



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

223

RSA-6122-2014 (O&M)

Date of decision: 03.04.2025

Nagar Panchayat

...Appellant(s)

Vs.

Malkiat Singh and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Manish Kumar Singla, Advocate for the appellant.

Ms. Amandeep Kaur, Advocate for
Mr. K.S.Chahal, Advocate for respondents
No. 1, 2, 4 to 16, 18 to 28, 30, 31, 33 to 41,
43, 47 to 59, 61 to 67 and 70 to 72.

NIDHI GUPTA, J.

The defendant is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the plaintiffs seeking declaration to the effect that plaintiffs along with residents of village being proprietors of the village are owners of the suit land measuring 613 Kanal 18 Marlas; and mutation bearing No. 6204 sanctioned in favour of the appellant on 23.04.1979 on the basis of Rapat Roznamcha No. 270 dated 10.02.1979 and entries in revenue record are null and void; along with consequential relief of permanent injunction, has been decreed by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'defendant No.1'; and respondents are the 'plaintiffs'.



3. It was the pleaded case of the respondents/plaintiffs in the plaint that during the consolidation of holdings in the village, proprietors of the village Kotduna were deprived of their holding for common purposes, and land was described as Jumla-Mustarka Malkan Wah Digar Hak Daran Arazi Hasab Rasad Raqba Khewat. It was stated in the plaint that the entries in this regard were incorporated in the revenue record as Bachat land. The proprietors of the village Kotdunna were owners of the suit land. The defendants had tried to alienate the suit property on 20.8.2005. In revenue record, the suit land has been incorrectly mutated in the name of the defendant vide mutation No. 6204 dated 23.04.1979, which was sanctioned on the basis of Rapat Roznamcha No. 270 dated 10.02.1979. It was pleaded that no order of sanction of mutation was passed by any competent authority; nor any proprietor of village was present at the time of sanction of mutation; and that the entries made in the revenue record are null and void and illegal. It was further submitted that the proprietors of the village including the plaintiffs came to know about the said change for the first time on 25.05.2005; whereupon the present suit came to be filed on 30.08.2005.

4. On the basis of pleadings of the parties, following issues were framed:-

- “1. Whether the plaintiffs are entitled to the relief of declaration, as prayed for?OPP
2. Whether the plaintiffs are entitled to the relief of permanent injunction, as prayed for?OPP



3. Whether the plaintiffs have got no locus-standi to file the present suit? OPD

4. Whether the suit is not maintainable in the present form? OPD

5. Whether the suit is within limitation?OPP

6. Whether the plaintiffs are estopped by their act and conduct from filing the present suit?OPD

7. Relief.

5. Learned counsel for the appellant/defendant firstly submits that the suit of the plaintiffs was barred by limitation. It is submitted that the mutation entry of 1979 has been challenged by the plaintiffs in a civil suit filed in the year 2005 i.e. after more than 25 years. It is submitted that the suit deserves to be dismissed on this short ground itself. However, this aspect of the matter has not been considered by learned Courts below.

6. It is further submitted that a specific plea was taken by the defendant in the written statement that the Civil Court has no jurisdiction as the suit land is shamlat land. In this regard, Id. counsel relies upon Section 13 of the Punjab Village Common Land Act (hereinafter referred to as 'the Act'), which stipulates as follows: -

“13. Bar of Jurisdiction in Civil Courts:- No civil court shall have jurisdiction:-

(a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not Shamilat deh vested or deemed to have been vested in a Panchayat under this Act; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act, or



(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.”

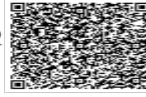
7. It is further submitted that the plaintiffs were neither inhabitants nor proprietors of the parent village Kotduna; and that the management and control of the suit was with the defendant Panchayat. Despite the fact that specific plea was made in this regard, no issue was framed by the learned trial Court.

8. It is submitted that even if the plaintiffs are proprietors of the suit land, they had to approach the proper authority, which is the revenue authority; where case of each proprietor was to be considered and decided separately after applying prorata cut and also showing their cultivating possession over the suit land. However, this has not been done.

9. It is submitted that the suit land is shamlat land and vests in the defendant/appellant Nagar Panchayat. The said land is being used for common purposes even till today. Nagar Panchayat is managing the affairs of the suit land and giving the suit land on lease. The Nagar Panchayat is very much in possession of the suit land. Even for the past more than 26 years, Nagar Panchayat is recorded as owner in the revenue record. It is accordingly prayed that the present appeal be allowed; and impugned judgments and decrees of the learned Courts below be set aside.

