

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

**RSA No.3589 of 1987
Date of decision: 09.09.2015**

Shiv Hari
Vs. ... Appellant

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. A.P.S.Sandhu, Advocate
for the appellant.

Mr. Ravi Pratap Singh, AAG, Haryana.

Mr. M.L.Sarin, Senior Advocate with
Mr. Ritesh Aggarwal, Advocate
Ms. Ankita Sambyal, Advocate and
Mr. Nitin Sarin, Advocate
for respondents No.2 and 3.

AMIT RAWAL J. (Oral)

This Regular Second Appeal at the instance of the appellant-plaintiff, is directed against the judgment and decree of the lower Appellate Court, whereby, the judgment and decree dated 11.11.1986 of the trial Court, has been reversed.

Before advertng to the arguments submitted by learned counsel for the parties to the lis, it would be apt to refer brief facts of the case which resulted into filing of the suit.

Shiv Hari alleging himself adopted son of Lalti, filed the suit seeking injunction in respect of the property measuring 826 kanals 18 marlas, situated within the revenue estate of village Pangaltoo, Tehsil Palwal, District Faridabad by alleging, that he has one half share in the land aforementioned on account of inheritance from Smt. Lalti widow of Gokal. It has further been averred that the mutation vide order dated 21.05.1960 in respect of the land had already been sanctioned in favour of the plaintiff. Smt. Lalti, mother of the plaintiff, died on 28.05.1959 in the aforesaid village. The aforementioned land, according to the averments made in the plaint, was never declared surplus by any competent authority or office either during the life time of Lalti or in the knowledge of the plaintiff. The plaintiff acquired, the aforementioned knowledge only on 13.05.1983 when Sh.Radhey Lal, Patwari, made a statement on behalf of the State, as a witness in case titled Bhuley vs. Badli etc. to the effect that vide order dated 27.07.1959 , land measuring 16 standard acres 10 ½ units, out of the half share of the land, mentioned above, owned and possessed by Smt.Lalti had been declared surplus. It has been further alleged in the suit, that neither declaration form i.e. Form D and F were ever thumb marked nor signed by Smt. Lalti, which is a statutory requirement of law, in respect of the proceedings of declaring land as surplus. It has been further alleged that on the basis of the aforementioned order, Government had sold away the land to defendant No.2 on

16.10.1980.

Along with suit, an application seeking exemption stating grounds of urgency to file the suit under Section 80(2) CPC was filed. The trial Court, vide order dated 4.6.1983 granted the exemption in sending statutory notice.

Defendants, in defence, stated that Smt. Lalti, died on 28.05.1959. It was further stated that the suit land vide order dated 27.07.1959, passed by the Agrarian Collector, Palwal, under the provisions of Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act, 1953) had been declared surplus and the said surplus area vested within the State Government as per Section 12 (3) of the Haryana Ceiling on Land Holding Act, 1972 (hereinafter referred to as the Act, 1972) and therefore, plaintiff astutely pleaded accrual of cause of action in the year 1983, i.e, by filing a suit on 4.06.1983. The maintainability of the civil suit vis-a-vis jurisdiction of the civil Court was also objected to, and prayed for dismissal of suit.

The plaintiff, in order to prove the averments made in the suit, brought on record the death certificate, Ex.P1, and various other documents, Ex.PW-3/1, Ex.P-4, Ex.P5 and Ex.P-6, to show that plaintiff is the adopted son of Smt. Lalti.

In order to prove the aforementioned documents, plaintiff examined the following witnesses:-

PW1	-	Plaintiff
PW2	-	Keshav son of Toda

PW3 - Bhuley son of Dhan Sahib
PW4 - Radhey Lal Patwari
PW5 - Munshi Ram, document writer

and tendered documents, Ex.P2 to Ex.P7.

The aforementioned documents were tendered by the counsel representing the plaintiff, whereas, on other hand, defendants brought on record the order dated 27.7.1959, Ex. DA and various other documents i.e., allotment letter issued in favour of defendants No.2 and 3.

Defendants, through counsel, vide statement dated 28.10.1986 tendered the documents Ex.D1 to D-20. The trial Court on the basis of the aforementioned documentary evidence, declined the injunction, on the ground that the property had been handed over to defendants No.2 and 3 but however, as noticed above, granted the relief of possession. While rendering the finding, it also observed that in view of order dated 4.6.1983, application under Section 80 (2) CPC, had already been allowed, therefore, suit could not have been dismissed for non compliance of provisions of Section 80 of the CPC. It also found that the it had jurisdiction on the premise that notice dated 27.7.1959, was never served upon Smt. Lalti being settled law that a proceeding declaring the suit land surplus, notice has to be served upon the owner and in case the owner dies, upon LRs, but no such procedure had been followed.

