



## IN THE HIGH COURT OF PUNJAB &amp; HARYANA AT CHANDIGARH

109

RSA-1917-2019 (O&amp;M)

Date of Decision: 18.03.2025

DES RAJ (SINCE DECEASED) THROUGH HIS LRS

.....Appellant

Vs

DASONDI RAM (SINCE DECEASED) AND OTHERS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present: Mr. Vipin Mahajan, Advocate and  
Ms. Chandanpreet Kaur Ahluwalia, Advocate  
the appellants.

\*\*\*\*\*

**DEEPAK GUPTA, J.**

Plaintiff of the case is aggrieved by the concurrent findings recorded against him by the Courts below, inasmuch as suit for declaration regarding property in dispute filed by him against defendant-Dasondi Ram (*respondent herein*) was dismissed by the trial Court on 18.07.2016, and the appeal filed by him was dismissed by the First Appellate Court on 11.09.2018.

2. Perusal of the paper book would reveal that plaintiff claimed declaration to the effect that he was in joint possession to the extent of 198/2990 share in the total holding measuring 149 kanals 10 marla comprised in Khewat No.6, Khatauni Nos. 9, 10 and 11, as fully detailed in the head note of the plaint, situated in Village Naushera, Tehsil and District Gurdaspur, after purchasing 4 kanal of land from defendant No.1 vide sale deed dated 11.06.1990; and that defendant No.1 was in joint possession to the extent of 1001/5980 share.

3. As per the case put forth by the plaintiff, he had purchased 4 kanals of land out of land arising 6 kanal 3 marla comprised in Khewat No.2 Khatauni No.4, rectangle No. 23 Killa No.22/1/1 for consideration of ₹10,000/- from defendant No.1 vide sale deed dated 11.06.1990, but when he went to the Patwari for getting the mutation sanctioned on the basis of sale deed, it transpired that defendant No.1 had already sold 14 kanal of land including the aforesaid Killa to defendant



Nos. 22 to 24 vide sale deed dated 13.02.1989. It was claimed by the plaintiff that even if the sale deed in his favour pertains to specific Khasra number out of joint holding, it is nothing but sale out of the share of the vendor-defendant No.1 and as such, plaintiff's share was increased to the extent of 4 kanal in joint holding; whereas, the share of defendant No.1 was correspondingly decreased by 4 kanal. It was also claimed that earlier plaintiff had filed a suit to rectify the revenue record, but the same was dismissed on technical grounds and the appeal was dismissed with liberty to file fresh suit by removing the technical defects.

4. Defendant No.1 contested the suit on various grounds including the bar of limitation and principle of *res judicata*.

5. After framing the issues and taking in account evidence produced by the parties, the trial Court dismissed the suit and the Appellate Court upheld the findings.

6. Assailing the concurrent findings recorded by the Courts below, it is argued by learned counsel for the appellant that appellant-plaintiff has been non-suited on the ground that his suit was barred under Order II Rule 2 and 3 CPC and that suit was also barred by limitation. It is argued that the previous suit was dismissed on account of technical defects and that Appellate Court had granted permission to file fresh suit by removing the technical defects and as such, present suit was not barred under Order II Rule 2 and 3 CPC. It is further the contention of learned counsel that since the suit is based upon title, therefore, bar of the limitation was not applicable.

7. This Court has considered submissions of learned counsel for the appellant and finds no merits in any of the contentions as raised by him.

8. It will be relevant to reproduce the observations made by the First Appellate Court, based upon the appreciation of evidence produced on file, which read as under:-

“18. Plaintiff appellant has come up with a specific and categoric case that he has purchased 4 kanals of land out of Khewat No. 4, Rect. No. 23 and Killa No. 22/1/1 by specific Khasra numbers vide sale deed dated 11.6.1990 copy of which is Ex.



PW2/2, but when sale deed was submitted to revenue authorities for entry and sanction of mutation on that basis, it had transpired that this property has already been sold by defendant No. 1 to defendants Nos. 22 to 24 vide sale deed dated 13.2.1989. It is his next claim that though he has purchased 4 kanals area by specific Khasra number, but as per law settled in ***Ram Chander versus Bhim Singh & others 2008 (4) Civil Court Cases 002 (P&H) (FB)*** he will be treated as co-sharer in entire holding as detailed and described in head note of the plaint. It is further his claim that he is already co-sharer in suit land and his vendor defendant No. 1 has also more land to his share in suit land, so in above eventuality his share will increase by 4 kanals ipso facto, whereas share of defendant No. 1 will reduce to that extent and in that process he becomes co-sharer in suit land to the extent of 198/2990 shares.

