeopardized by the actions or assertions of the defendants then he must take resort to initiate

proceedings within three years from the date of such action or assertion. In the light of such settled position of the law, the suit filed by the

plaintiff/respondent can not held to be time barred. In view of the reasons recorded above, I find that the present second appeal must fail as it does

not raise any question of law, much less substantial question of law.

The appeal is accordingly dismissed.