

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1495 of 1987 (O&M)

Date of Decision: August 19, 2015

Karam Singh (deceased) through L.Rs. & others

...Appellants

Versus

Harnek Singh (deceased) through L.Rs. & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Ashok Singla, Advocate,
for the appellants.

Mr.Sunil Garg, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

CM No.8993-C of 2015

Prayer in the application is for impleading the L.Rs. of Mukhtiar Singh, appellant No.3. The application is supported by an affidavit.

Allowed subject to just exceptions.

Amended memo of parties is taken on record.

RSA No.1495 of 1987

The challenge in the present Regular Second Appeal is to the

impugned judgment and decree dated 19.3.1987 passed by the Lower Appellate Court, which had not only dismissed the appeal filed against the findings rendered by the trial Court on issue No.4, but has also reversed the findings on other issues.

Mr.Ashok Singla, learned counsel appearing on behalf of the appellants submits that during the consolidation proceedings, property measuring 49 kanals 11 marlas has fallen to the share of the appellant-plaintiffs. In essence, the property was partitioned. Kundha Singh, being represented by his successors-in-interest, i.e., respondent-defendants moved an application before the Consolidation Officer for correction of the revenue record by recording him as *Gair-marusi* and for handing over possession. The aforementioned application was dismissed vide order dated 24.6.1968 (Ex.P5). The said order was not assailed and had attained finality. The appellant-plaintiffs continued to remain in possession of the suit property. Suddenly, in the year 1982, Kundha Singh purported to have moved an application under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short “the Act”) before the Additional Director. He submits that no notice of the aforementioned proceedings was issued to the appellant-plaintiffs and even otherwise, the matter was listed for hearing on 17.11.1982, however, the then Additional Director preponed the hearing of the matter to 13.10.1982 without issuing any notice to the appellant-plaintiffs and decided the application against them. The entire order has been extracted in the judgment of the Lower Appellate Court. The operative part of the same reads thus:-

“I have heard the ld.counsel for the petitioner and examined

the record. The respondent is not present and hence, ex parte proceedings have been started against him. This is a genuine request which is hereby granted. The Consolidation Officer is directed to give possession of the land in dispute to the petitioner immediately, under intimation to this court.”

On coming to know of the aforementioned order, the appellant-plaintiffs assailed the order by moving an application before the Director Consolidation for setting-aside the order, but the same was also dismissed in a most sketchy manner and without assigning any reason vide order dated 25.8.1983 (Ex.P4). Since the aforementioned orders were without jurisdiction, the appellant-plaintiffs had left with no other option, but to file a suit by invoking the jurisdiction under Section 9 of the Civil Procedure Code on the premise that de hors of the bar under Section 44 of the Act, the suit was/is maintainable, when the orders assailed are passed without jurisdiction. He further submits that the trial Court had rendered the findings on all the issues, including issue of adverse possession, but dismissed the suit on the ground that the Civil Court did not have the jurisdiction in view of Section 44 of the Act.

Aggrieved against the aforementioned findings, an appeal was filed. The Lower Appellate Court, instead of pondering upon the grounds of appeal which were confined to findings rendered on issue No.4, upset the findings on other issues without there being any cross objections/cross appeal at the instance of the respondent-defendants and, therefore, the present appeal, according to me, involves the following substantial questions of law:-

“a) Whether for impugned orders, which have been passed at the back of the affected party, the Civil Court would have the jurisdiction *de hors* of the bar under Section 44 of the Act?

b) Whether the Lower Appellate Court could reverse the findings on other issues in the absence of cross-objections/ cross-appeal and action of rendering the findings is perverse?

In support of the aforementioned contention, learned counsel for the appellant-plaintiffs has relied upon the judgment of the Full Bench of this Court in **Jagtar Singh Versus Additional Director, Consolidation of Holdings, Punjab, 1984 R.R.R. 31** to contend that for application under Section 42 of the Act, the limitation under Rule 18 of the Rules is six months. By relying upon the ratio decidendi culled out in the aforementioned judgment, he submits that the respondent-defendants had an occasion to move an application after the order dated 24.6.1968 (Ex.P5) was passed, but the petition was filed in the year 1982 which could not have been filed. He also relies upon the judgment rendered in **State of W.B. Versus Indian Iron and Steel Co.Ltd., AIR 1970 (SC) 1298** to contend that where the orders passed are without jurisdiction *de hors* of the fact that there is an alternative remedy, the bar to avail the remedy by invoking the jurisdiction of the Civil Court under Section 9 of the CPC could not come in its way.

Mr.Sunil Garg, learned counsel appearing on behalf of the respondent-defendants submits that both the Courts below have rendered a finding of fact and law, based upon the appreciation of oral and documentary evidence, that the jurisdiction of the Civil Court under

Section 44 of the Act was *ex-facie* barred and, therefore, the remedy, if any, was to file an application or to avail other remedy under the Act. He further submits that the Lower Appellate Court has reversed the findings on other issues while exercising powers under Order 41 Rule 33 CPC, which can always be entertained without there being any cross appeal/cross objections, thus, no substantial question of law arises for determination by this Court.

I have heard the learned counsel for the parties and appraised the paper book.

No doubt, whenever there is an alternative remedy provided to challenge the order, the person aggrieved has to avail the same. Equally, it cannot be escaped the notice of the Court, as has been held by the catena of judgments, that where the orders are without jurisdiction and have been passed at the back of the party, such orders can always be challenged by invoking the jurisdiction under Section 9 of the Civil Procedure Code.

From the perusal of the order dated 25.8.1983, it is evident that the Additional Director had preponed the hearing of the matter from 17.11.1982 to 13.10.1982 without issuing any notice to the appellant-plaintiffs and passed the impugned order by proceeding the respondents therein and appellants herein as *ex-parte*.

It is a matter of record that the application filed by Kundha Singh, predecessors-in-interest of the respondents, for correcting his name in the revenue record as *Gair-Marusi* was dismissed on 24.6.1968 and the said order had attained finality. The petition filed under Section 42 of the Act in the year 1982 was not only belated, but was not maintainable. Even otherwise, the order allowing the application under Section 44 of the Act, as

noticed above, has been passed at the back of the appellant-plaintiffs. On coming to know about the said order, the appellant-plaintiffs had assailed the same before the Additional Director, who had also, in a mechanical and unreasoned manner rejected the application. In my view, the aforementioned orders have been passed in a most illegal and unwarranted manner, much less, there has been a blatant violation of the principles of the natural justice. The *quasi-judicial authorities* are expected to entertain the petitions filed under the provisions of the Act in a most pragmatic and reasonable manner.

It is a matter of record that the appellant-plaintiffs were in continuous possession as co-sharers of the land allotted to them in consolidation proceedings held in 1961-62. Even the application under Section 68 at the instance of Kundha Singh was belated one.

In view of what has been observed above, both the Courts below have committed an illegality and perversity in dismissing the suit on the ground of maintainability and as well as setting-aside of the findings on the issues.

As regards, the findings on issue No.3, there was no occasion for the appellant-plaintiffs to press for the same once they have been allotted land. They could not have claimed the adverse possession. The findings on issue No.3, which have already been reversed by the Lower Appellate Court, are hereby upheld. The findings on issues No.1 and 2 are restored and the findings rendered on issue No.4 are set-aside and it is held that the Civil Court had the jurisdiction. The questions of law, noticed above, are, thus, answered in favour of the appellant-plaintiffs and against

the respondent-defendants.

Accordingly, the appeal is allowed. The suit stands decreed.

Decree-sheet be prepared.

August 19, 2015
ramesh

(AMIT RAWAL)
JUDGE