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**IN THE HIGH Court OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.1599 of 1989 (O&M)
Date of Decision: 25.02.2015

Shiv Dei Enterprises and anotherAppellants

Vs

Udami and others**Respondents**

CORAM:HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikas Mohan Gupta, Advocate
for the appellants.

Mr. Vikas Singh, Advocate
for respondent No.1.

Respondents No.2 to 12.
(deleted vide order dated 15.12.1992).

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?***

RAJ MOHAN SINGH, J.

[1]. Defendants No.12 and 1 are in second appeal against the judgment and decree dated 23.05.1989 passed by Additional District Judge, Sirsa, vide which judgment and decree dated 15.01.1987 passed by Senior Sub-Judge, Sirsa, was reversed and the suit of the plaintiff was decreed in *toto*.

[2]. Facts of the case are that plaintiff-Udami filed suit for permanent injunction against the defendants seeking restraint order from interfering in his possession over the suit land measuring

20 kanal 18 marla and also for possession of an area measuring 45' x 65' of Rect. No.302, Killa No.2/2 min (0-11). The case of the plaintiff was that he was an ejected tenant and was allotted 65 kanal 12 marla of land in the area of Ellenabad, which included the suit land. Possession was delivered to him by the Surplus Authorities on 23.05.1970 and Rapat No.374 was entered by the Revenue Patwari.

[3]. It was alleged that the suit land was previously under the tenancy of Bahadur and Bhaga sons of Shera. When they started interfering in the possession of the plaintiff, he filed a **Civil Suit No.260 of 1971** against them. Bahadur and Bhaga had claimed their possession in the said suit and the same was dismissed by the trial Court on 27.02.1973. In appeal the suit was decreed vide judgment and decree dated 25.03.1974 passed by Additional District Judge, Hisar. Resultantly, Bahadur and Bhaga thereafter filed **RSA No.1330 of 1974** which was dismissed on 09.02.1983 by this Court.

[4]. Plaintiff further alleged that in the meantime Bahadur and Bhaga obtained some collusive purchase order under Section 18 of the Punjab Security of Land Tenures Act, 1953 (for short 'the Act') from the Court of Assistant Collector, 1st Grade, Sirsa on 30.08.1973 against the landowner (Jai Chand Lal). The said order was obtained in collusion with the owner and by taking undue benefit of that collusive purchase, they executed fictitious sale deeds in respect of suit land in favour of defendants.

[5]. Plaintiff pleaded that defendants had no right to interfere in his possession on the basis of such sale deeds as their vendors namely Bahadur and Bhaga themselves were not in possession of the suit land and were not even competent to transfer the same to the defendants. Plaintiff further alleged that in the intervening night of 4/5 September, 1985 defendant No.12 forcibly occupied area of 45' x 65' despite the interim order. Consequently, prayer for possession of the portion occupied by defendant No.12 was also incorporated.

[6]. Defendant No.1 contested the suit and denied the allotment in favour of the plaintiff because Bahadur and Bhaga were cultivating the land as owners on the strength of purchase order under Section 18 of the Act. He alleged that allotment in favour of the plaintiff was cancelled by the Competent Authority and plaintiff never remained in possession of the suit land. Rapat Roznamcha No.374 was claimed to be inconsequential as the same was a paper transaction only. He claimed himself to be the *bona fide* purchaser and in possession of the suit land from Bahadur and Bhaga. He had also raised construction over the portion of the suit land. Besides taking other objections, it was prayed that the suit be dismissed with costs. Other defendants also opposed the prayer in the suit by taking pleas in their separate written statements.

[7]. On the basis of the pleading of the parties, trial Court framed the following issues:-

- “1. *Whether the plaintiff is in possession of the suit land as alleged? OPP*
2. *Whether the plaintiff is entitled to the injunction prayed for? OPP*
3. *Whether the suit is not maintainable in the present form? OPD*
4. *Whether suit is bad for non joinder of necessary parties? OPD*
5. *Whether the suit is liable to be stayed under section 10 of C.P.C? OPD*
6. *Whether the plaintiff has no locus standi to file the present suit? OPD*
- 6-A. *Whether the plaintiff was in possession of the entire suit land at the time of filing of the suit, if so to what effect? OPP*
- 6-B. *Whether the defendant No.12 has illegally occupied a portion of the suit land as alleged in the amended plaint after filing of the suit, if so to what effect? OPP*
- 6-C. *Whether the suit has not been properly valued for the purposes for court fee and jurisdiction? OPD*
7. *Relief.”*

