

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

**RSA No. 2072 of 1989
Date of decision : 18.9.2015**

State of Punjab and another **.....Appellants**

v.

Naranjan Singh and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

Present : Ms. Diepa Singh, Addl. AG, Punjab, for the appellants

Mr. G.S. Dhaliwal, Advocate, for the respondents

Ramendra Jain, J.

State has filed the present regular second appeal against the judgment and decree dated 20.8.1988 passed by the learned Additional District Judge, Patiala, declaring the respondents-plaintiff as absolute owners of the agricultural land measuring 69 kanals 14 marlas, situated in village Kotla Suleman, Tehsil Sirhind, District Patiala, detailed in the head note of the plaint (in short 'the suit land').

Brief facts of the case are that the suit land being a 'muslim evacuee property', was allotted to one Padma Wati widow of Rai Sahib Parma Nand in or around the year 1950 as a displaced person on quasi permanent basis. Thereafter, she was made absolute owner of it by the Government, giving her permanent proprietary rights. Consequently, her name was also entered as such in the revenue record. She sold 3/4th share of the suit land in favour of one Pritam Singh and remaining 1/4th share to Kapoor Singh, both sons of Karam Chand, residents of village Kotla Suleman, Patiala, for a sale consideration of ₹

8000/-, vide registered sale deed No. 1661 dated 24.10.1960. Kapoor Singh died and thus, his 1/4th share devolved upon his four sons, three daughters and widow. In a family settlement between them, three daughters of deceased Kapoor Singh relinquished their share in favour of their brothers and mother i.e. respondents-plaintiff No. 4 to 9. Similarly, a family settlement took place in between Pritam Singh-vendee and his three sons, according to which, he gave his 3/4th share to them i.e. respondents-plaintiff No. 1 to 3. In this way, all the respondents-plaintiff became joint owner in possession of the suit land. As per case of the respondents-plaintiff, the appellant-State had no right, title or interest, whatsoever in the suit land, but despite that it was intending to evict them from the suit land illegally and forcibly. Hence, they were liable to protect their possession under Section 41 of the Transfer of Property Act, 1882. With these broad submissions, the respondents-plaintiff filed a suit for permanent injunction to restrain the appellants-defendant from interfering in the suit land in any manner, whatsoever.

The appellants-defendant contested the suit by filing written statement, taking various preliminary objections viz- maintainability; suit was barred by the principle of res judicata; civil Court had no jurisdiction in view of the provisions of Section 16 of the Punjab Package Deal Property (Disposal) Act, 1976 etc. On merits, the State claiming its own ownership over the suit property, pleaded that the respondents-plaintiff were in un-authorised possession of the same. The 'muslim evacuee property' character of the suit land and its allotment to Padma Wati widow of Rai Sahib Parma Nand on quasi permanent basis and then giving her permanent proprietary rights was admitted. However, it was pleaded that the disposal of the suit land was to be done afresh under the

Punjab Package Deal Property (Disposal) Act and the rules framed thereunder because after allotment of the suit land to Padma Wati, a complaint was received and on enquiry of the same, it was found that she was holding excess land in her name. Consequently, on a suo motu reference made by the Chief Settlement Commissioner, Punjab, permanent rights in respect of the excess land to the extent of 20.9½ SAS were cancelled by him vide order dated 2.2.1963. Accordingly, a letter dated 25.2.1963 regarding cancellation of allotment of excess land, was issued by the then Assistant Registrar (L) for implementation of the same in the revenue record. The Chief Settlement Commissioner, Punjab was within his jurisdiction to pass such orders under Section 24 (2) of the Displaced Persons (C & R) Act, 1954 and thus, Padma Wati - vendor had remained with no right, title or interest in the concerned area. Since the respondents-plaintiff had purchased the cancelled area from Padma Wati-vendor, therefore, they had also remained with no right, title or interest. Accordingly, the suit was liable to be dismissed, because Tehsildar (Sales), Patiala or Tehsildar, Bassi were fully competent to evict the respondents-plaintiff from the suit land by following due process of law.