10. Learned counsel for the respondents/plaintiffs submits that the only instruction she has in the matter is that her presence be marked. She further submits that she has no objection if the present Appeal is allowed.

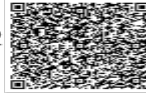
11. No other argument is raised on behalf of the parties.



12. I have heard learned counsel for the parties and perused the case file in great detail.

13. The learned trial Court vide judgment and decree dated 06.12.2011 had decreed the suit of the plaintiffs on the ground that the plaintiffs had produced Jamabandi for the year 1974-75 Ex.P2; and Rapat Roznamcha Wakiati for the year 1978-79 wherein it was shown that the mutation of the land measuring 628K 15M in the ownership of Jumla-Mustarka Malkan Wah Digar Hak Daran Arazi Hasab Rasad Raqba Khewat be changed in the name of Nagar Panchayat Village Kotduna on the oral orders dated 10.02.1979 of the SDM. Thus, on the oral order of the SDM, mutation No. 6204 was sanctioned in favour of defendant/Nagar Panchayat Village Kotduna. Learned trial Court accordingly held that oral order is no order for sanctioning of any mutation passed by any competent authority. Moreover, none of the proprietors of the village was present at the time of sanctioning of disputed mutation. No opportunity of hearing was granted to the proprietors of village Kotduna. The said findings were duly affirmed by learned lower appellate Court vide judgment dated 25.09.2014.

14. However, before considering these aspects of the matter, it was incumbent upon the learned Courts below to adjudicate upon the two preliminary and fundamental issues in the case - which are - the issues of jurisdiction and limitation. The impugned judgments reveal that no proper finding has been given by the learned Courts below in respect of the objections of the defendant regarding jurisdiction and limitation. In respect



of issues No.3 and 4, the reasoning of learned trial Court is in para 13 of the judgment dated 06.12.2011, which reads as under: -

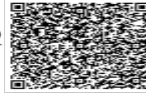
“Issues No.3 & 4:

Both these issues are taken up together being interconnected. Onus to prove both these issues was upon the defendants. Counsel for defendants submitted that plaintiffs have got no locus-standi and suit is also not maintainable. Whereas counsel for plaintiffs submitted that plaintiffs have got every locus-standi to file the suit and suit is also maintainable. I do not agree with the contention of counsel for defendants because the plaintiffs being the proprietors of village have right in the suit property which was wrongly transferred in the name of defendants and that order has been set aside while deciding issues No.1 and 2 and plaintiffs being the proprietors of village have every locus-standi to file the suit to get the wrong order rectified and for this purpose they have filed the suit and suit is very much maintainable. As such both these issues are decided against the defendants and in favour of the plaintiffs.”

15. In respect of Issue No.5 regarding limitation, the findings of learned trial Court are in para 14 of the judgment dated 06.12.2011, as under: -

“Issue No.5:

Onus to prove this issue was upon the plaintiffs. Counsel for the plaintiff submitted that suit is within limitation whereas counsel for defendants submitted that suit is not within limitation. I do not agree with the contention of counsel for defendants because perusal of plaint shows that the plaintiffs have claimed that they came to know about the wrong entries in the revenue record on the basis of mutation for the first time on 25.5.05 and they have filed the instant suit on 30.8.05 which is within three years on coming to know about the revenue

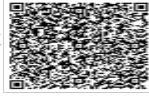


entries and I am of the view that suit is within limitation. As such the issue is decided in favour of plaintiffs and against defendants.”

16. Needless to say, the above said reasoning is utterly dissatisfactory. The learned trial court rather both the learned courts below have not at all dealt with the pleading of the defendant that the suit was not maintainable as admittedly, the suit land is Shamlat land. As such, jurisdiction of the learned civil court is barred under section 13 of the Act. Further, learned courts below have also not considered that the plaintiffs had failed to prove themselves as proprietors of the village. The plaintiffs had not produced the relevant documentary evidence in this regard i.e. Scheme Consolidation, Missal Hakiyat, Khatauni Paimaish, Khatauni Istemal and Naksha Haqdarbar ie. the five basic documents to prove themselves to be the proprietors of the village and their entitlement to the suit land.

17. It is further not denied that order sanctioning mutation *albeit* oral, is of the year 1979. It is but trite to suggest that in case the plaintiffs were proprietors of the village how would they not know of the impugned mutation for more than 25 years and would discover the same only on 25.05.2005. Even no evidence in this regard is produced.

18. In view of the discussion above, the present regular second appeal is **allowed**; and the impugned judgments and decrees dated 6.12.2011 and 25.09.2014 passed by learned Courts below are set aside.



19. Pending applications, if any, stand disposed of.

03.04.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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