

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

1. RSA No.3723 of 2012 (O&M)
Date of decision : 30.09.2015

Sabbir and ors. ...Appellants

Versus

Sewa Ram and ors. ...Respondents

2. RSA No.5159 of 2012 (O&M)
Date of decision : 30.09.2015

Ummar Mohmad and another ...Appellants

Versus

Ram Lal and ors. ...Respondents

3. RSA No.1152 of 2013 (O&M)
Date of decision : 30.09.2015

Ummar Mohmad and another ...Appellants

Versus

Chander and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Rajinder Goyal, Advocate for the appellants
(In RSA No.3723 of 2012)

Mr. Umesh Narang, Advocate for appellants
(In RSA Nos.5159 of 2012 & 1152 of 2013)

Mr. Sanjay Vij, Advocate for respondent No.3
(In RSA No.3723 of 2012)

AMIT RAWAL, J. (Oral)

CM No.9945-C of 2012

This is an application u/s 151 of CPC for condonation of delay of 589 days in re-filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, delay of 589 days in re-filing the appeal is condoned.

The application stands disposed of.

Main Case

This order of mine shall dispose of three RSAs bearing No.3723 of 2012 titled as Sabbir and ors. Vs. Sewa Ram and ors., RSA No.5159 of 2012 titled as Ummar Mohmad and another Vs. Ram Lal and ors. & RSA No.1152 of 2013, titled as Ummar Mohmad and another Vs. Chander and ors. filed by the appellant-defendants in three separate suits.

Challenge in the present appeals is to the concurrent findings of fact, whereby suit filed by respondents-plaintiffs for declaration and permanent injunction, has been decreed.

Mr. Rajinder Goyal, Advocate for the appellants in RSA No.3723 of 2012 and Mr. Umesh Narang, Advocate for appellants in RSA Nos.5159 of 2012 & 1152 of 2013 submits that both the Courts below have committed illegality and perversity in decreeing the suit, inasmuch as that, the appellants have acquired the title and interest in the property by way of auction conducted by the Government. In pursuance to the auction, plots were allotted to the plaintiffs, however, on account of default in the payment of installments, their allotment was cancelled, therefore, valuable right has

accrued which cannot be taken away in the suit filed in the year 1997, therefore, the substantial question of law arises for determination.

Mr. Sanjay Vij, ld. counsel appearing on behalf of respondent No.3 in RSA No.3723 of 2012 submits, that State has failed to prove on record any documents to show that before cancelling allotment in favour of the plaintiffs any show cause notice was served & on such premise the trial Court decreed the suit at the best defendants-appellants can be compensated by ordering refund along with interest.

In rebuttal, it has been submitted that Civil Court did not have jurisdiction as alternative remedy was/is provided under the Haryana Evacuee Properties (Management and Disposal) Act, 2008 and The Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the suit is hopelessly time barred.

I have heard learned counsel for parties and appraised the paper book.

It is a candid case of the respondents-plaintiffs that cause of action to seek declaration arose only in 1997 when the defendants started interfering into the peaceful possession. The allotment letter in favour of defendants did not envisage that possession, had, at any point of time was handed over. Be that as it may but the fact remains that appellants have not led any evidence before the trial Court to this effect but, an effort was made in this Court for the first time by moving application under Order 41 Rule 27 read with Section 151 CPC for placing on record the additional evidence. In my view, such application was/is not maintainable as these documents were in existence. Thus, plea of additional evidence did not fall within the

expression “despite exercise of due diligence”. The State also failed to lead evidence that prior to the passing of the cancellation order dated 27.08.1971 any show cause notice was sent or received by the respondents-plaintiffs. Thus, there is blatant violation of principles of natural justice.

It is settled law where order/orders which have been apparently passed without jurisdiction, the Civil Court, as per Section 9 of the Code of Civil Procedure would have a jurisdiction to try and entertain the controversy. At the best, the appellants-defendants are entitled to refund to their money along with interest.

There is another aspect of the matter, Union of India has not filed any appeal against the judgment and decree rendered by the lower Appellate Court.

I do not find any illegality and perversity in findings rendered by both the Courts below, which are based on the appreciation of facts of law, much less, no substantial question of law arises for adjudication of the present appeals.

The appellants-plaintiffs shall be at liberty to seek refund of the money stated to have been deposited in pursuance to the auction along with prevailing interest.

In view of aforementioned observation, appeals are dismissed.

30.09.2015

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**(AMIT RAWAL)
JUDGE**