

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

RSA No.1110 of 2011.
Date of Decision: 22.09.2015.

Santa Singh

....Appellant.

VERSUS

State of Punjab and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Mehar Singh Rai, Advocate for the appellant.

SNEH PRASHAR, J.

This is an appeal assailing the concurrent findings of learned trial Court and first appellate Court by virtue of which Civil Suit No.382-1 of 01.04.1999 for declaration filed by appellant-plaintiff Santa Singh was dismissed.

Precisely, the relevant facts as they emerge from the record are that appellant-plaintiff Santa Singh, claiming declaration that he is owner in possession of land measuring 14 Kanals 10 Marlas (detailed description given in the head note of the plaint as per Jamabandi for the year 1992-93) situated in the area of village Walleyshah Uttar, Tehsil Fazilka, on the basis

of an order passed by Tehsildar Sales cum Mall on behalf of the Central Government (defendant No.2) and duly proved by Sales Commissioner/S.D.M., Fazilka (defendant No.3) and also on the basis of the conveyance deed dated 24.06.1998 registered on 03.08.1998 vide Vasika No.2230 by Sub Registrar, Fazilka. As a consequential relief an injunctive order restraining the defendants from effecting any change in the revenue record by deleting his (plaintiff's) name and from transferring/alienating the suit land or ousting him illegally and forcibly was sought.

The plaintiff pleaded that he had been in peaceful and continuous possession of the suit land as *Gair Marusi* under the Central Government for the last nine years. As per policy of the Government, being eligible person, he filed an application to get the suit land allotted on fixed price settled by the Government. Scrutinizing the papers submitted by him, Tehsildar Sales allowed his application and forwarded the case to Sales Commissioner/S.D.M., Fazilka, who after perusing the record gave his approval. The entire sale price fixed was deposited by him after which conveyance deed was issued in his favour on 24.06.1998 and was got registered with Sub Registrar, Fazilka on 03.08.1998. Mutation No.179 was also sanctioned in his name by the revenue officer and in that manner he became owner in possession of the suit land. The defendants were now threatening to cancel the allotment in his favour and intended to oust him illegally and forcibly, which necessitated filing of the suit.

Respondents-defendants appeared and contested the suit on

numerous legal and factual grounds. They submitted that the suit land belongs to Central Government Border Security Force (for short, "B.S.F.") and that the plaintiff had obtained the conveyance deed by fraud and in connivance with the Halqa Patwari and its registration was void. They pleaded that the plaintiff being in possession of the suit land had filed an application for transfer of the land in his favour under the Government policy and a conveyance deed was executed in his favour but they submitted that all that was done erroneously. They further pleaded that necessary correction had since been made in the revenue record by inserting '*Fard Badar*'. Defendant No.4-B.S.F. alleged that the land was owned by Central Government (B.S.F.) and could not be transferred in the name of the plaintiff. He was trying to take undue benefit of wrong entry of his name in the revenue record. The conveyance deed issued in his favour was alleged to be illegal, ineffective, null and void having no value in the eyes of law.

On the pleadings of the parties, following issues were framed:-

- (1) Whether the plaintiff is owner in possession of the land in suit? OPP.
- (2) Whether plaintiff is entitled for declaration as prayed for? OPP.
- (3) Whether plaintiff is entitled for injunction as prayed for? OPP.
- (4) Whether suit is bad for mis-joinder of necessary parties? OPD.
- (5) Whether suit is bad for non-joinder of necessary parties?

OPD.

(6) Whether no valid notice U/s 80 CPC was served upon the defendants before filing the present suit, if so, its effect? OPD.

(7) Relief.

Both the parties adduced ocular as well as documentary evidence to substantiate their rival contentions.

Learned trial Court determined issues No.1 to 3 against the plaintiff and dismissed his suit with costs. Aggrieved by the judgment and decree dated 10.08.2009 passed by learned trial Court, the appellant preferred an appeal which was dismissed by first appellate Court vide judgment dated 21.07.2010. Feeling unsatisfied the appellant has approached this court.