[8]. Both the parties led their evidence. Trial Court took up issues No.1, 2, 6-A and 6-B jointly and concluded that plaintiff was entitled to injunction only in respect of his part of the suit land which was in his possession at the time of filing of the suit land. Issues No.1, 2 and 6-A were decided partly in favour of plaintiff and partly against him, whereas issue No.6-B was decided wholly against the

plaintiff. Plaintiff was held to be in possession of the suit land except land measuring 1 kanal 6 marla comprised in Rect. No.302 Killa No.2/2 min. which was in possession of defendant No.12 and 2 Kanals of land comprised in Sq. No.302 Killa Nos.3/7 and 3/6 which was in possession of defendant No.1. Accordingly after deliberating upon other issues, trial Court decreed the suit of the plaintiff in part against the defendants except land measuring 1 Kanal 6 Marla owned and possessed by defendant No.12 and 2 Kanal owned and possessed by defendant No.1. Qua remaining land defendants were restrained from interfering in possession of the plaintiff vide judgment and decree dated 15.01.1987.

[9]. Feeling aggrieved against the aforesaid judgment and decree, plaintiff filed **Civil Appeal No.2-CA** on 23.01.1987. Defendants-Sadhu Singh, Jagdish Singh and Kahan Singh also filed cross appeal before the Lower Appellate Court. Both the appeals were consolidated and were decided vide common judgment dated 23.05.1989. Lower Appellate Court decreed the suit of the plaintiff in *toto* while reversing the findings of the trial Court on issue No.1.

[10]. Defendants No.12 and 1 have filed the present appeal impleading all the defendants as proforma respondents No.2 to 12. These proforma respondents have already been deleted vide order dated 15.12.1992 being unnecessary as they were not having any subsisting claim in the present *lis*. Therefore, the only contest remains between defendants No.12 and 1 on one hand and

respondent No.1/plaintiff on the other hand.

[11]. During the pendency of the appeal, learned counsel for the appellants formulated the following substantial questions of law:-

- “i) Whether in the facts and circumstances of the case, the Appellant would be deemed to be bonafide purchaser having purchased the suit land after making bonafide sufficient enquiries and consulting and verifying the revenue records?*
- ii) Whether a party can be bound by a Judgment of Civil Court, though is not party to such suit?*
- iii) Whether Purchase Order under Section 18 of the Punjab Security of Land Tenures Act, would be deemed to be valid as having not challenged?*
- iv) Whether the report of the Local Commissioner was sufficient to non-suit the plaintiff in the present case?*

[12]. Plaintiff-Udami appeared as PW-1 and reiterated his stand of allotment of 65 kanal 12 marla of land in his favour by the Surplus Authorities as a re-settled tenant and delivery of actual physical possession on 23.05.1970. Bahadur and Bhaga were cultivating the suit land and he filed a civil suit which was accepted in appeal and attained finality in this Court. On the strength of this, plaintiff claimed his possession over the suit land. He alleged that in the intervening night of 4/5 September, 1985, defendant No.12 made forcible entry qua the area of 45' x 65' in violation of the interim order of the Court and thus, plaintiff sought possession qua this portion. The record of civil suit filed by the plaintiff proved that plaintiff was held to be in

possession of the suit measuring 20 kanal 18 marla and Bahadur, Bhaga and Jai Chand Lal were restrained from interfering in his possession. The said decree had already attained finality in view of dismissal of **RSA No.1330 of 1974** on 09.02.1983. Defendants derived their title from Bahadur and Bhaga, therefore, they were bound by the judgment and decree passed against their vendors as presumption of continuity of possession has to be presumed.

[13]. Bal Mukand, Patwari appeared as DW-1 and on the basis of *Jamabandi* for the year 1977-78, and *Khasra Girdawaris* of period 1978 to *Rabi* 1981 deposed that Bahadur and Bhaga had purchased the suit land and mutation (Ex.DW1/3) sanctioned on 12.09.1975 by the Assistant Collector, IInd Grade and revenue record did not show plaintiff to be in possession of the suit land. Varinder Kumar, Document Writer appeared as DW-2. According to him, he was the scribe of sale deed Ex.D2/1 executed by Bahadur and Bhaga in favour of defendant No.12 pertaining to land measuring 1 kanal 6 marlas for a sum of Rs.46,800/-. Sukh Ram was the attesting witness who appeared as DW-3 and sought to prove the execution of the sale deed in favour of defendant No.12. Badri Parshad Gupta was the partner in the firm-Defendant No.12, who also appeared as DW-4 and supported the case of the defendant. The entire tenor of evidence of the defendants was directed towards proving the possession of the defendants and the purchases by the defendants No.12 and 1 were claimed to be on account of *bona fide* nature of

