

Before Anil Kshetarpal, J.

RAGHU NATH AND OTHERS—Appellants

versus

AJMAT SINGH AND OTHERS—Respondents

RSA No.2865 of 2010

April 08, 2019

A) *Specific Relief Act, 1963—S.31 and 34—Suit for cancellation of a written instrument and suit for declaration of status or right—Difference—In suit for cancellation, where a person against whom a written instrument is void or voidable and he want to get it adjudged as void or voidable may file a suit and get it declared set aside or cancelled—Whereas under suit for declaration, declaratory suits filed by any person, who is entitled to any legal character or any right as to any property may institute a suit and the court may in its discretion make therein a declaration that he is so entitled to.*

Held that the scope of both the suits are different. Section 31 is applicable where a person against whom a written instrument is void or voidable and he want to get it adjudged as void or voidable may file a suit and get it declared set aside or cancelled. Whereas Section 34 deals with the declaratory suits filed by any person, who is entitled to any legal character or any right as to any property may institute a suit and the court may in its discretion make therein a declaration that he is so entitled to.

(Para 16)

B) *Specific Relief Act, 1963—S.31 and 34—Limitation Act, 1963—Art. 58—Suit for declaration—Barred by Limitation—Whether plaintiffs are owners in possession without challenging any written instrument can be held to be barred by time without examining the facts which gave rise to the suit—Plaintiffs filed suit for declaration which is governed by Article 58 of Schedule to Limitation Act—Article 58 provides that period of limitation would begun to run when right to sue first accrues—Entry or error in revenue record does not necessarily give rise to cause of action—Cause of action would arise when defendants came to dispossess plaintiffs who are in possession—Said event took place as per plaint week before filing of suit—Therefore, suit not barred by limitation.*

Further held that Article 58 provides that period of limitation would begun to run when the right to sue first accrues. It is by now well settled that an entry or error in the revenue record does not necessarily give rise to the cause of action. The cause of action would arise in the facts of the present case when the defendants came to dispossess the plaintiffs who are in possession. The aforesaid event took place as per the plaint a week before the filing of the suit and therefore, the findings of the first appellate court that the suit was barred by limitation is also erroneous.

(Para 18)

Amit Jain, Advocate
for the appellants.

O.P.S.Tanwar, Advocate
for respondent no.1.

Sanjiv Gupta, Advocate
for respondent nos.2 and 3.

ANIL KSHETARPAL, J.

(1) Plaintiffs-appellants are in the regular second appeal against the judgment passed by both the courts below dismissing the suit filed by them for declaration that the appellants are owners in possession of the suit land and mutation no.2053 sanctioned on the basis of the orders passed by the Consolidation Officer is valid and binding.

(2) In the considered view of this court, following substantial questions of law arise for determination:-

(i) What is the difference between a suit for cancellation of a written instrument and suit for declaration of status or right?

(ii) Whether a suit filed for declaration that the plaintiffs are owners in possession without challenging any written instrument can be held to be barred by time without examining the facts which gave rise to the suit?

(3) Facts of this case clearly prove that a small mistake by the Consolidation Authorities can result into a long drawn litigation between the parties.

(4) Consolidation of Holdings as per the provisions of East Punjab Holdings(Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the 1948 Act') took place in the village

in the year 1955. In the Consolidation of Holdings, plaintiffs, who were owners of 114 kanals and 12 marlas of land were allotted 114 kanals and 17 marlas of land. Similarly, predecessors of the defendants were also owners of 114 kanals and 17 marlas of land, whereas they were allotted 114 kanals and 11 marlas of land. After the Consolidation of Holdings were complete, necessary documents were prepared and therein a small error crept in while referring to land comprised in rectangle No. 76 in place of rectangle No.91. The dispute between the parties can be demonstrated from the small table.-

Raghu Nath etc.

