

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

**Regular Second Appeal No.3797 of 2012 (O&M)
Date of decision : 08.05.2015**

Ram Kishan & others

...Appellants

versus

Union of India/Central Government, Rehabilitation Department,
Government of India, New Delhi & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. A.P.Bhandari, Advocate for the appellants.

RITU BAHRI, J (Oral)

The appellants have come up in regular second appeal against the judgment of the trial Court dated 24.07.2008 and the lower appellate Court dated 14.05.2012 whereby the suit for declaration that land measuring 33 kanals Vest in Union of India/Central Government, Rehabilitation Department, Government of India, New Delhi.

The case of the plaintiffs in the suit was that the suit land was to be allotted by defendant No.2, Rehabilitation Department, Government of Haryana, however, the same was not allotted. In the year 1994, an application was made by plaintiff No.1 to enquire how the land came in the ownership and possession of defendants No.6 to 14. The Collector, on inquiry, received a report from the Tehsildar (Sales), Ambala, defendant No.4 that the land had never been allotted to any person and was owned by defendant No.1-Union of India. Thereafter,

letter dated 27.07.2000 was written by defendant No.2 to defendant No.4-Tehsildar (Sales), Ambala in respect of the allotment application filed by Balbir Singh and in reply to this, defendant No.2 had informed that no land was ever been allotted to Balbir Singh. Since the land had never been allotted to Balbir Singh, therefore, Joginder Kaur had no right to alienate the same to Inder Singh, however, by playing a fraud, she took the land on the pretext that her husband had died on the way to India during 1947. The plaintiffs had filed a civil suit which was dismissed on 13.12.2000 with the observation that on investigation, it was found by defendant No.2 that Balbir Singh was alive and never migrated to India and, therefore, allotment in favour of Joginder Kaur was cancelled by the Chief Settlement Commissioner vide order dated 15.09.1964. Against this order, Joginder Kaur had filed an appeal in this Court and vide order dated 09.03.1972, the order dated 15.09.1964 passed by the Chief Settlement Commissioner, was set aside.

On notice, defendants No.1 to 5 filed their joint written statement taking the preliminary objections that according to record Joginder Kaur @ Jagjinder Kaur wife of Balbir Singh had migrated to India in the year 1947. However, her husband remained in Pakistan and the land was allotted in her name on the ground that her husband had died on the way to India. During the investigation, it was found that she took this land on misrepresentation of facts. Vide sale deed dated 15.09.1958, Joginder Kaur had sold away the same land to Inder Singh. The allotment in her favour was cancelled by the Chief Settlement

Commissioner, vide order dated 15.09.1964 against which, she filed Civil Writ Petition No.11 of 1965 in this Court, wherein the order dated 15.09.1964 was set aside. However, no appeal was preferred by defendant No.2. While alleging that the suit was hit by the principle of res-judicata as earlier a civil suit bearing No.38 of 1994 qua the same property had been decided by the civil Court.

The following issues were framed:

- “1. *Whether the present suit is barred by the principles of resjudicata? OPD.*
2. *Relief.*”

The trial Court and the lower appellate Court dismissed the suit of the plaintiff on the following grounds:-

1. As per the judgment Ex.D1 dated 13.12.2000 passed by the Civil Judge (Jr.Divn.) Yamuna Nagar at Jagadhari plaintiff Ram Kishan had filed a suit for declaration that the suit property is owned by the Central Government and the allotment done in favour of Balbir Singh through his wife Joginder Kaur and subsequent sale of property by Joginder Kaur to Inder Singh is nullity and that suit was dismissed and appeal against this order was also dismissed vide order 07.09.2004 (Ex.D3). While dismissing the appeal it was observed as under:-

“22. *Further, in judgment dated 7.9.2004 (Ex.D3), the Court of Shri S.K.Gupta, the then learned Additional District Judge, Jagadhari also held that;*

“that suit land was allotted to Joginder Kaur she sold to Inder Singh, predecessor-in-interest of defendants No.1 to 6, vide registered sale deed dated 15.09.1958 Ex.P3. Admittedly, defendants No.1 to 6 are in possession of the suit land. Therefore, they are held to be owners in

possession of the suit land”.

It was further held that :

“the title of defendants No.1 to 6 cannot be protected under section 41 of the Transfer of Property Act because there is no evidence on the file that at the time of purchase of the suit land by Inder Singh, Joginder Kaur was recorded owner of the suit land in favour of Joginder Kaur has been placed on the file. In the Jamabandi for the year 1955-56 Ex.D8, the suit land was shown as unallotted evacuee property”. ”

2. Joginder Kaur in whose favour the land had been allotted, which was cancelled by the Chief Settlement Commissioner vide order dated 15.06.1964 and she filed a writ petition in this Court and vide order dated 09.03.1972, the order of the Chief Settlement Commissioner was set aside and no appeal against this order was filed by the department.

The argument of the learned counsel for the appellants is that since they were not a party to the writ petition No.11/65, they had no occasion to challenge the order passed by the High Court either by filing LPA/SLP against that order. Vide judgment dated 13.12.2000 Ex.D1 and vide judgment dated 07.09.2004 Ex.D3, the present suit was rightly held to be barred on the principles of res-judicata and the plaintiffs have no locus standi to file any appeal.

No substantial question of law has arisen in this appeal for adjudication.

Dismissed.

08.05.2015
Vinay

(RITU BAHRI)
JUDGE