The submissions made by Mr. Mehar Singh Rai, learned counsel representing the appellant have been considered.

At the very outset, learned counsel for the appellant emphatically argued that in their pleadings defendants No.1 to 3 admitted that the plaintiff is in possession of the suit land. They also admitted that the plaintiff had applied for transfer of the land in his name under Government policy which was allowed and on deposit of the sale price a conveyance deed was issued in his name. This amounted to complete admission of claim of the plaintiff, yet learned trial Court as well as the appellate Court failed to appreciate the evidence in his favour and dismissed his suit on mere conjectures and surmises.

The defendants admitted execution of the conveyance deed in favour of the plaintiff but simultaneously submitted that the entire proceedings leading to issuance of conveyance deed were conducted erroneously. The land belonged to Central Government (B.S.F.) and could not be transferred in the name of the plaintiff. Scrutinizing the revenue documents placed on record, the findings of learned first appellate Court are as under:-

“According to the plaintiff he is in possession of the suit land. It was allotted to him as per government policy and he has proved the conveyance deed Ex.P1 and he had deposited Rs.10875/-. On the other hand, the defendants have stated that the plaintiff got the khasra girdawari corrected in his name. No doubt there is conveyance deed in favour of the plaintiff but defendants No.1 to 3 also admitted the possession of the plaintiff and the possession is shown in the copy of khasra girdawari Ex.PY for sauni 1993 placed on the file. In Khasra no.50 plaintiff is shown to be in possession but in the column of cultivation Gair Mumkin chowki of B.S.F. has been recorded. The defendants have produced on the record Roznamcha Vakiati bearing no.578 dated 30.12.1998 Ex.DA/5 vide which a request has been made by Tehsildar for reviewing mutation No.179 of village Walle Shah Uttar sanctioned on the basis of conveyance deed No.2230 dated 28.10.1998 Ex.P1 and Fard Badar Ex.D3 was prepared in this regard and necessary correction was ordered to be made in the revenue record by the Sub Divisional Magistrate, Fazilka and disciplinary action was ordered to be taken against the wrong doers and vide Fard Badar No.2 dated 15.1.1999 mutation has been sanctioned in the name of Central Government/B.S.F. qua land measuring 20 kanals 10 marlas. So it is clear that

land is situated on the border and B.S.F. is in possession of the same. B.S.F. which is guarding the post of Indo-Pak border is liable to protect this land and no body can be allowed to take possession of land adjoining to the border. So it is clear that appellant/plaintiff is not in possession of the suit land and he is not entitled to any relief.”

It has been held by Hon'ble Supreme Court in Krishna Hare Gaur vs. Vinod Kumar Tyagi and Ors., A.I.R. 2015 SC 1248 that even in judicial proceedings once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est.

Tehsildar, Fazilka DW1 Iqbal Singh Sandhu, in his deposition made in the form of an affidavit Ex.DW1/A testified that the land belongs to Central Government (B.S.F.) and that the plaintiff had obtained the conveyance deed of suit land by fraud in connivance with Halqua Patwari. Similarly, DW2 Rajbinder Singh deposed that B.S.F. is in actual possession of the suit land and the plaintiff had wrongly managed to get the same transferred but the wrong entry has since been corrected by way of 'Fard Badar'. From the revenue documents adduced in evidence, it is apparent that B.S.F. is the owner of the suit land. It is important to note that in Khasra Girdawari Ex.PY of Sauni 1993 though the plaintiff had been shown to be in possession, but in the column of cultivation 'Gair Mumkin Chowki of B.S.F.' was recorded. That goes a long way to prove that B.S.F. was in

actual possession of the suit land and a wrong entry showing possession of the plaintiff was recorded, based on which proceedings of allotment of the suit land in his favour were erroneously conducted.

Thus, there being no ground for intervention in the concurrent findings of learned trial Court and learned first appellate Court and the appeal being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

22.09.2015

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