

## Durga vs Milkhi Ram on 16 January, 1969

**Equivalent citations: 1969(I)UJ41(SC), AIRONLINE 1969 SC 62**

### JUDGMENT

Sikri, J.

1. This appeal by special leave is directed against the judgment of the High Court of Punjab at Chandigarh (Grover, J.) dismissing the appeal of the appellants, Durga and Others--hereinafter referred to as the defendants. The only point involved in this appeal is whether the High Court was right in holding that in view of the facts and circumstances of the case the presumption under Section 44 of the Punjab Land Revenue Act, 1887 had been rebutted.

The facts in brief are as follows. Milkhi Ram and Others, plaintiffs, respondents before us, filed a suit for possession of 52 Kanals of land situate in village Ratewal on the ground that this land had been wrongly allotted to defendants 1 and 2 during consolidation proceedings on account of shamlat land in respect of land bearing Khasra Nos. 2786 and 2806. The claim of the plaintiffs was that they along with defendant No. 3 had 2/3rd share in the shamlat land in dispute pertaining to these Khasra numbers. The Trial Court "dismissed the suit mainly on the ground that the suit was barred by time. The Senior Sub-Judge, on appeals, allowed the appeal and granted the plaintiffs decree for joint possession of 219 kanals 14 marlas of land in question allotted to defendants 1 and 2, the plaintiffs' share in the land being equal in value to 7/12th of the shamlat land appurtenant to the land comprised in previous Khasra Nos. 2786 and 2806. The Senior Sub-Judge held:

"The learned Subordinate judge has taken the view that the entries in the Jamabandi of 1929-30 and the subsequent Jamabandis supersede the entry in the Jamabandi of 1925-26 and that the plaintiffs cannot rely upon the Jamabandi of 1925-26 in support of their claim for the shamlat land in question. I cannot agree with him on this point. It is in evidence that the alteration in the entries was not based on any order passed by the revenue authority. No mutation for deleting the names of the plaintiffs was ever entered or attested by any revenue authorities. It is clear that it was by mistake that Durga and Sidhu alone were entered as entitled to the shamlat in question. I am of clear opinion that in these circumstances the entry in the Jamabandi for the year 1925-26 holds good and the entries in the subsequent Jamabandi made by mistake do not carry any weight."

3. Relying on Shri Raja Durga Singh of Solan v. Tholu (1), it was urged before the High Court, as before us, that the lower appellate court had wrongly relied on the earlier entries placing the burden on the defendants, whose names appeared in the later entries, to rebut the presumption. This Court observed in that case as follows:

"It was urged before us that there are prior entries which are in conflict with those on which the learned District Judge has relied. It is sufficient to say that where there is such a conflict, it is the later entry which must prevail. Indeed from the language of Section 44 itself it follows that where a new entry is substituted for an old one it is that new entry which will take the place of the old one and will be entitled to the presumption of correctness until and unless it is established to be wrong or substituted by another entry."

4. grover j.--observed as follows:

"It is clear from the pedigree-table set out in its judgment that Mathar Mal had three sons Jiwan, Amin Chand and Relu. Durga and Sidhu are the descendants of Jiwan whereas the plaintiff and defendant No. 3 are the descendants of Amin Chand and Relu. Now, in the entries prior to 1929-1930 each one of the descendants of the three sons of Mathar Mal had been shown to have 1/3rd share and without any mutation the entries were changed in 1929-30. Admittedly there is no order of the revenue authorities showing how the change was made. Thus although the presumption would be in favour of the latter entries but that presumption was a rebuttable one and it would stand rebutted by the fact that the alteration in the entries in 1929-30 was made unauthorisedly or mistakenly, there being no material to justify the change of entries."

5. grover, J., distinguished Shri Raja Durga Singh of Solan v. Tholu (1) thus:

"There is nothing to indicate that in the case decided by their Lordships such was the position. More-over, the decision in that case proceeded largely on the finding of fact arrived at by the District Judge on a consideration of the evidence "being not open to interference in second appeal. The finding in the present case of the lower appellate Court is also based on evidence from which it has been inferred that the later entries are not the correct ones."

6. We agree with the observations of Grover, J.,

7. The learned counsel for the appellants-defendants further contended that they had been in possession for a long time. But this was not the basis of the defence in the written statement filed by them and no question of adverse possession can be allowed to be raised at this stage.

In result the appeal fails and is dismissed with costs.