

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Regular Second Appeal No.113 of 1988
Date of Decision: 22.4.2015

Union of India and others

Appellants

versus

Deena Nath and others

Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. D.Khanna, Additional Advocate General, Haryana
for the appellants.

Mr. L.N.Verma, Advocate, for the respondents.

RAJIVE BHALLA, J. (ORAL)

The Union of India and the State of Haryana have filed this appeal challenging judgment and decree dated 9.10.1987 passed by Additional District Judge, Sirsa, accepting the appeal filed by the respondent-plaintiffs, setting aside judgment and decree dated 16.8.1986, passed by the Sub Judge 1st Class, Sirsa and as a consequence, decreeing the suit for declaration of ownership filed by the plaintiff-respondents.

A brief reference, to the facts, would be appropriate.

Mal Narain Dass, a displaced person from Pakistan, was allotted land, on 14.10.1949, in two villages, namely, village Kussar, Tehsil Sirsa and village Lakhuwana, Tehsil Dabwali, in lieu of land left

behind in Pakistan. After the demise of Mal Narain Dass, his legal heirs sold the land in village Kussar, to the plaintiff-respondents, vide registered sale deed, dated 9.2.1967 for Rs.27,000/- and part of the land in village Lakhuwana, to Labh Singh. The Managing Officer, Sirsa, found an excess allotment of 6.4-1/2 standard acres and, therefore, forward a reference to the Chief Settlement Commissioner for cancellation of the excess land. The Chief Settlement Commissioner, vide order dated 22.9.1969 (Ex.D1), accepted the reference, ordered cancellation of the excess land of, 6.4-1/2 standard acres and directed the Tehsildar (Sales), Hisar, to hear the vendors and withdraw excess area from the vendee, "last in point of time". A relevant extract from the order reads as follows:-

".....In case, it is found that Mal Narain Dass has no other allotment or area undisposed of then the excess area shall be withdrawn from the vendees, beginning with the vendee last in point of time. The vendees have been directed to appear before the Tehsildar (Sales), Hissar on 15.10.1969."

The Tehsildar (Sales), vide order dated 15.10.1969, retrieved excess land from Labh Singh etc., who filed an appeal. The Chief Settlement Commissioner, accepted the appeal and remitted the matter to the Tehsildar, vide order dated 26.1.1971. The plaintiff-respondents filed CWP No.1822 of 1971, which was dismissed on 25.4.1980, by holding that the Commissioner had merely remanded the matter. The Naib Tehsildar (Sales), thereafter, passed an order dated 25.01.1982, retrieving excess land from the

plaintiff-respondents. The plaintiff-respondents filed an appeal which was accepted by the Assistant Settlement Commissioner, on 8.6.1982, by remanding the matter. The Naib Tehsildar (Sales)-cum-Managing Officer, vide order dated 27.6.1983, once again retrieved excess land from the plaintiff-respondents, who, thereafter filed an appeal before the Settlement Officer-cum-Assistant Settlement Commissioner, Haryana, which was dismissed on 29.7.1983.

The plaintiff-respondents did not pursue any further remedies, under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as "the Act"), but filed a civil suit challenging the orders retrieving excess land by pleading that as they are bona fide purchasers, the land cannot be retrieved from them. The trial court accepted the prayer of bona fide purchaser, but dismissed the suit by holding that Section 36 of the Act bars the jurisdiction of a civil court. The respondents filed an appeal which has been allowed by affirming the finding that the respondents are bona fide purchasers but set aside the finding that the suit is barred and consequently, decreed the suit.

Counsel for the appellants submits that as Section 36 of the Act, bars the jurisdiction of a civil court, from dealing with matters arising under the Act and it is not alleged that orders passed by authorities, were without jurisdiction, the first appellate court had no jurisdiction to hold that the suit is not barred. The substantial question of law that arises for adjudication is, whether the first appellate court has committed an error of jurisdiction while holding, that in the facts and circumstances of the present case, Section 36

of the Act does not bar the jurisdiction of a civil court?

Counsel for the respondents fairly concedes that in view of Section 36 of the Act, the suit filed by the respondents was not maintainable. Counsel for the respondents, however, prays that liberty may be granted to the respondents, to seek their remedy in law against the orders retrieving excess land from the plaintiff-respondents.

I have heard counsel for the parties and appraised the facts. Section 36 of the Act, prohibits a civil Court from entertaining challenge to matters provided for under the Act. The cancellation of a part of the land allotted to Mal Narain Dass, “may” have been passed in an erroneous exercise of jurisdiction, cannot be said to have been passed by an authority that was not vested with jurisdiction.

Counsel for the plaintiff-respondents has, therefore, fairly conceded that the suit was not maintainable.

Consequently, the question of law is answered in favour of the appellants by holding that the suit was barred by Section 36 of the Act. In view of answer of the question of law, it must necessarily follow that the first appellate court has committed an error of law while holding that the suit is maintainable.

The appeal is, therefore, allowed, the judgment and decree passed by the first appellate court is set aside, the judgment and decree passed by the trial court is restored but by modifying the trial court decree by holding that as the suit is not maintainable, the respondents are at liberty to seek their remedy, in accordance with

law.

22.4.2015
VK

(RAJIVE BHALLA)
JUDGE