<i>Before Consolidation</i>		<i>After Consolidation</i>	
80/24/2(1-16)	88/89	76/16/2(2-15)	76/13/(6-0)
25(7-16)	10/1(1-0)	14/1(2-2)	14(5-8)
87/4(8-0)	7(8-0)	17(17-1)	15(6-0)
5(8-0)	79/21(8-0)	24(6-15)	16(6-0)
88/1(8-0)	22(8-0)	25(6-1)	17(5-8)
2(8-0)	23(8-0)	91/4(5-11)	18(6-0)
3(8-0)			
4(8-0)	114-12	6(6-0)	24(5-8)
5(8-0)		7(5-8)	25(6-0)
8(8-0)		8(8-0)	98/4(5-8)
			5(5-19)
			114-17

Faggu Singh etc.

<i>Before Consolidation</i>		<i>After Consolidation</i>	
76/16/2(2-15)	91/14(5-8)	43/1(8-0)	79/19(8-0)
14/1(1-2)	15(6-0)	2(6-9)	20(8-0)
17(4-1)	16(6-0)	10(8-0)	11/24(4-12)
24(6-15)	17(5-8)	42/4/2(4-0)	12(7-11)
25(6-1)	18(6-0)	5(8-0)	9(6-4)

91/4(5-11)	23/2(4-3)	6(8-0)	8(8-5)
5(6-0)	24(5-8)	7(8-0)	3(2-0)
6(6-0)	25(6-0)	29/23(8-0)	80/16/1(3-4)
7(5-8)	98/4(5-8)	18(8-0)	114-11
8(6-0)	5(5-19)		
13(6-0)	114-17		

(5) It is apparent from the aforesaid tabulated information that the land which was with Faggu Singh etc., predecessors of the defendants was allotted to plaintiffs as it is but a small error was committed by the consolidation authorities while mentioning Rect. No.76 in place of Rect. No.91 with respect to land comprised in Khasra Nos.13, 14, 15, 16, 17 and 18 It would be significant to note here that after Consolidation of Holdings the land situated in a revenue estate was divided into rectangles which are normally of 25 acres and each rectangle ordinarily has 25 acres of land and each acre was assigned khasra number/killla number.

(6) After the Consolidation of Holdings was complete, the possession was exchanged in accordance with Sections 21 and 23 of the Act of 1948. However, on account of error with reference to rectangle number, consequent entry in the revenue record in the ownership column continued in the name of predecessor of the defendants. It may be mentioned here that after consolidation of holdings, predecessors of the defendants were never allotted any land in Rect. No.91, although, they were owners thereof before consolidation of holdings. However, as noticed, it is because of the error this entire dispute has arisen.

(7) In the jamabandi for the year 1965-66, Ex.P3 with regard to land comprised in Rect. No.91, khasra numbers 13, 14, 15, 16, 17 and 18, plaintiffs were recorded to be in possession of the land, however, ownership column continued in the name of the predecessor in interest of the defendants. In the remark column, entry was made that the plaintiffs are in possession on account of exchange. This entry continued in the jamabandies for the years 1970-71, Ex.P4, 1975-76, Ex.P5. When the plaintiffs came to know of the aforesaid mistake, they filed an application under Sections 43-A read with Section 42 of the Act of 1948. The matter was referred to the Consolidation Officer, who after examining the record found that there is error in the record prepared at the time of consolidation of holding and after hearing the

parties present including defendants Ajmat Singh, defendant no.1 ordered correction of the typographical clerical error vide order dated 25.01.1980. The effect of the aforesaid order was duly reflected in the revenue record vide mutation No.2059 sanctioned in February, 1980, thus, the revenue record was also corrected. Thereafter, jamabandi entries for the years 1980-81, 1985-86, 1990-91, 1995-96 in the ownership column as well as in possession, name of plaintiffs was correctly mentioned.

(8) There is another side of facts which have created the entire confusion. Predecessor-in-interest of the defendants was Surat Singh, who had two sons Faggu and Daulat Ram. Sons of Faggu are Ajmat and Janak, whereas Daulat Ram had left behind only widow, namely, Nirmala. Name of son of Ajmat is Kirno, whereas name of son of Janak is Jasmer. Jasmer and Kirno had obtained a fraudulent consent decree from Nirmala dated 29.04.1972, Ex.D5 with respect to land owned by her. Nirmala on coming to know challenged the aforesaid consent decree. She was successful and suit filed by her was decreed on 28.03.1981.