Replication was filed, denying the contents of the written statement and that of reiterating the plaint, besides that the suit property had never fell under the Punjab Package Deal Property Act.

The learned trial Court after framing necessary issues and recording evidence to the satisfaction of both the sides, partly decreed the suit for permanent injunction, restraining the appellants-defendant from dispossessing the respondents-plaintiff from the suit land illegally or forcibly except in due course of laws. The learned trial court also directed the appellant to give

preference to the respondents-plaintiff or the original vendees to purchase the suit property in accordance with the rules and regulations framed by the concerned department for such allotment in compliance of the order of the Chief Settlement Commissioner dated 28.8.1978, while deciding their application pending before the Tehsildar (Sales), Fatehgarh Sahib, vide judgment and decree dated 16.7.1987.

Since Issues No. 3 and 4 regarding declaration of ownership of the respondents-plaintiff over the suit land and jurisdiction of the civil Court, were decided against the respondents-plaintiff, therefore, they preferred an appeal, which after hearing both the sides was allowed in toto, by the learned Additional District Judge, Patiala, vide his judgment and decree dated 20.8.1988, by reversing the findings of the learned trial Court on Issues No. 3 to 5 in favour of the respondents-plaintiff, declaring them as absolute owners of the suit property and further that the civil Court had every jurisdiction to decide the matter in dispute. Hence, this appeal.

Learned counsel for the appellants-defendant argued that the learned Appellate Court has erred in holding jurisdiction of the Civil Court in deciding the matter in dispute, though the same was expressly barred under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and Section 6 of the Punjab Act, 1976. Both the Courts below have also wrongly held that the respondents-plaintiff were entitled to protection under Section 41 of the Transfer of property Act.

On the other hand, learned counsel for the respondents-plaintiff strongly opposed the above arguments by submitting that another RSA No. 2523 of 1992 titled as **State of Punjab v. Lachhman Singh and others** qua the same

land has already been dismissed by this Court vide order dated 10.10.1993. Hence, this appeal is barred by the principle of constructive res judicata. Even otherwise, the appellant State is estopped by its own acts and conduct to agitate this appeal, in view of the aforesaid decision dated 10.10.1993. He further contended that the present second appeal before this Court was not maintainable, because no substantial question of law has been raised. The same was only maintainable, when some substantial question of law was involved. The learned trial Court has referred **Gehna Singh v. Union of India 1975 PLJ 395**, wherein it has been held that if a land allotted to an allottee is cancelled without hearing his vendee or transferee, the same has not binding effect upon the transferee and he has got independent right to defend the title by filing a suit.

After giving my thoughtful consideration to the submissions made by both the sides, the present appeal deserves dismissal in toto, because, the issue regarding jurisdiction in such matters has already been decided for all times to come in “**Kali Ram v. UOI, 376 PLR 475**”. In that case this Court has even gone to the extent that a suit for declaration and perpetual injunction and for cancellation of allotment of 'evacuee property' by the Chief Settlement Commissioner, after its sale under the Displaced persons (Compensation and Rehabilitation) Act, 1954, is maintainable. It has also been held therein that bona fide purchaser in such a case is protected under Section 41 of the Transfer of Property Act and he becomes absolute owner of the property purchased by him, notwithstanding the fact that allotment in favour of his vendor was subsequently cancelled. More so, vide order dated 10.10.1993, a regular second appeal filed by some other vendees of the transferee of the original allottee Padma Wati qua the suit land has been dismissed by this Court. Therefore, this

appeal has to met the same fate. Even otherwise, no substantial question of law has been raised. I have gone through the impugned judgment and find no illegality or perversity in the same.

No other point was urged before me.

In view of the discussion above, the present appeal fails and is hereby dismissed with costs.

(RAMENDRA JAIN)
JUDGE

18.9.2015

Ashwani