

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.2366 of 1988
Date of Decision: 18.02.2015

State of Punjab and others

..... APPELLANTS

VERSUS

Raja Ram and others

..... RESPONDENTS

PRESENT: - Mr. Rajesh Bhardwaj, Additional Advocate
General, Punjab for the appellants.

Mr. H.S.Bhardwaj, Advocate with
Mr. G.S. Dhillon, Advocate
for respondents No.1,3 and 7.

CORAM: **HON'BLE MR. JUSTICE SHEKHER DHAWAN**

- 1) Whether Reporters of the 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?

SHEKHER DHAWAN, J.

This Regular Second Appeal is directed
against judgment and decree dated 12.05.1988

passed by the Court of Additional District Judge, Bhatinda whereby the judgment and decree dated 27.02.1986 passed by Senior Sub Judge, Bhatinda was set aside.

For convenience sake, hereinafter, reference to the parties is being made as per their status in the Civil Suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that plaintiffs Raja Ram and others had filed suit for declaration against State of Punjab and others i.e. defendants No.1 to 4 as well as against defendants No.5 to 7 (Natha Singh, Kishan Singh and Assa Singh) to the effect that the plaintiffs are owners in possession of land measuring 158 kanals 2 marlas. One Sunder Singh son of Darshan Singh, resident of Village Karrial, District Gujrawala (now in Pakistan) was the owner of land measuring 42 standard acres. After partition, Sunder Singh migrated to India. Immediately after migration, he died. Defendants No.5 to 7 were collateral of Sunder Singh. They had preferred claim for allotment of land in lieu of land left by Sunder Singh in Pakistan. Defendants No.5 to 7 were allotted 22 standard acres of land, which was the land in

dispute. The possession was delivered to defendants No.5 to 7 and proprietary rights were also conferred upon them on 06.04.1956. Subsequently, Smt. Kartar Kaur, Kewal Kaur (daughters of Sunder Singh) and Balkar Singh (maternal grandson of Sunder Singh) were also allotted land measuring 28 standard acres of land in village Bras, District Karnal in lieu of land left behind by Sunder Singh in Pakistan. It was a case of double allotment of land in respect of land left behind by Sunder Singh in Pakistan. Litigation started amongst defendants No.5 to 7 on one side and heirs of deceased Sunder Singh on the other side. The order of allotment in favour of defendants No.5 to 7 was cancelled on the basis of judgment dated 26.04.1982 passed by this Court. However, the plaintiffs purchased the suit land from defendants No.5 to 7. It is the case of the plaintiffs that they had made purchases of the land from defendants No.5 to 7 after making due inquiry from the revenue officials and other persons and the land was purchased vide registered sale deed dated 12.02.1957 and the plaintiffs received the possession of the suit land after execution of the sale deed as owners. As per the plaintiffs, they are owners of the suit land and are in exclusive possession of the same since the execution of the sale deed

in their favour. Consolidation proceedings had taken place in the village and the suit land was allotted to the plaintiffs in lieu of the land purchased by them from defendants No.5 to 7.

As per plaintiffs, Tehsildar Mansa had issued notice for possession of the suit land from the plaintiffs and to recover the arrears of rent for use and occupation of the land after judgment of this Court dated 26.04.1982. The plaintiffs also assailed their claim on the plea that they have become owners of the suit land by way of adverse possession. The plaintiffs prayed that service of notice under Section 80 CPC be dispensed with.