their beliefs. Din Dayal, Document Writer appeared as DW-5 and proved the execution of lease deed (Ex.DW5/1) in favour of defendant No.12. The lease deed was in respect of 1 kanal 4 marlas of land which was leased out by Bahadur and Bhaga on 12.12.1980 in favour of defendant No.12. Similarly Munshi Ram-DW-6 supported the case of the defendant that defendant No.12 had started the agency of Eicher Tractors on the part of the suit land and had constructed a room and boundary wall thereon. Other witnesses namely Inderjit (DW-7), William Massih (DW-8) and Bhupinder Singh (DW-9) also supported the case of the defendants by saying that they had seen the opening of Eicher Agency and tractor repairing work having been performed over the part of the suit land and the same was not in cultivation by anyone. Defendant No.1 pleaded that he had purchased 1 kanal land from Bahadur and 1 kanal of land from Teja Singh in the year 1978 and 1981 respectively, and had also raised a boundary wall and a room on the land so purchased by him. Thus, he claims himself to be in possession of the said land. He pleaded so by appearing as DW-10. DW-11 Murli Dhar supported his case.

[14]. Sh. Dinesh Kumar, Advocate appointed as Local Commissioner gave his report as Ex.DW4/A. In his report he pointed out presence of pacca walls and rooms on the shed over the suit land and did not show any cultivation over the suit land.

[15]. Trial Court was swayed away with the aforesaid evidence of

the defendants to show that defendants No.12 and 1 were in actual physical possession of the land so purchased by them. Lower Appellate Court noted the perversity in the findings recorded by the trial Court. Filing of earlier Civil Suit No.260 of 1971 was an admitted fact Ex.P-1 Rapat No.375 was recorded by Patwari and Additional District Judge, while allowing the appeal on 25.03.1974 gave finding that the land was allotted to Udami by Surplus Authorities and he was delivered possession of that land on 23.05.1970. In para No.12 of the judgment, findings were to the effect that Udami was in possession of the suit land at the time of this suit and Bahadur and Bhaga were not in possession of the land at the time of filing of the suit land. The findings recorded in the earlier suit on the factum of possession were upheld upto this Court. Lower Appellate Court noted the perversity in the judgment of the trial Court and held that Bahadur and Bhaga were not in possession of the suit land because copy of *Jamabandi* for the year 1982-83 Ex.D/1 revealed that Dharampal and Teja Singh to be owner in possession of the land in Khasra Nos.307/7 and 307/6 when the vendors of the defendants No.12 and 1 were not found to be in possession of the suit land upto the stage of filing of the present suit, the alleged possession of defendants No.12 and 1 in the present suit remained to be conspicuous.

[16]. Lower Appellate Court held that plaintiff was proved to be in possession in whatsoever capacity and he was not to be

dispossessed by use of force. Consequently, Lower Appellate Court accepted the appeal, thereby decreeing the suit of the plaintiff in *toto*.

[17]. I have heard the arguments of both the sides and have perused the relevant record.

[18]. Perusal of para No.5 of the plaint reveals that the plaintiff has mentioned factum of obtaining collusive order of purchase under Section 18 of the Act by Bahadur and Bhaga. Learned counsel for the appellants has contended that in view of this recital, it was imperative on the part of the plaintiff to assail the said transaction. Secondly Bahadur and Bhaga have not been impleaded as party respondents in the present suit. On the strength of this submission, learned counsel for the appellants stressed that allotment dated 13.08.1973 in favour of Bahadur and Bhaga cannot be questioned and possession of defendants No.12 and 1 is the natural consequence of such transaction. In the absence of any challenge having been made to this document, plaintiff has virtually admitted document in question and has not sought any declaration to seek annulment of the document in question. He has also argued that defendants No.12 and 1 are the *bona fide* purchasers and plaintiff-Udami was never in possession of the suit land. He also relied upon the revenue record to supplement his arguments that even in the revenue record, possession of the defendants is depicted which shows that the purchase in favour of Bahadur and Bhaga were duly implemented in

terms of revenue record.

[19]. Learned counsel for the appellants submitted that the scope of the earlier suit was only that the plaintiff thereof could have been dispossessed in due course of law. Since the allotment in question of plaintiff was a conditional allotment and the plaintiff did not deposit the installment and as consequence thereof on cancellation of the allotment, possession was taken in due course. He further argued that Bahadur and Bhaga were not made parties nor the transaction of their purchase was assailed in the suit by seeking declaration thereof and lastly claimed that defendants No.12 and 1 are the *bona fide* purchasers and their claim should be protected.

