

Before Hon'ble G. R. Majithia, J.
 GOPAL SINGH AND OTHERS,—Appellant.

versus

STATE OF PUNJAB,—Respondent.

Regular Second Appeal No. 881 of 1979

February 24, 1992

Punjab Land Revenue Act 1857—Section 45, 158 (2) (vi)—Specific Relief Act (47 of 1963)—Section 34—Whether Civil Court has jurisdiction to entertain a suit challenging the change made in record of rights or annual records—Section 158 (2) (vi) of Punjab Land Revenue Act only empowers Revenue Officer to make necessary corrections after matter has been adjudicated between parties.

G. R. Majithia, J.

Held, that Section 45 of the Act read with Section 34 of the Specific Relief Act entitled the plaintiff to move the Civil Court if he was aggrieved by any such entry in the record of rights and the defendant cannot be allowed to urge that the plaintiff should not feel aggrieved and be not permitted to knock at the door of the Civil Court.

(Para 7)

Further held that Section 158 (2) (vi) of the Act only says that correction in the revenue record can only be made by a revenue officer; civil Court will determine the rights of the parties leaving it to the revenue officers to correct the revenue record in accordance with the adjudication made by the Civil Court of the rights of the parties.

(Para 8)

Gurbachan Singh, Advocate, with G. S. Bal, Advocate, for the Appellant.

None, for the Respondent.

ORDER

G. R. Majithia, J.

(1) The unsuccessful plaintiff has come up in regular second appeal against the judgment and decree of the First appellate Court partially modifying those of the trial Judge and holding that civil Court had no jurisdiction to entertain the suit.

(2) The facts :—

The plaintiff-appellant (hereinafter the plaintiff) was allotted land measuring 122 kanals 12 marlas during consolidation; that mutation No. 3840 was sanctioned on April 26, 1965 by the Assistant

Consolidation Officer having powers of Assistant Collector, II Grade Amritsar; that this mutation was subsequently reviewed on the ground that excess land was allotted to the plaintiff; that the plaintiff was allotted Khasra numbers 3261, 3263, 3224, 3184 and 3190 during consolidation and total area of these Khasra numbers came to 113 kanals 7 marlas and not 122 kanals 12 marlas; that the plaintiff's entitlement was only for 122 kanals 7 marlas; that the plaintiff unsuccessfully challenged the order of the reviewing authority before the Collector, Commissioner and the Financial Commissioner; that having lost before these authorities, the plaintiff instituted the present suit for declaration that mutation No. 3840 dated April 26, 1965 was correctly sanctioned by the Assistant Consolidation Officer.

(3) The defendant-respondent (hereinafter the defendant) denied the allegations made in the plaint.

(4) From the pleadings of the parties, the following issues were framed by the trial Judge :—

- (1) Whether the civil court has no jurisdiction ? OPP.
- (2) Whether the suit is within time ? OPP.
- (3) Whether notice under section 80 CPC served upon the defendant is legal and valid ? OPP.
- (4) Whether the impugned order of the revenue officers against sanctioning of mutation No. 3840 is *ultra vires*, arbitrary, illegal and void for the reasons set out in para 8 clauses (i) to (x) of the plaint ? OPP.
- (5) Whether the plaintiff is in possession of the disputed land ? OPP.
- (6) Relief.

(5) Issue No. 1 was answered in favour of the plaintiff and it was held that the civil Court had jurisdiction to try the suit; issue No. 2 was decided in favour of the plaintiff and it was held that the suit was within limitation; issue No. 3 was answered in favour of the plaintiff and it was held that a valid notice was served by the plaintiff on the defendant before filing the suit; issue No. 4 was decided against the plaintiff and it was held that the order passed on review was valid; under issue No. 5, it was held that the plaintiff was allotted Khasra No. 3261, 3263, 3224, 3181, 3184 and 3190 during consolidation

and the total area of these khasra numbers came to 113 kanals 7 marlas and not 122 kanals 12 marlas as alleged by the plaintiff. On ultimate analysis, the suit of the plaintiff was dismissed.