(9) First appeal as well as second appeal were dismissed. However, once again an error was committed by the revenue authorities. Since, decree dated 29.04.1972, which has been set aside later on, was passed with respect to land described by khasra numbers which was not corrected at that time, the revenue authorities cancelled the aforesaid mutation and thereafter once again entered the name of Nirmala while implementing the judgment and decree having been passed cancelling the decree passed on 29.04.1972, on 28.03.1981, Ex.D7. Once again position came back to square one. Nirmala died and his property was inherited on the basis of a testament by Rattan Singh, Mahavir and Sushila Devi.

(10) Plaintiffs once again on coming to know of the aforesaid wrong entry, filed a suit for declaration with consequential relief of permanent injunction against Rattan Singh, Mahavir and Sushila Devi. Unfortunately, the suit was dismissed for non-prosecution as none of the party appeared before the court on 26.07.1992. In the meantime, another development took place that the beneficiaries under the Will of Nirmala, namely, Rattan Singh, Mahavir and Sushila Devi transferred the property through consent decrees in favour of defendants in the suit. It may be noted here that the appeal filed against the sanction of mutation No.2053 which was sanctioned on the basis of order of consolidation dated 25.01.1980 was challenged before the revenue

authorities in appeal and matter remained pending after remand. The mutation proceedings are now adjourned sine-die to await the decision of the civil court.

(11) Plaintiffs filed the present suit claiming that they are owners in possession of land comprised in Rect. No.91, Khasra Nos.13, 14, 15, 16 17 and 18.

(12) Plaintiffs pleaded their cause of action on various dates including one week before the filing of the suit when the defendants tried to forcibly dispossess the plaintiffs from the suit land, however, could not succeed.

(13) Both the courts as noticed above on appreciation of evidence have chosen to dismiss the suit filed by the plaintiffs.

(14) Learned first appellate court has recorded the following strange reasons to dismiss the appeal filed by the plaintiffs-appellants:

(1) The decree passed in a suit filed by Nirmala against Kirno and Jasmer dated 28.03.1981 has become final and “hence all the consequential acts and deeds done on the basis of alleged unlawful and illegal decree stand abrogated having no effect on the rights of Nirmala Devi in terms of the said decree.”

(2) The decree dated 28.03.1981 has not been challenged and unless the decree dated 28.03.1981 is challenged and set aside, therefore, mutation sanctioned on the basis thereof also cannot be set aside.

(3) “A well adjudicated and final decree cannot be modified or altered so as to set aside its mutation only on the basis of vague order of 1955 which was passed in the absence of Nirmala Devi or her husband Daulat Ram.”

(4) The suit filed by the plaintiffs is barred by limitation as the judgment and decree was passed on 28.03.1981. Whereas the suit has been filed in November, 1996 after lapse of 15 years.

NOTE:- Mutation is an entry made by the revenue authorities updating the revenue record on account of change in the column of ownership in the jamabandi, be it for any reason like death of the owner, sale, gift, mortgage etc. etc.

(15) On reading of the judgment passed by the learned first appellate court, it is apparent that the first appellate court has failed to distinguish between the suit filed for cancellation of written instrument and declaration of status or right. Both these suits are governed by different provisions of the Special Relief Act, 1963. Section 31 deals with cancellation, whereas Section 34 provides for declaration. Both the Sections are extracted as under:-

31. When cancellation may be ordered.—(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. (2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

(16) It is apparent that the scope of both the suits are different. Section 31 is applicable where a person against whom a written instrument is void or voidable and he want to get it adjudged as void or voidable may file a suit and get it declared set aside or cancelled. Whereas Section 34 deals with the declaratory suits filed by any person, who is entitled to any legal character or any right as to any property may institute a suit and the court may in its discretion make therein a

declaration that he is so entitled to. The distinction between a suit for cancellation and a mere declaration has been explained by a Full Bench of this Court in the case of *Niranjan Kaur* versus *Nirbigan Kaur*¹.