19. His claim is resisted with chief pleas that there is no Khasra/ Killa number in suit property as stated by plaintiff/appellant; he had filed a suit on same cause of action previously which was dismissed by lower court vide its judgment dated 25.9.2002 (Ex. P4) and appeal filed against that judgment has also been dismissed by appellate court on 16.7.2007 (Ex.P2) and this suit is barred by principles of res-judicata.

20. When in order to appreciate rival contentions, evidence lying on record is evaluated, it is found that in jamabandi Ex. P1, on basis of which this suit was filed, in Khewat No. 4 and Rect. No. 23 Killa No. 22/1/1. Perusal of certified copy of judgment in civil suit No. 123 of 24.5.1999 decided on 25.9.2002 (Ex. P4) shows that Des Raj, present appellant/plaintiff had sought a decree for possession as owner of land measuring 4 kanals out of land 7 kanals 2 marlas bearing **Khewat No. 2**, Khatouni No. 2, Rectangle No. 6 and Killa No. 19/2 situated in village Nashira as per jamabandi for the year 1994-95 in lieu of land measuring 4 kanals Khasra No. 23R/22/1/1(6-0) Min lehnda, nearer to Killa No. 21 situated at the same place sold to plaintiff/appellant by defendant vide sale deed dated 11.6.1990 being defective title and one thing is crystal clear from Ex. P4 that defendant No. 1 had no alienable/ transferable title in property, which is subject matter of sale deed dated 11.6.1990. From perusal of Ex. P4 it is further evident that said suit of plaintiff/appellant was dismissed and his appeal challenging judgment of dismissal of his suit has also been dismissed by the court of Shri Harjinderpal Singh, the then



learned Additional District Judge, Gurdaspur in civil appeal No. 143 of 14.11.2002 decided on 16.7.2007 titled as Des Raj vs Dasonda Ram (Certified copy is Ex. P2).

21. Now instant suit has been filed by him claiming that he be declared joint owner in possession of suit property to the extent of 198 2990 shares in suit land by adding aforesaid 4 kanals in his previously owned share and it be reduced from share of Dasondi Ram defendant/ respondent No. 1. It is evident from these facts that plaintiff appellant had come to know soon after 11.6.1990 i.e. when sale deed copy of which is Ex PW2/2 was executed in his favor that Dasondi Ram has already sold his share to defendants Nos 22 to 28 and relief now being claimed after his failure in above referred litigation, was thus available to him at the time when civil suit dismissed by the court of Mrs. B.J. Dimple.

22. At this juncture it is pertinent to jot down that though principles of res-judicata as envisaged under Sec. 11 of Civil Procedure Code may not come into play, but provisions of order II rule 2 and 3 of Civil Procedure Code are obviously big hurdles for appellant/defendant, wherein it is prescribed that (Rule 2) every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of the court and (Rule 3) a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

23. In previous litigation it was clear and categoric stand of plaintiff/appellant that title of his vendor qua property purchased by him through sale deed dated 11.6.1990 was defective and he had tried to get it rectified through court by claiming that a decree for possession as owner of land measuring 4 kanals out of land 7 kanals 2 marlas bearing Khewat No. 2, Khatouni No. 2, Rectangle No. 6 and Killa No. 19/2 situated in village Naushehra as per jamabandi for the year 1994-95 in lieu of land measuring 4 kanals khasra No. 23R/22/1/1(6-0) Min lehnda, nearer to killa No. 21 situated at the same place sold to plaintiff/appellant by defendant vide sale deed dated 11.6.1990 being defective title, be passed. Relief now claimed at that time was also required to be claimed in that suit or plaintiff/appellant should have sought leave of the court to omit this relief. Certainly suit now filed by



him is barred under order II rule 3 of Civil Procedure Code and no decree can be passed.