[20]. As against this learned counsel for the respondents has argued that issue of possession had already stood decided in the earlier litigation against the vendors of the appellants by judgment and decree of the Lower Appellate Court dated 23.05.1974 (Ex.P-2) and decision rendered in **RSA No.1330 of 1974** decided on 09.02.1983 (Ex.P-3). The findings recorded therein are conclusive in nature and no Court can interpret those findings to the contrary. He vehemently submitted that the findings recorded by the trial Court on issue No.1 are perverse. He took the Court to para No.10 of the Lower Appellate Court wherein Dharampal and Teja Singh were shown to be in possession of the *Khasra* Nos.303/7 and 307/6 which were not even disputed *khasra* numbers hence reference to these

persons was claimed to be meaningless.

[21]. Learned counsel for the respondents further submitted that there was no need to challenge the alleged transaction dated 30.08.1973 (purchased under Section 18 of the Act) because they had the title in view of the earlier suit decided in their favour. At this juncture he took me to page No.117 of the record. Wherein nature of earlier suit was shown to be declaration and injunction on account of filing amended plaint in which the plaintiff-Udami claimed declaration of his right with regard to 20 kanal 18 marla of land. He further relied upon the findings recorded at page No.123 of the record i.e. judgment of Lower Appellate Court dated 25.03.1974. In the relied judgment Para No.13 of the said judgment is reproduced hereunder:-

- “(i) Udami's civil appeal No.111 of 1973 is accepted, the judgment and decree under appeal are set aside and his suit for declaration with consequential relief is decreed against Bahadur, Bagga and Jaichai Lal with costs throughout. It is declared that Udami is a re-settled tenant in possession of 20 kanals 18 marlas land and that the aforesaid defendants will not interfere in the possession in an illegal manner.*
- “(ii) Udami's civil appeal No.112 of 1973 is accepted, the judgment and decree under appeal are set aside and the suit instituted by Bahadur and Bagga is dismissed, leaving the parties to bear their own costs.”*

[22]. On the strength of aforesaid, learned counsel for the

respondents submitted that plaintiff was held owner in possession of the land in question in the earlier litigation and thus findings were conclusive in nature and had attained finality. No order of cancellation for allotment in favour of plaintiff was ever made nor any evidence to that effect was produced by the defendants. Learned counsel by attacking on Ex.D-1 submitted that real picture is crystal clear in view of cryptic mentioning of *khasra* numbers showing Dharampal and Teja Singh to be in possession of *Khasra* Nos.307/7 and 307/6. Since the defendants No.12 and 1 have stepped into the shoes of their vendors, therefore, they cannot wriggle out of the liabilities of their vendors. Since the alleged right in favour of defendants No.12 and 1 came during the pendency of the earlier litigation, therefore, the same was squarely hit doctrine of *lis pendens*.

[23]. In view of aforesaid defendants No.12 and 1 cannot be held to be *bona fide* purchasers. They could not have improved their title over and above the title held by their vendors. Even the appellants could not protect their alleged possessory title as their vendors were not found to be in possession of the suit land on the strength of judgment and decree dated 25.03.1974 Ex.P-2 passed by Lower Appellate Court which was confirmed in **RSA No.1330 of 1974** decided on 09.02.1983 (Ex.P-3). Consequently, question No.1 is answered against the appellants.

[24]. Question No.2 is also liable to be answered against the

appellants. There was no necessity of appellants being parties to the civil suit. Vendors were parties to the civil suit in the earlier litigation in which declaratory title and dispossessory title both were held in favour of the plaintiff. Plaintiff has mentioned the transaction of alleged purchase dated 30.08.1973 in para No.5 of the plaint and the same was not necessary to be assailed because plaintiff had perfect title in view of decision rendered in Exs.P-2 and P-3 in previous litigation and, therefore, even if Bahadur and Bhaga were not impleaded as party respondents/defendants in the present suit, that did not improve the case of the appellants in any manner. Hence question No.2 is also liable to be answered against the appellants.

[25]. Question No.3 has its answer in questions No.1 and 2 which has already been explained. The alleged purchase under Section 18 of the Act cannot be held valid in view of decisions of earlier litigation which have attained finality, therefore, question No.3 is also answered against the appellants. There was no necessity of challenging the same because plaintiff had perfected his title in the earlier suit.

[26]. The report of Local Commissioner was not sufficient to non-suit the plaintiff in view of overwhelming evidence on record. Report of Local Commissioner is an opinion document and is not conclusive.

[27]. Resultantly no question of law worth cognizance is involved in the present appeal.

[28]. In view of what has been stated above, this appeal is totally bereft of merits and is dismissed as such, leaving the parties to bear their own costs.

February 25, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE