

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****105****RSA-5738-2018 (O&M)****Reserved on : 11.03.2025****Pronounced on : 20.03.2025**

Nanu Ram

....Appellant

VERSUS

Improvement Trust, Karnal through
its Executive Officer

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajnish K. Gupta, Advocate for the appellant.

ALKA SARIN, J.

1. Present appeal has been filed by the plaintiff-appellant challenging the judgement and decree dated 16.02.2011 passed by the Trial Court and the judgement and decree dated 10.01.2014 passed by the First Appellate Court. The present appeal has been filed alongwith an application being CM-15770-C-2018 for condonation of delay of 1544 days in filing the present appeal.

2. The brief facts relevant to the present *lis* that the plaintiff-appellant herein filed a suit for declaration and permanent injunction seeking a declaration that he is a co-sharer as Bisweddar in Shamlat Deh Kasba with respect to the land measuring 05 Bighas 0 Biswa comprised in Khewat No.3241 min. Khatauni No.6668 Khasra No.5848 min. (5-0) situated in Kasba Karnal and that mutation No.12911 dated 24.11.1986 sanctioned by the revenue officer in favour of the defendant-respondent was illegal, null, void and ineffective and was without any notice and hence not binding on the

plaintiff-appellant. The plaintiff-appellant set up a case that his father Moli Ram was a joint owner in possession of the land measuring 04 Bighas 12 Biswas comprised in Khewat No.529 min./497 Khatauni No.1634 Khasra No.1650 (1-0), Khewat No.533 min. Khatauni No.1687 Khasra No.1650 (3-5), 1651 (0-7) situated in Kasba Karnal as per Jamabandi for the year 1943-44. After the death of Moli Ram, the plaintiff-appellant is in possession of the suit property being the son and legal heir of Moli Ram. He claimed to be in actual physical possession of land measuring 05 Bighas 0 Biswa. It was averred that the land was Shamlat Deh of Kasba Karnal and that the plaintiff-appellant had planted trees besides sowing vegetables in the suit land. It was further the case that the defendant-respondent i.e. Improvement Trust, Karnal had no right, title or interest in the suit property. Further challenge was laid to the mutation No.12911 which was entered in favour of the defendant-respondent. It was pleaded that the said mutation was against the facts and records and that while sanctioning the mutation the instructions of the Financial Commissioner have not been followed.

3. The defendant-respondent filed a written statement raising various preliminary objections including the suit being barred under Section 41(h) of the Specific Relief Act, 1963. On merits it was claimed that the plaintiff-appellant was not in possession of the land and Khasra No.5848, which consists of a large area measuring 346 Bighas extending from Sabji Mandi Bridge to Meerut Road Bridge and Mughal Canal was carved out during the Mughal era for irrigation purposes, which is about 259 to 300 feet in width. It was further the case set up that during the Mughal era no individual had any right and the entire estate was considered to be the estate of the King. Consolidation took place from the year 1884-85 as per Jamabandi for the year

1884. The Mughal Canal was recorded as ownership of the Provincial Government and the Irrigation Department used to manage and control the land. After diversion of the canal water in the Western Yamuna Canal, the Mughal Canal was used for discharge of rainwater of Kasba Karnal as well as for sullage and dirty domestic water of Karnal. As per Section 61 of the Haryana Municipal (Committee) Act, 1973, all streams vested in the Municipal Committee including the Mughal Canal. In between, the Mughal Canal was transferred to HUDA after the development of Sector 13. However, subsequently in 1986 the Canal was transferred to the Improvement Trust and thus mutation No.12911 was sanctioned in favour of the Karnal Improvement Trust on 24.11.1986.

4. Replication was not filed. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is in possession of the suit property as owner thereof. If so, its effect ? OPP
2. If issue No.1 is proved, then whether the defendant is trying to dispossess him forcibly and illegally. If so, its effect ? OPP
3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the suit of the plaintiff is false and frivolous and is liable to be dismissed ? OPD
5. Relief.