24. Apart from plaintiff/appellant was supposed to seek decree of declaration **within three years** from the time when his title had come under cloud and from Ex. P4 it is seen that he had come to know about defective title of his vendor prior to 24.5.1999. Suit for declaration should have been filed within three years from the date when the right to sue first had accrued to plaintiff/appellant as per Article 58 of Limitation Act, 1963. Suit in hand has been filed on 16.01.2008 i.e. after more than seven years and it is barred by law of limitation also. However, appellant/defendant in his cross-examination admits that he had come to know about defect in sale deed after three or four months w.e.f. 11.6.1990 and on that account suit has been filed after about 15 years. It is true and relevant to mention here that contesting respondents/defendants have not taken such an objection, but it is duty of the court to see whether a lis is within period of limitation prescribed by law or not.

25. In the light of above situation, if principles of res-judicata are not attracted or proved as argued by learned counsel for appellant/ plaintiff that makes a little difference, as suit is barred under Order II rule 2 of Civil Procedure Code and Article 58 of Limitation Act, 1963.

26. Facts which emerges on surface from above discussions are that defendant/respondent No. 1 had no alienable or transferable title in property, which is subject matter of original of Ex. PW2/2 sale deed dated 11.6.1990 and relief now claimed was available to plaintiff/appellant at the time of previous suit and relief claimed is barred by law of limitation also. So his appeal is bound to fail irrespective of the fact that his oral evidence or law laid down in case of **Ram Chander versus Bhim Singh & others 2008 (4) Civil Court Cases 002 (P&H) (FB)** is not properly appreciated. Apart from above, there no covenant in sale deed dated 11.6.1990 (Ex. PW2/2) that if title of Dasondi Ram is later on found defective, plaintiff/appellant can be compensated from his remaining land and in that eventuality ratio of law laid down in case of Ram Chander (supra) is not beneficial for appellant/plaintiff.”



9. It is apparent from the above said observations that when sale deed dated 11.09.1990 (Ex.P2/2) was executed in favour of the plaintiff by defendant No.1, said defendant No.1-vendor did not have the alienable title, inasmuch as he had already sold the property as purchased by the plaintiff to defendant Nos. 22 to 24 by virtue of sale deed dated 13.02.1989.

10. It is very important to notice that 4 kanal of land has been purchased by the plaintiff out of land comprised in Khewat No.2 Khatauni No.4. However, by way of this suit, plaintiff claims that his share has increased by 4 kanal on account of sale deed in his favour, in another Khewat No.6 as per details given head note of the plaint i.e. entirely different Khewat. Once it has been found that defendant No.1-vendor was not left with no title in the Khewat, out of which the land was sold to the plaintiff, obviously, plaintiff can no claim any right in the property of defendant No.1 in another Khewat.

11. Not only above, as has been found by the Courts below that plaintiff had earlier filed a suit of same cause of action, which was dismissed by the trial Court on 25.09.2002 and the appeal filed by him was dismissed on 16.07.2007. Though the same was dismissed on account of technical defects, but it has been rightly observed by the First Appellate Court that under Order II Rule 2 and 3 CPC are clearly applicable, as per which plaintiff was required to include the whole of the claim, to which he was entitled in respect of cause of action, at the time of filing of the previous suit and in case, he has omitted to include any claim, except with the leave of the Court, he shall not afterward sue for any relief so omitted.

12. In the previous litigation, plaintiff claimed that title of his vendor was defective and so, he tried to get it rectified through the Court by claiming decree for possession as owner out of land comprised in same Khewat No.2 from which he had purchased the land. The relief as being claimed in the present suit, was available to the plaintiff at the time when he had filed the previous suit and as such, it has been rightly held that suit is barred under Order II Rule 2 and 3 CPC.

13. Apart from above, it has been rightly held by the Courts below that plaintiff had come to know about the defective title of his vendor-defendant No.1 much prior to 24.05.1999 and as such, the suit for declaration could have been filed



by him within 03 years. However, the present suit was filed on 16.01.2008 i.e. much beyond the period of limitation and as such, suit has been rightly held to be barred by limitation.

14. On account of entire discussion as above, this Court does not find any ground to interfere in the well-reasoned concurrent findings of facts as recorded by the Courts below. There is neither any illegality nor any perversity in the findings, calling for any interference.

Dismissed.

**18.03.2025**

*Pry*

Whether speaking/reasoned : Yes  
Whether reportable : No

**(DEEPAK GUPTA)  
JUDGE**