Feeling aggrieved against the aforementioned finding,

defendants No.2 and 3 filed an appeal before the lower Appellate Court. The lower Appellate Court after examining the oral and documentary evidence being the last Court of fact and law, set aside the impugned judgment and decree of the trial Court, by holding that in view of provisions of Section 25 of the Act, 1953, the civil Court did not have jurisdiction and, in case, plaintiff had any grievance, could have availed remedy of filing appeal before the revenue Tribunal, but not in the manner, i.e., by invoking the jurisdiction of the civil Court under Section 9 of the CPC. The lower Appellate Court also found that the death certificate of 1959 produced on record was not genuine, as it had been issued under provisions of the Death and Birth Registration Act, 1969. In essence, the death occurred in 1959 could not have been registered under 1969 provisions, as the said act has not come into force.

Mr. A.P.S.Sandhu, learned counsel appearing on behalf of the appellant-plaintiff submits that the decree for permanent injunction restraining the respondent-defendants from taking forcibly possession of the suit land had been sought and in the alternative, in case, defendants No.1 to 3 were found to be in possession of the suit land, relief for possession was prayed for. He further submits that the trial Court, on the basis of the oral and documentary evidence, decreed the suit with regard to possession of the suit land and further direction was issued to the Haryana Government to reconsider, the surplus matter in respect of the suit property, after giving opportunity

to plaintiff- Shiv Hari.

He further submits that the lower Appellate Court in paragraph 10 of the impugned judgment has wrongly recorded that it was not in dispute, at the time of arguments, that Shiv Hari-plaintiff was/is not adopted son of Smt.Lalti, whereas, no such statement on behalf of the plaintiff or his counsel in this regard had been made. The order of Agrarian Collector, declaring the land surplus suffers from non-compliance of principles of natural justice. In essence, no opportunity of hearing was granted to the plaintiff, as noticed above, under the Act, 1953. Thus, in such circumstances, Civil Court always will have jurisdiction to declare the order, declaring land surplus, as null and void. In essence, the civil suit, was maintainable, as there would be no bar of provisions of Section 26 of the Act 1953. He further submits that the lower Appellate Court misdirected itself, in not referring the testimony of DW-4, who, unequivocally admitted, that as per the proceedings of Agrarian Collector, no notice was served upon Smt. Lalti and once such witness deposed on the basis of the record, the order dated 27.7.1959, Ex.DA could not have been treated to be a valid. He further submits that even on a cursory glance of the order, though it has been mentioned that Smt. Lalti had been represented before the Agrarian Collector, but it has been mentioned that Smt. Lalti accepted summons, therefore, it deals with the stand of the State that Smt. Lalti had put in appearance before the Agrarian Collector as the expression, "he" instead of "she" had

been mentioned in the aforementioned order.

The lower Appellate Court over-looked the death certificate Ex.P1 as the respondent-defendants did not deny the factum of death vis-a-vis averments made in the plaint. In essence, as per the provisions of Order 8 Rule 5 CPC, in the absence of the denial the corresponding paragraphs pleadings, are deemed to be admitted. He further submits that the lower Appellate Court decided issue Nos.2 and 3 against the appellant by arriving at conclusion that order Ex.DA was not void ab initio as the land in dispute had rightly been put in surplus pool, for, as the order passed, was totally in derogation of the Act, 1953 and thus, prays that following substantial questions of law arise for determination of this Court:-

“i) Whether the civil Court has jurisdiction to decline the order dated 27.7.1959 passed under Act, 1953 as the said order had been passed without complying with the principles of natural justice?

ii) Whether there had been compliance of Rule 6(3) of the Act, inasmuch as that notice had been sent to the persons interested with regard to the declaration of Form F and D?

iii) Whether the appellant-plaintiff has deposed the son of Smt. Lalti in view of adoption deed Ex.PW3/1?”

In support of the aforementioned contention, he relied upon the following judgments of this Court to contend that where trial

Court granted exemption in filing the suit by entertaining the ground of urgency and the lower Appellate Court could not have dismissed the appeal while rendering impugned finding on issue No.7:-

- i) **State of Haryana and others vs. Vinod Kumar and others 1986(1) PLR 222.**
- ii) **State of Haryana and others vs. Hari Singh and others 1973 PLJ 811.**
- iii) **Megh Raj and others vs. Manphool and others 2008(3) R.C.R. (Civil) 241.**
- iv) **Jit Singh vs. State of Punjab 2005(1) R.C.R. (Civil) 558.**
- v) **Gutti vs. State of Haryana and others 2009 (1) R.C.R (Civil) 494.**
- vi) **Anoop Singh and others vs. The State of Haryana and others 2008(2) R.C.R.(Civil) 626.**

Mr. M.L. Sarin, learned Senior counsel assisted by Mr. Ritesh Aggarwal, Advocate submits that the suit ex facie was time barred, inasmuch as the plaintiff had sought the declaration of the order dated 27.7.1959 as the limitation to seek declaration of document, which according to the appellant-plaintiff is three years. In support of his aforesaid contention, he cited the judgment of the Hon'ble Supreme Court in **State of Punjab and others vs. Gurdev Singh and another, AIR 1992 Supreme Court 111.** He further submits that finding rendered by the lower Appellate Court qua issue

with regard to adoption deed was not pressed and had not been assailed in the regular second appeal. In essence, no such ground has been taken. He further submits that in case, the lower Appellate Court had committed fallacy, in recording such finding, the appellant-plaintiff ought to have invoked the jurisdiction of the Court in correcting the finding noted in the impugned judgment. In essence, in case actually the party had not suffered statement the Court can correct only, but in the rarest of rare case and not in every situation. However, in the instant case, no such effort had been made.