5. The Trial Court vide judgement and decree dated 16.02.2011 dismissed the suit. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate

Court vide judgment and decree dated 10.01.2014. Hence, the present regular second appeal.

6. Learned counsel for the plaintiff-appellant would contend that both the Courts failed to appreciate that the plaintiff-appellant was the son of Moli Ram and he has been in continuous possession of land measuring 04 Bighas 12 Biswas and that the plaintiff-appellant was in possession of 05 Bighas 0 Biswa. It is further the contention that trees have been planted by the plaintiff-appellant qua which there was sufficient evidence on the record. Learned counsel for the plaintiff-appellant would further contend that mutation entered in favour of the defendant-respondent was not in accordance with the instructions of the Financial Commissioner.

7. I have heard learned counsel for the plaintiff-appellant.

8. In the present case both the Courts concurrently found that there was not an iota of evidence to prove that the plaintiff-appellant was in possession of the suit property except for a site plan (Ex.P1) produced by him. No other document was proved on the record to establish the possession of the plaintiff-appellant. It was found that the defendant-respondent, on the other hand, by way of leading cogent evidence had proved on the record that the land was in the name of the Improvement Trust. DW1 Mahipal Singh had stated that the entire area of Khasra No.5848 which consists of 347 Bighas 16 Biswas was in possession of the Improvement Trust, Karnal. The same was corroborated by Ex.DW1/B. Ex.DW1/C, which is the Jamabandi for the year 1994-95 which also revealed that the Improvement Trust, Karnal was reflected as owner of Khasra No.5848. Similarly, Jamabandi for the year 1992-93 (Ex.DW1/D) also revealed the same position. It has further come on the record that change in the entry in the Khasra Girdawari in favour of the

Improvement Trust was challenged by the plaintiff-appellant before the Assistant Collector-II Grade, Karnal which was dismissed vide order (Ex.DW1/E). An appeal was preferred by the plaintiff-appellant which was also dismissed vide order dated 06.11.2006 (Ex.DW1/F). The plaintiff-appellant claimed to be in possession of 05 Bighas 0 Biswa of land in Khasra No.5848 which consists of 347 Bighas 16 Biswas. There is nothing on the record to show as to which is the area in possession of the plaintiff-appellant. There is cogent evidence which was led by the defendant-respondent to show that the entire Khasra No.5848 was being managed by the Improvement Trust, Karnal and a notification (Ex.DW1/L) which included Khasra No.5848 min. for remodeling of the Mughal Canal by the Improvement Trust, Karnal was also notified. Learned counsel for the plaintiff-appellant has not been able to point out to any cogent or reliable evidence in support of the case set up by him. In the absence of any evidence, the plaintiff-appellant is not entitled to the relief of declaration and permanent injunction as prayed for. In the face of the findings of fact recorded by both the Courts, there is no scope for interference by this Court. No credible or reliable evidence has been highlighted by learned counsel for the plaintiff-appellant for this Court to take a contrary view from the one taken by both the Courts. In view thereof, no fault can be found with the findings returned by the Courts concerned. No other point was argued.

9. In view of the above, no question of law much less substantial question of law arises in the present case, which requires determination by this Court. The appeal even otherwise is barred by limitation as the same has been filed after a delay of 1544 for which no cogent reason is forthcoming. The application (CM-15770-C-2018) for condonation of delay does not explain

the delay of 1544 days in filing the present appeal except for stating that the plaintiff-appellant is an illiterate person and not aware of the technicalities of law. However, the plaintiff-appellant has been litigating before the revenue authorities also and thus the reason given is not plausible. The application for condonation of delay (CM-15770-C-2018) thus deserves to be dismissed. The appeal also being devoid of any merit is accordingly dismissed on merits as well as on the ground of delay. Pending applications, if any, also stand disposed off.

20.03.2025
jk

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO