

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No. 1042 of 1985

Date of Decision: February 25, 2015

State of Haryana and another

....Appellants..

Versus

Joginder Singh

....Respondent..

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. S.P. Singh, DAG, Haryana,
for the appellants-State.

Mr. S.S. Brar, Advocate,
for the respondent.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?✓
3. Whether the judgment should be reported in the Digest?

JASPAL SINGH, J.

State of Haryana through Collector, Sirsa and SDO (Civil) exercising powers of Prescribed Authority, Allotment Authority, Sirsa have preferred instant appeal feeling dissatisfied against judgment and decree dated November 21, 1984 passed by Additional District Judge, Sirsa whereby judgment and decree dated August 06, 1983 passed by Senior Sub Judge, Sirsa was affirmed vide which order dated June 12, 1980 passed by SDO (Civil) exercising powers of Prescribed Allotment Authority, allotting the land measuring 169 kanals and 15 marlas, situated in the revenue estate of village

Gardarna, Tehsil and District Sirsa as surplus was set aside and respondent-plaintiff was held owner thereof. Through the suit respondent-plaintiff sought following relief:-

“ Suit for declaration to the effect that the order of Prescribed Authority/Allotment Authority Sirsa dated 12.06.1980 vide which the defendant No.2-Prescribed Authority/ Allotment Authority Sirsa has allotted land measuring 169 Kanals and 15 marlas comprised in Rect. No. 41 Killa No. 14(6-9), 15 (9-7), Rect. No. 42 Killa No. 10(2-11) 11(8-0) Rect. No. 61 Killa No. 4(9-6) 5/1(3-16) 6(8-0) 7(8-0) 8(6-2), Rect. No. 185 Killa No. 21 (8-0) 22(8-0) 23(8-2), Rect. No. 190 Killa No. 16 (8-0), 6(8-0), 15(8-0) 25/1 (2-0), 25/2(6-0) 24(0-10) Rect. No. 191 Killa No. 1(8-0) 2(8-0) 3(4-14), 9(9-6) 10 (8-0) 11 (8-0) 12 (5-12) situated in village Gadrana, Tehsil and District Sirsa owned and possessed by the plaintiff, to different persons by treating the aforesaid land along with other land as surplus in the hands of the plaintiff, is wrong and illegal against law, against the fundamental rights, principles of natural justice, null, void, without jurisdiction, inoperative and ineffective and hence not binding upon the ownership & possession rights of the plaintiffs over the suit land and liable to be quashed and ignored, as the plaintiff is the small landowner under the Haryana Ceiling on Land Holdings Act, and

the rules framed there under; with consequential relief of permanent injunction, restraining the defendants from executing and implementing the above said impugned order by delivering the possession of the above said suit land to any person, in any manner, on the basis of evidence of every description.”

2. Succinctly, facts given rise to instant lis are that on appointed day i.e. January 24, 1971, respondent-plaintiff was not a big landlord in accordance with the Haryana Ceiling on Land Holdings Act, 1972 (for short, “Act of 1972”), which was promulgated on December 23, 1971. However, subsequent thereto, he purchased land measuring 241 kanals 16 marlas on August 08, 1975 and had sold land measuring 233 kanals and 12 marlas to Billa Ram and others in the year 1974, out of his land earlier owned by him. On the basis of above referred sale mutations were sanctioned on the same day. Case of respondent-plaintiff (Joginder Singh) is that aforesaid transactions of sale was made by him bonafidely and is in a manner of exchange. The prescribed authority has not taken into consideration the land sold by him and treated him as a big landowner by ignoring the above referred sale. On that account, respondent-plaintiff challenged impugned order of Prescribed Authority. The suit was resisted by present appellant/defendant(State of Haryana) before Id. trial court by filing written statement to the effect that civil court has no jurisdiction to entertain and try suit in

view of provision contained in Section 25 of the Punjab Security of Land Tenure Act 1953 as well as under Section 26 of the Act 1972 as well as that suit is bad for want of notice under Section 80 CPC and is also bad for non-joinder of necessary parties. On merits, appellant-defendants pleaded that respondent-plaintiff was a big land owner and all transfers after appointed day have been ignored according to law. Respondent -plaintiff has also not been able to prove that the sale was bonafide. In fact, he was owner of land measuring 444 kanals and 15 marlas and after leaving permissible area of 275 kanals, remaining land measuring 169 kanals and 15 marlas was declared surplus for utilization under the Haryana Utilization Scheme of 1976. Accordingly, appellant-defendant prayed for dismissal of suit.

3. On going through pleadings of parties, following issues were culled out by Id. trial court in order to settle the matter in controversy between the parties.

“1. Whether the plaintiff is entitled to the declaration and injunction as prayed for on grounds mentioned in the plaintiff? OPP.

2. Whether this Court has got no jurisdiction to try the present suit as alleged in preliminary objection No.1? OPD.

3. Whether the present suit is bad for want of notice under Section 80 CPC, its effect? OPD.

4. Whether the suit is bad for non-joinder of necessary parties? OPD.

5. Relief.”

4. Both the parties afforded ample opportunities to conclude and adduce oral as well as documentary evidence.

5. After hearing learned counsel for parties and appraisal of evidence, trial court decided issue No. 1 in favour of respondent-plaintiff whereas issues No. 2 and 3, onus of which was on appellant-defendant were decided against them. Resultantly, suit of respondent-plaintiff was decreed as reflected in para No. 1 of this judgment.

6. Aggrieved against said judgment and decree, State of Haryana and another preferred Civil Appeal No. 91-CA of 1984/1983 and was dismissed on November 21, 1984 which necessitated the filing of instant regular second appeal.

7. While assailing impugned judgments and decrees rendered by both the courts below, it has been ebulliently argued by learned State counsel that both the courts below have grossly erred in deciding issue No. 1 in favour of respondent-plaintiff and issues No. 2 to 4 against appellants-defendants.

8. No doubt, father of respondent-plaintiff was a small landowner on the day the Act of 1972 came into force but he purchased 241 kanals 16 marls of land vide sale deed dated August 08, 1975 and thus, became a big land owner. The land measuring

233 kanals 12 marlas was though allegedly sold by him but said sale was not a bona fide one and thus, could not be excluded from the ownership of land. Thus, findings recorded by Id. trial court and affirmed by lower appellate court are not sustainable in the eyes of law and deserves to be reversed and in view of reversal of findings, suit of respondent-plaintiff is liable to be dismissed in *toto*.

9. On the other hand, learned counsel for respondent-plaintiff, Mr. S.S. Brar has supported impugned judgments and decrees passed by both the courts below and submitted that there is no infirmity or perversity either in findings recorded by Id. courts below on all the issues or impugned judgments and decrees. The same are perfectly in accordance with evidence as well as legal proposition applicable to the facts and circumstances of the case in hand. Instant appeal being devoid of merit is liable to be dismissed with special cost.

10. Having heard learned counsel for the parties at length, appraisal of evidence available on record and analyzing impugned judgments and decrees of both the courts below, this court is of the considered view that impugned judgments and decrees do not suffer from any material infirmity, illegality or perversity being absolute in accordance with evidence available on file as well as legal proposition.

11. The only question which survives for determination in instant appeal is whether respondent-plaintiff was a big landlord on

the appointed day and that land measuring 233 kanals 12 marlas was sold by him bonafidely or not.

12. To determine aforesaid question, a perusal of relevant provisions of the Act of 1972 i.e. Sections 7 and 8 is required, which read as under:-

“7. Notwithstanding anything to the contrary contained in any law, custom, usage or agreement, no person shall be entitled to hold whether as landowner or tenant or as a mortgagee with possession or partly in one capacity or partly in another land within the state of Haryana exceeding the permissible area on or after the appointed day.

8. Save in the case of land acquired by the Union government or the State under any law for the time being in force or by a tenant under the Pepsu law or the Punjab Law or by an heir by inheritance no transfer or disposition of land in excess of

(a) the permissible area under the Pepsu law or the Punjab law after the 20th day of July, 1958;

(b) the permissible area under this act, except a bonafide transfer, or disposition after the appointed day, shall affect the right of the State Government under the aforesaid Acts to the surplus area to which it would be entitled but for such transfer or disposition provided that any person who had received an advantage under such transfer or disposition of land shall be bound to restore it, or to pay compensation to the person from who he received it.”

13. A glance at the aforesaid provisions leaves no ground to doubt that no person can own and possess land exceeding

permissible area, on or after appointed day. Concededly, respondent-plaintiff was not holding land exceeding the permissible area on January 24, 1971 i.e. appointed day. Here, it would be just and proper to mention that present appellant/defendant examined Manohar Lal, Patwari Surplus, as DW-1, who has admitted the aforesaid fact in clear terms. Moreover, there is no evidence to depict that respondent-plaintiff was holding land exceeding permissible area. Moreover, perusal of Section 8(a) of the Act of 1972 also clearly provides that after appointed day, all the bonafide transfers are protected. Ajmer Singh, father of respondent-plaintiff appeared before Id. trial court and categorically deposed that he was owner of 50 acres of land, out of which 32 acres came to the share of respondent-plaintiff-Joginder Singh, whereas remaining 18 acres fell to his own share. Not only this, even it has also been clarified by him while making statement on oath that land measuring 233 kanals 12 marlas, out of land owned by respondent-plaintiff was alienated in order to affect an exchange of the land measuring 241 kanals 16 marlas, which was situated in the vicinity of the other land owned and possessed by respondent-plaintiff. The said land was purchased in the year 1975, whereas land measuring 233 kanals 12 marlas was sold much prior to it by him in the year 1974. The mutations on the basis of sale as well that of purchase have already been incorporated and sanctioned. It appears that, intention of respondent-plaintiff or his father was not to hold in excess of permissible area, rather, it was to

keep the land abutting to each other in the vicinity of the remaining land owned by him. In such a situation, it can be safely concluded that Id. trial court was right to hold that these were bonafide transfers and were not protected under provisions of the Act of 1972. Id. lower appellate court has also rightly affixed its stamp on findings recorded by Id. trial court in this regard. The findings recorded by Id. trial court on any of issues do not call for any interference by this Court being absolutely in consonance with evidence as well as legal proposition. Order dated June 12, 1980 passed by SDO (Civil) exercising the powers of Prescribed Authority making an allotment of land measuring 169 kanals 15 marlas, has rightly been set aside being against *letter and spirit* of the provisions contained in the Act of 1972. Provisions of Punjab Security of Land Tenure Act, 1953 are not attracted in the case in hand. Similarly, it cannot be said that jurisdiction of civil court was barred.

14. In the light of what has been discussed above, this Court does not find any illegality, impropriety or perversity in the impugned judgments and decrees. Resultantly, instant appeal being devoid of any merits is dismissed.

15. No order as to costs.

February 25, 2015
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(JASPAL SINGH)
JUDGE