(6) The plaintiff aggrieved against the judgment and decree of the trial Judge challenged the same in first appeal. The first appellate Court, relying upon the provisions of Section 158 (2) (vi) of the Punjab Land Revenue Act, 1887 (for short, the Act), came to the conclusion that the civil Court had no jurisdiction to entertain the suit. According to the first appellate Court, the plaintiff sought correction of entry in the revenue record and the civil Court's jurisdiction to entertain the suit was barred. The plaintiff aggrieved against the judgment and decree of the first appellate Court has come up in this regular second appeal.

(7) Section 45 of the Act says that a person aggrieved as to any right of which he is in possession by any entry in the record of rights or in any annual record, he may institute a suit for declaration of his right under the Specific Relief Act in a civil Court. The plaintiff was aggrieved against the change effected in the mutation register. The plaintiff was allotted land during consolidation and mutation No. 3840 dated April 26, 1965 was sanctioned in his favour. This mutation was subsequently reviewed. He was obviously aggrieved against the changed entry which affected his right and was thus entitled to sue for declaration as envisaged by Section 45 of the Act. Civil Court had jurisdiction to entertain the suit filed by the plaintiff. Section 45 of the Act read with Section 34 of the Specific Relief Act entitled the plaintiff to move the civil Court if he was aggrieved by any such entry in the record of rights and the defendant cannot be allowed to urge that the plaintiff should not feel aggrieved and be not permitted to knock at the door of the civil Court. Reliance can be placed on the following observations of their Lordships of the Lahore High Court in *Ghulam Mohammad Khan and others v. Samundar Khan and others* (1) :—

“Section 45, Punjab Land Revenue Act, clearly empowers any person aggrieved by an entry in the record of rights to seek relief under Section 42, Specific Relief Act. It is for the plaintiffs to decide whether they feel aggrieved by any such entry, and if the plaintiffs assert that they are so aggrieved, the defendants cannot be allowed to urge that

the plaintiffs should not feel aggrieved and be not permitted to knock at the door of the Court.”

Section 158 (2) (vi) of the Act only says that correction in the revenue record can only be made by a revenue officer; civil Court will determine the rights of the parties leaving it to the revenue officers to correct the revenue record in accordance with the adjudication made by the civil Court of the rights of the parties. Section 158 (2) (vi) only pertains to the correction of entries in the revenue record and does not override the provisions of Section 45 of the Act and any person aggrieved by an entry in the record of rights can sue for declaration in the civil Court. The view taken by the first appellate Court is not sustainable at law. Consequently, the judgment and decree of the first appellate Court cannot be sustained. The first appellate Court did not decide issue No. 4, which was a material issue arising for determination and hastened to dispose of the appeal on purely technical grounds. Under these circumstances, there is no other alternative but to remand the case to the first appellate Court to decide the appeal afresh.

(9) For the reasons stated above, the appeal succeeds, the judgment and decree of the first appellate Court are set aside to the extent it held that the civil Court had no jurisdiction to entertain the suit and the Additional District Judge, Amritsar is directed to restore the appeal at its original number and dispose of the same in accordance with law. There will be no order as to costs. The parties through their counsel are directed to appear before the Additional District Judge, Amritsar on March 27, 1992.

J.S.T.

Before Hon'ble Jawahar Lal Gupta, J.

M/S SAMANA STEEL PIPES PVT. LTD.,—Petitioner.

versus

THE UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ Petition No. 10438 of 1989.

28th September, 1993.

Central Excise Act, 1944—Section 11-A,—Central Excise Rules, 1944—Rules 56-A & 57-A—Rule 174—Central Excise Notification dated 20th May, 1988 by the Finance Ministry—Exemption from payment of excise duty on tubes and pipes manufactured from