The suit was contested by defendants No.1 to 4 i.e. State of Punjab before the Court of First Instance. However, defendants No.5 to 7 were proceeded ex parte vide orders dated 27.05.1983 and 20.10.1984. Preliminary objections were taken by defendants No.1 to 4 regarding jurisdiction of the Civil Court as the suit land is part of the compensation pool under the Punjab Package Deal Properties (Disposal) Act. Preliminary objection was also taken that notice under Section 80 CPC was not served before filing the suit and the suit was not maintainable in the present form. However, on merits, defendants No.1 to 4

took the plea that Sunder Singh was allotted land measuring 22 standard acres in Village Adamke and it was a case of double allotment having been made in the name of Sunder Singh in lieu of the land left behind by him in Pakistan. Allotment of land made at Village Adamke was cancelled and the said order was upheld by this Court vide judgment dated 26.04.1982. Defendants No.5 to 7 had no legal right to sell the suit land to the plaintiffs. More so, the plaintiffs again became the owners of the suit land on the basis of sale deed executed by defendants No.5 to 7 as they had no right or interest to alienate the same in favour of the plaintiffs.

Learned trial Court settled the following issues and the parties were put to trial:

- “1. Whether the plaintiffs are the bonafide purchaser for consideration, without notice of the land in dispute? OPP
2. Whether the plaintiffs have become the owner of the land in dispute through adverse possession? OPP
3. Whether this Court has got no jurisdiction to try this suit? OPD
4. Whether the present suit is maintainable with service of the notice under Section 80 CPC? OPD
5. Whether the suit is not maintainable in the present form? OPD

6. Whether the suit is not maintainable since the plaintiffs had other effective remedies provided in the Packing Deal Property (Disposal) Act, 1976? OPD
7. Whether the plaintiffs are entitled to the injunction prayed for? OPP
8. Relief."

The learned Court of First Instance after appreciating oral as well as documentary evidence, decided issues No.1 and 2 against the plaintiffs and in favour of defendants No.1 to 4. Issues No.3, 5 and 6 were decided in favour of the plaintiffs whereas issues No.4 and 7 were decided against the plaintiffs and consequently the suit of the plaintiffs was dismissed. Appeal filed by the plaintiffs was accepted by the Court of First Appeal that the plaintiffs were declared owners in possession of land measuring 158 kanals 2 marlas in Village Adamke on account of bonafide purchasers for consideration without notice and for permanent injunction restraining the State of Punjab from dis-possessing the plaintiffs from the suit land forcibly and they were also restrained from recovering any amount on account of arrears of rent. Hence the present Regular Second Appeal before this Court.

When the appeal was admitted, no substantial question of law was framed. Even no proposed substantial

question of law has been placed on record during the pendency of appeal. Learned counsel for the appellant took the plea that the substantial question of law can be settled even at the stage of Regular Second Appeal if the Court comes to the conclusion that there are some substantial questions of law which require determination and decision by the Court. Such a law was laid down by Hon'ble the Supreme Court in case of **Santosh Hazari Vs. Purushottam Tiwai (Dead) by LRs.**, 2001(2) JT 407 that if substantial questions of law not framed at the time of admission of appeal, the same can still be settled and controversy between the parties can be settled during the hearing of the Regular Second Appeal.

Accordingly, this Court proceed to decide the present controversy after formulating the following substantial questions of law:

1. Whether the Courts below misread and mis-appreciated the evidence available on file which is resulted into mis-carriage of justice.

I have heard Mr. Rajesh Bhardwaj, Additional Advocate General, Punjab for the appellant and Mr. H.S.Bhardwaj, Advocate with Mr. G.S. Dhillon, Advocate for respondents No.1,3 and 7 and perused the record.

Mr. Rajesh Bhardwaj, Additional Advocate

General, Punjab representing the State of Punjab took the plea that the Court of First Appeal had fallen in error while reversing the findings recorded by the Court of First Instance which was otherwise based on facts of the case and evidence available on file. As per learned counsel for the appellant, most of the facts are not disputed that Sunder Singh had died and his legal representatives were entitled to get land in lieu of land left by him in Pakistan. However, it was a case of double allotment. The land allotted to defendants No.5 to 7 in village Adamke was cancelled and the said order of cancellation of land was upheld upto this Court. Defendants No.5 to 7, namely, Natha Singh, Kishan Singh and Assa Singh had no right to alienate the suit land to the plaintiffs-respondents. There was absolutely no evidence available on file that any efforts were made to trace out the natural heirs of Sunder Singh and the conduct of the plaintiffs-respondents was suspicious and they could not be held to be bonafide purchasers for consideration.

