

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

RSA No.4494 of 2012
Date of decision : 29.10.2015

Rati Ram

...Appellant

Versus

Rehabilitation Department and another

...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. B.R. Gupta, Advocate for the appellant.

Mr. Ravi Partap Singh, Asstt. A.G. Haryana.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of fact, whereby suit for specific performance of the agreement to sell dated 13.06.1990 entered into between him and the Rehabilitation Department in pursuance to the auction conducted on 13.06.1990, has been dismissed.

Mr. B.R. Gupta, learned counsel appearing on behalf of appellant-plaintiff submits, that Rehabilitation Department on 13.06.1990 invited bids for holding auction in respect of land measuring 2 kanals 12 marlas. More than three bidders participated in the aforementioned auction.

Ultimately, the appellant-plaintiff was found to be successful as his bid of Rs.1,13,000/- was highest and paid the desired amount of Rs.28,307/-. However, after the auction, it was found that one Kashmiri Lal had already obtained ex parte judgment and decree dated 05.03.1990, whereby he was held to be the owner of the aforementioned land. The Settlement Commissioner vide order dated 06.10.1993 dismissed the petition of the Kashmiri Lal and issued direction to take the appropriate legal steps for setting aside of the aforementioned ex parte judgment and decree. Accordingly, Civil Suit No.951 of 1995 for declaration with consequential relief of permanent injunction was filed. In the aforementioned suit, Rati Ram was impleaded as defendant No.6. The aforementioned suit was decreed in favour of Rehabilitation Department vide judgment and decree dated 10.09.2002 Ex. P4. The aforementioned judgment and decree was also upheld in a appeal filed by Kashmiri Lal, in essence, Rehabilitation Department acquired the ownership of the property when the appeal filed by Kashmiri Lal was dismissed. Before the appellant could take further steps, he was astounded to receive the letter dated 09.08.2006 Ex.P3 written by Tehsildar, whereby auction aforementioned was cancelled. It is in these circumstances, the suit for specific performance of the agreement and declaration for setting aside the letter dated 09.08.2006, whereby auction was cancelled, was filed. The umpteen number of documentary evidence was led on record to show that contents of the letter dated 09.08.2006 was contrary to the record, as more than four bidders had participated in the auction and ultimately appellant-plaintiff was found to be successful bidder.

The Rehabilitation Department on the date of auction was not

owner in view of the ex parte judgment and decree dated 05.03.1990 and have acquired ownership on 13.06.1990. Both the Courts below have committed illegality and perversity in dismissing the suit by heavily relying upon judgment and decree dated 10.09.2002 on the premise that plaintiff was arrayed as defendant No.6, thus prays that following substantial question of law arises for determination by this Court:-

1. Whether the Rehabilitation Department was owner of the land when the auction on 13.06.1990 was held particularly in view of ex parte judgment and decree dated 05.03.1990, whereby Kashmiri Lal and another were declared owners.
2. Whether the letter dated 09.08.2006 Ex.P3 could have been passed in the manner as it was against the principles of natural justice as no show cause notice prior to the cancellation of the auction had been issued.
3. Whether the judgment and decree of both the Courts below suffers from illegality and perversity.

Mr. Ravi Partap Singh, Asstt. A.G. Haryana submits, that vide judgment and decree dated 10.09.2002, it has been held that Rehabilitation Department had become owner and the plaintiff was arrayed as defendant No.6, therefore, the plaintiff cannot claimed the ownership and specific performance. Even otherwise, the auction proceedings were not conducted in appropriate manner inasmuch as no reserved price was fixed and the auction was not approved by the competent authority and rightly so the same vide letter dated 09.08.2006 Ex.P3 was cancelled and prays that no substantial question of law arises for determination and appeal is liable to be

dismissed.

I have heard learned counsel for parties and appraised the paper book, as well as the record of the Courts below and I am of the view that appeal is to be allowed on the following grounds:-

As per the ex parte judgment and decree dated 05.03.1990, Rehabilitation Department on the date of auction i.e. 13.06.1990 was not the owner, ultimately Chief Settlement Commissioner was constrained to pass the order dated 06.10.1993 (Ex.P9), whereby direction was issued to Department, to initiate the appropriate proceedings, in accordance with law i.e. for setting aside of the ex parte judgment and decree and as well as for regularization of auction. The operative part of the order is extracted hereinbelow:-

“3. I have also perused the revenue record. According to Misal Haqiat 1970-71, rect. No.239/14/2 (2K-12M) is the ownership of Central Govt. Mortgager and Sheo Dan, Kashmiri Lal ss/o Sh. Damodar Lal (½ share), Sumant Parsad adopted son of Mehar Singh (½ share) as mortgagee. The old Khasra number of this land was 7553/3934 according to the Jamabandi for the year 1955-56 and the Central Govt. is recorded as owner in possession. There is no entry of mortgagee. According to jamabandi for the year 1943-44 khasra No.7553/3934 the entries are Abdul Habib, Faiz Ali ss/o Shahab Khan as owners. Mustaq Ali Khan is recorded as mortgagee. According to Jamabandi for the year 1959-60 khewat No.1310 khatauni No.2522 the entry in the col. of ownership is Central Govt. and in the col. of possession is also Central Govt. The suit land is claimed to have been decreed in favour of S/Sh. Ishwar Dass etc. vide civil