In support of the aforementioned contention, he relied upon the judgment of the Hon'ble Supreme Court in **State of Maharashtra v. Ramdas Shrinivas Nayak AIR 1982 Supreme Court 1249** to contend, that where a situation arises doubting the observation of Court vis-a-vis particular issue having not pressed, the statements of the Judges cannot be contradicted by statements at Bar or by affidavit. In the aforesaid judgment, it has been held that where something done, said or admitted before Court, that has to be the last word on the subject, in essence, the principle is well settled, that statements of fact, as to what transpired at the hearing or recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. He further submits that the possession of the property was taken, as way back in the year 1980. Had, the plaintiff actually been adopted son of Lalti, he would not have remained silent

would have raved hue and cry at that relevant point of time but not in the year 1983.

This Court vide order dated 03.06.1988, after perusing the record, issued the summons to the Additional Registrar, who, appears to have issued certified document Ex.P1, death certificate, to appear in the Court to verify the correctness of the aforesaid document, but he did not appear despite various orders passed from time to time, i.e., on 22.7.1988, 29.7.1988.

The death certificate Ex.P1 regarding the death in May, 1959, could not be issued on the form provided under 1969, Act. The aforementioned document has not been proved, in accordance with law, as much as, same was tendered into evidence. Mere exhibition of the document would not dispense with its proof, The plaintiff did not make any effort by summoning witness from the concerned branch as he had in apprehension that truth would surface. There is no illegality and perversity in the findings of the lower Appellate Court, inasmuch as that on perusal of Ex.D1, it is evident that the order signed by the Collector, notices the presence of Lalti and thus, there was compliance of the provisions of principles of natural justice, much less, provisions of Act of 1953 and the rules framed there under. In such situation, civil Court did not have the jurisdiction to try and adjudicate the suit with regard to the order declaring the suit land surplus, the plaintiff had alternative remedy under Section 25 of the Act, but, for the unexplained reason, the same has not been availed

of. He further submits that the things which are settled long time ago and should not be in settled in the year 2015.

As per the Act of 1972, the property vested with the Haryana Government, in 1971, therefore, the suit is hopelessly time barred, thus, submits that the appeal does not involve the substantial question of law to be determined by this Court.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below, as well as, case law cited by learned counsel for the parties to the lis.

After noticing the rival contention of the parties to the lis, *ibid*, it transpires that impugned judgment and decree of the lower Appellate Court does not suffer from any illegality and perversity for the following reasons:-

Ex.P1, death certificate has not been proved in accordance with law. No witness from the concerned department has been summoned to prove the genuineness and authenticity of the same. It is now well settled that as per the dictum judgment of the Hon'ble Supreme Court in State of Maharashtra's case (*supra*).

The plaintiff has not challenged the finding rendered by the lower Appellate Court, whereby, it held that plaintiff is not adopted son of Lalti. No such effort has been made by the plaintiff to get the finding corrected by moving an application within a reasonable time before the lower Appellate Court, therefore, the ratio decidendi culled by the Hon'ble Supreme Court, in **State of Maharashtra's case**

(supra) is squarely applicable to the facts and circumstances of the present case. I would not be differing, from the finding recorded by the lower Appellate Court with regard to adoption being not pressed, as the plaintiff had not sought to correct the same, or made any concreted effort by moving an application.

Limitation in filing suit, seeking declaration order to be illegal, as per Article 113 of the Limitation Act, is three years. Intentionally, the appellant-plaintiff has not sought the declaration of the order dated 27.07.1959. Ex.DA, which had been passed, after noticing the presence of Lalti, therefore, the civil suit, in my view, was time barred. The appellant cannot be permitted to allege that there was no compliance of the principles of natural justice, much less, non-compliance of provisions of Act of 1953 and rules framed there under and therefore, had an audacity to invoke the jurisdiction of the civil Court.

Documentary evidence would prevail upon the oral evidence. No doubt, PW4 has made a statement, that as per the record, no notice was served to Smt. Lalti, but the fact remains, that on perusal of the order, it is evident that it was passed in the presence of Lalti, no evidence, contrary to the same, has been proved from the summoned record from the office of the Agrarian Collector, i.e., zimni orders and various other noting, that department had not sent any notice to Smt. Lalti. There is no dispute to the ratio decidendi culled out in the judgments cited on behalf of Mr. Sandhu,

Advocate that where the order declaring the land surplus has not been served upon the land owner or his/her LRs. In such case, the Civil Court would have a jurisdiction, but the instant case is not the case of such nature as the order dated 27.7.1959, declaring the land surplus was passed in the presence of Smt. Lalti.

Keeping in view the aforementioned observations, the substantial questions of law, noticed above, are answered against the appellant-plaintiff and in favour of respondent-defendants. The lower Appellate Court being the last Court of fact and law rendered a finding on the basis of the oral and documentary evidence and I do not find any illegality and perversity in the same.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 09, 2015

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