Learned Court of First Appeal had completely ignored these facts while reversing the findings recorded by the Court of First Instance on this point and, as such, the said findings recorded by the Court of First Appeal are liable

to be reversed.

While arguing on this point, Mr. Bhardwaj, learned counsel for the plaintiffs-respondents took the plea that most of the facts are not disputed that Sunder Singh was entitled to seek land as he had left land in Pakistan at the time of partition. Defendants No.5 to 7 were allotted land and they had sold the land in dispute to the plaintiffs-respondents on the basis of registered sale deed. The plaintiffs-respondents had made bonafide inquiries from the record as well as from the concerned person before purchasing the suit land and their rights as bonafide purchasers are protected under the law. More so, this liberty to take the plea of bonafide purchasers was allowed to be taken by this Court only vide Ex.DX. The Court of First Appeal had rightly recorded those findings while affirming the rights of the plaintiffs-respondents being bonafide purchasers for consideration.

I have given thoughtful consideration to the arguments advanced by learned counsel for the parties and also perused the record.

As most of the facts are not disputed that Sunder Singh had left agriculture land in Pakistan and after partition the land was to be allotted to the legal representatives of

Sunder Singh. Inadvertently double allotment of land was made. The said double allotment of land was cancelled and the land allotted to Natha Singh, Kishan Singh and Assa Singh etc. in Village Adamke was cancelled by Financial Commissioner, Punjab vide order dated 29.06.1971. The said order passed by the Financial Commissioner, Punjab was affirmed by this Court vide judgment Ex.DX dated 26.04.1982.

At the time of passing of judgment Ex.DX, this Court had given right to the plaintiffs-respondents to take the plea of bonafide purchaser at appropriate time and for ready reference relevant portion of Ex.DX is being reproduced as under:

“As regards the additional contention advanced on behalf of the vendees, it may be observed that it would be open to them to resist their dispossession from the land in question by establishing in the Civil Court, if so advised, that they had purchased the land bonafide for consideration from the ostensible owner as and when action to dispossess them from the land is taken by the competent authority.”

The plaintiffs-respondents had taken this plea of bonafide purchaser for consideration before the Court of First Appeal and the same plea was accepted by the Court

of First Appeal while deciding the case of the plaintiffs-respondents on 12.05.1988. The appellants were resident of Village Adamke where the disputed land is situated whereas daughter of Sunder Singh resided in village Bras, District Karnal where they got the land allotted and, as such, the appellants could not know the heirs of deceased Sunder Singh. This fact was rightly believed by the Court of First Appeal as there was no rebuttal on that point. Even, no relative of Sunder Singh deceased ever resided in village Adamke. There was every reason for the plaintiffs to believe that Sunder Singh had not left behind any daughter or daughter's son in whose favour allotment of land could be made. The Court of First Appeal rightly came to the conclusion that it appears that the plaintiffs made bonafide inquiry when they got verified from revenue record i.e. Jamabandi and in the revenue record name of allottees was reflected if mutation was also sanctioned on the basis of said allotment in favour of the allottee. The land was purchased on 12.02.1957 whereas the order for cancellation of land situated in village Adamke had attained finality by this Court on 26.04.1982. The said findings recorded by learned Court of First Appeal are based on facts of the case and evidence available on file and the same do not call for

any interference and are hereby affirmed. However, the plea regarding plaintiffs being owners of the land by way of adverse possession was rightly negated by the Courts below.

In view of the above discussion, the present Regular Second Appeal is without any merit and the findings returned by the Court of First Appeal are hereby affirmed and consequently the present Regular Second Appeal is dismissed.

(SHEKHER DHAWAN)
JUDGE

February 18, 2015
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