court order dated 5.3.90. A perusal of that order would show that Union of India was made a party but was proceeded ex parte. This suit was instituted on 24.12.89 whereas all evacuee lands/properties had been transferred by the Central Govt. to the State Govt. in package deal and Administrative Arrangements prior to 1971. This would mean that the Govt. of Haryana and State Reh. Deptt. should have been impleaded as parties. Since the State Govt. is a successor-in-interest of the Union of India so far as Rehabilitation lands are concerned, it is, therefore, necessary that the ex parte order passed against the Union of India is got set aside by the Rehabilitation Department Govt. Haryana. Accordingly, the case is assigned to Tehsildar (Sales) Rohtak for getting the exparte order of the Civil Court dated 5.3.90 set aside. After so doing the auction conducted in favour of Sh. Ratti Ram can be regularised. Since the parties are not present today, a copy of this order be sent to them for their information and necessary action.”

As noticed above, the suit filed by the Rehabilitation Department was decreed on 10.09.2002 Ex.P4 and appeal filed by the defendant Nos.1 to 5 against the aforementioned suit was dismissed on 23.01.2005. It is only thereafter, the Rehabilitation Department voltefaced by issuing letter dated 09.08.2006 (Ex.P3) taking stance that auction was not in accordance with law. In my view, the plaintiff did not have any cause of action until and unless the Rehabilitation Department acquired the ownership and rightly so, the suit was filed on 24.08.2006 after the dismissal of the appeal filed by Kashmiri Lal and another on 23.01.2005.

There is another aspect of the matter, before cancelling of the

auction, Rehabilitation Department did not issue any show cause notice, thus have blatantly flouted the principles of natural justice. Had there been any irregularity, or the auction was lacking any requisite permission, the Settlement Commissioner would have mentioned in the order dated 06.10.1993. Even from the perusal of the bid sheet Ex.P2, it is evident that there were four bidders who gave inter-se bids and ultimately bid of the plaintiff was found to be higher. Thus, in my view the action of the Rehabilitation Department in cancelling the auction on the ground that bid of the plaintiff was less than the reserved price does not have any stand as from the perusal of the bid sheet, no reserved price was fixed.

In my view, cause of action, if any, accrued to the plaintiff only in 2002 and not before that. The aforementioned facts in my view have not been taken into the notice by the Courts below rather they have been swayed by the judgment and decree dated 10.09.2002. The aforementioned judgment and decree in my view did not deny any right, ownership to defendant No.6. The operative part of the judgment read thus:-

“18. It was argued on behalf of defendants No.1 to 5 that the suit of the plaintiff was barred by law of limitation since under Order 9 Rule 13 CPC the ex parte judgment and decree could have been challenged within 1 month from date of knowledge. Plaintiff in his plaint has nowhere stated that when he came to know about passing of disputed judgment and decree. It is pertinent to mention here that the present suit was for declaration that the judgment and decree Ex.P2 was null and void and as the State Govt. was not made party to this judgment order 9 Rule 13 CPC is applicable between the parties inter-se i.e. one month time would have been applicable only if

Union of India would have come in the Court for getting ex parte judgment and decree set aside. Here the present suit has been filed for declaration for declaring the judgment and decree as null and void and limitation for the suit for declaration is 3 years. From the facts of the present case, it is evident that Rehabilitation Department of the State i.e. the plaintiff came to know about passing of decree on 6.10.1993 when Chief Settlement Commissioner directed Tehsildar (Sales) to get the said decree set aside and the present suit was filed on 7.4.1995. Hence, the suit is within 3 years and therefore, the present suit is not barred by law of limitation. Otherwise also it has held in Ms. Radhika Khanna Vs. State 2002(1) Latest Judicial Reports 532 that order which is nullity can be challenged at any stage. Issue No.3 is decided in favour of the plaintiff and against the defendants.

Issues No.4 to 6

19. *So far as these issues are concerned, Ld. Counsels for the defendants have not pressed these issues during the course of arguments nor any such evidence to prove these issues has been adduced. Therefore, these issues No.4 to 6 are decided against the defendants and in favour of the plaintiff.*

Issue No.7 (Relief)

20. *In view of my discussion above on foregoing issues suit of the plaintiff is partly decreed and the ex parte decree dated passed in civil suit No.981 of 1989 titled as Kashmiri Lal Vs. Union of India etc. dated 5.3.1990 are declared illegal, null and void and not binding on the rights of the plaintiff and the name of the plaintiff is liable to be corrected in the column of owner in Fard-Jamabandi. However, since the plaintiff did not prove his*

possession over the disputed land the relief of permanent injunction cannot be granted to the plaintiff. Decree sheet be drawn accordingly and file be consigned to record room after due compliance.”

In view of what has been observed above, the questions of law as noticed above are answered in favour of appellant-plaintiff and against defendant-respondent and impugned judgment and decree of both the Courts below are set aside, in essence, the suit of the appellant-plaintiff is decreed.

Appeal is accordingly allowed.

The appellant-plaintiff is directed to deposit the rest of the amount within a period of one month from the date of receipt of certified copy of the order.

Decree sheet be prepared.

29.10.2015

pawan

**(AMIT RAWAL)
JUDGE**