

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 427 of 2011

Date of decision : February 5, 2015

Paramjit Singh and others

..... Appellants

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. J. R. Mittal, Senior Advocate with
Mr. Kashish Garg, Advocate
for the appellants.

Mr. M. S. Naryal, Additional Advocate
General, Punjab for the respondents.

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?

Amit Rawal, J (oral).

This Regular Second Appeal at the instance of the appellants-plaintiffs is directed against the judgment and decree of the lower appellate court whereby the judgment and decree dated 3.3.2003 of the trial court has been reversed.

The trial court vide aforementioned judgment and decree, decreed the suit of the appellants-plaintiffs by declaring the appellants-plaintiffs as owners in possession of the land and further held that the orders dated 10.11.1980 and 26.11.1980 had become non-operative owing to death of Bharatinder Singh and enjoined the respondents-defendants from taking forcible possession of the suit

land from the appellants-plaintiffs.

Learned Senior counsel appearing on behalf of the appellants-plaintiffs in support of grounds of appeal submits that since the parties were at variance and trial court on the basis of pleadings of the parties to the *lis* framed as many as 30 issues including the issue of relief and on the basis of oral and documentary evidence found that no notice was issued to the vendee of Bharatinder Singh declaring the land surplus. The orders dated 10.11.1980 and 26.11.1980 were thus not in conformity to the principles of natural justice and as no opportunity of hearing had been given to the vendee. He further submitted that the trial court addressed the issue as to whether civil court had jurisdiction to try the said claim/relief by referring to the provisions of Sections 21 and 28 of Punjab Land Reforms Act, 1972 (hereinafter called as 'the Act') and also by relying upon the Full Bench judgment of this Court in **Sardara Singh and others Vs. The Financial Commissioner and others 2008 (1) LAR 623** whereby it has been held that the civil court would have jurisdiction to entertain the suit to challenge the validity and legality of the order passed by the authorities declaring the land surplus in the eventuality where there had not been compliance of principles of natural justice, much less no opportunity had been given to the landowners or vendees. He further submits that the lower appellate court has committed illegality and perversity in addressing the issue of jurisdiction only and did not frame a point of determination being the last court of fact and law and thus urged this court that following substantial questions of law arise for

adjudication by this court:-

“i) Whether the orders dated 10.11.1980 and 26.11.1980 Ex. D-1 and Ex. D-2 passed by the competent authorities declaring the land surplus are illegal, null and void.?

ii) Whether the sale deeds dated 23.5.1978 and 1.8.1983 executed by Bharatinder Singh were valid?

Learned counsel appearing on behalf of the respondents-State in support of his contentions submits that the notice had been sent on 26.12.1980 and therefore there was compliance of principles of natural justice, much less an opportunity of hearing was granted to the vendee of Bharatinder Singh. He further submits that the trial court did not have jurisdiction to entertain and try the suit wherein legality and notice declaring the land surplus had been challenged.

Mr. J. R. Mittal, learned Senior counsel in rebuttal submits that even otherwise the orders were bad as the land was not utilized as it remained in possession of the vendee and in support of his contentions relies upon the Full Bench judgment of this Court in **Sardara Singh and others's case(supra)** to contend that where the land is not utilized and the landowner dies then the entire proceedings conducted under the Act for declaring the land surplus would be held to have lapsed and the proceedings have to be initiated de novo by issuing notice to the heirs of the deceased.

I have heard learned counsel for the parties and

appraised the impugned judgment and decree and I am of the view that the present appeal is liable to be allowed and the impugned judgment and decree of the lower appellate court is to be set aside for the following reasons:-

The lower appellate court could not tread on the jurisdiction point only while deciding the appeal filed under Section 96 of the Code of Civil Procedure. The lower appellate court was enjoined upon an obligation to frame points of determination under Order 41 Rule 31 CPC and ponder upon oral and documentary evidence lead by the respective parties to the *lis*. The lower appellate court only decided the issue No.28 which dealt with the jurisdiction against court, to question the orders dated 10.11.1980 and 26.11.1980 Ex. D-1 and Ex.D-2 passed by the competent authorities by declaring the land surplus. It is a matter of record that Bharatinder Singh expired in the year 1987 and the sale deeds were executed by him way back in the year 1973 and 1978 and the possession of the land remained with the vendees. Since the land was not utilized by the State and therefore the entire proceedings initiated by the State under the Act declaring the land as surplus would be nullity in the eyes of law in view of the decision in **Sardara Singh and others's case(supra)** and proceedings have to be started de novo by issuing notice to the legal heirs of the deceased. It is a matter of record that no notice prior to declaring the land surplus vide impugned orders was ever received upon the vendees.

In view of such situation, this Court in **State of Haryana and others VS. Vinod Kumar and others 1987 RRR 81**

has held that the said orders would be nullity and even civil court would have a jurisdiction to decide the controversy with regard to the validity and legality of such orders. The trial court after examining the oral and documentary evidence, much less provisions of law held that civil court not only had jurisdiction but could try and decide the issue of controversy between the parties to the *lis* and it also found that the orders declaring the land surplus did not conform to the statutory provisions of law, as no opportunity of hearing was ever given to the vendees of Bharatinder Singh.

The lower appellate court did not embark on merits of the case except by deciding the issue of jurisdiction.

In view of what has been observed above, the aforementioned substantial questions are thus, answered in favour of the appellants-plaintiffs and against the respondents-defendants.

The impugned judgment and decree of the lower appellate court is set aside and the judgment and decree of the trial court is restored.

It is made clear that in case the State had to take any action under the provisions of the Act they would be at liberty to take the action in accordance with law.

The appeal is allowed.

There shall be no order as to costs.

(AMIT RAWAL)
JUDGE

February 5 , 2015
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