(17) Plaintiffs were never parties to the decree of 1972 which was later on set aside vide judgment and decree dated 28.03.1981. Consequently, the plaintiffs who were not parties to the litigation were not required to seek cancellation of the decree. Plaintiffs are also not claiming any right under the parties who were parties to the litigation which resulted into judgment and decree dated 28.03.1981. Thus, the plaintiffs correctly filed the suit for declaration claiming declaration that they are owners in possession of the property.

(18) Similarly, the first appellate court erred while returning a finding that the suit filed by the plaintiffs was barred by time. Plaintiffs had filed a suit for declaration which would be governed by Article 58 of the Schedule to the Limitation Act, 1963. Article 58 provides that period of limitation would begun to run when the right to sue first accrues. It is by now well settled that an entry or error in the revenue record does not necessarily give rise to the cause of action. The cause of action would arise in the facts of the present case when the defendants came to dispossess the plaintiffs who are in possession. The aforesaid event took place as per the plaint a week before the filing of the suit and therefore, the findings of the first appellate court that the suit was barred by limitation is also erroneous.

(19) First appellate court has also erred in recording a finding that the decree of 1981 has been challenged by the plaintiffs, which is factually incorrect. Plaintiffs never filed a suit for cancellation of the decree. Rather the finding of the first appellate court is contradictory. On the one hand first appellate court held that the decree of 1981 has never been challenged whereas while dealing with the limitation, the court goes on to hold that the judgment and decree of 1981 has been challenged.

(20) As regards next reason, it may be noted that there is no order as such of 1955. In 1955, on completion of the consolidation proceedings, revenue entries were made. The order, if any, is dated 25.01.1980 passed by the Consolidation Officer correcting the error. Hence, the court has wrongly held that the mutation on the basis of vague order of 1955 cannot be modified.

¹ 1981 PLJ, 423

(21) A desperate appeal was made by learned counsel for the respondents that the legal heirs of Nirmala would stand deprived of the property because of the judgment passed by the court. They tried to explain that there was inter-se judgments and decrees passed by the courts in between the family members of Faggu and Daulat Ram followed by Nirmala. It may be noted here that the inter-se dispute between the families of Faggu and Daulat Ram is not subject matter of the present suit. Hence, they would be at liberty to resolve the controversy inter-se between them in accordance with a suit instituted, if permissible, in law.

(22) At the time of admission of the appeal on 29.08.2017, following substantial questions of law as proposed by counsel were framed by the court:-

“(a) Whether in the facts and circumstances of the instant case, the approach of the learned courts below in ignoring the ownership and possession of the appellants as per their entitlement, based on decision dated 28.02.1955 read with correction vide order dated 25.1.1980 and dismissing the suit can be sustained in law?

(b) Whether the later civil litigation to which the appellants were not party and ownership and possession of the appellant flowed from the order passed by the competent authority under the Consolidation Act, the suit filed by the appellants could be dismissed?

(c) Whether in the facts and circumstances of the instant case, the approach of the learned courts below in ignoring that it would amount to double allotment in favour of contesting respondents, the plaintiffs/appellants could be non-suited?

(d) Whether in the facts and circumstances of the instant case the civil suit filed by the plaintiff/appellants could be held non maintainable?

(e) Whether in the facts and circumstances of the instant case, the suit filed by the plaintiff/appellants, who are in established possession as owner, could be dismissed on the point of limitation?

(f) Whether in the facts and circumstances of the instant case, the contesting respondents could claim any right, title or interest

in respect of the property on the basis of civil litigation to which they are not parties?

(g) Whether in the facts and circumstances of the instant case, the civil court decrees passed in Civil Suit No.510 of 1987 and Civil Suit No.131 of 1993 are not fraudulent?

(23) The questions of law which have been framed stands answered by answering the questions of law framed by this court at the time of final hearing.

(24) The regular second appeal is allowed.

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(25) Prayer in this application is to produce in additional evidence certified copy of the application dated 01.10.1995 and certified copy of the order dated 22.07.1996 passed by the Assistant Collector 2nd Grade, Shahabad.

(26) At the time of final arguments, learned counsel appearing for the appellants did not press this application. Hence, dismissed as not pressed.

Ritambhra Sharma