

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

**Regular Second Appeal No.1504 of 2015 (O&M)  
Date of decision : 23.04.2015**

State of Haryana through District Collector, Mewat at Nuh & another.

...Appellants

versus

Smt. Saraswati Devi & others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

**Present:** Mr. Siddarth Sanwariya, DAG, Haryana for the appellants.

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**RITU BAHRI, J (Oral)**

**CM-4197-C-2015**

There is a delay of 849 days in filing the appeal.

For the reasons stated in the application, the same is allowed and the delay of 849 days in filing the appeal is condoned.

CM stands disposed of.

**RSA-1504-2015**

The State of Haryana through District Collector, Mewat at Nuh has come up in appeal against the judgment of the lower appellate Court dated 13.09.2012 whereby the judgment of the trial Court was set aside and the suit of the plaintiff was decreed and the orders dated 18.09.1998 passed by the Joint Secretary (Rehabilitation)-cum-Settlement Commissioner, Haryana, Chandigarh and order dated 12.06.2004 regarding rejection of mutation No.1602 were wrong,

illegal and null and void. A decree for permanent injunction was passed in favour of the plaintiff and against defendant No.1 for re-auctioning the suit land to third parties and defendant No.6 was restrained from interfering in the peaceful possession of the plaintiff. The appellant was also held entitled for the cost of the suit.

The plaintiff Saraswati Devi filed a suit for declaration of permanent injunction that she was the owner in possession of the land measuring 6 kanal on the basis of sale deed 01.08.1996 executed by defendants No.3 to 5. The defendants had acquired the suit land in an open auction held on 11.08.1994 by Union of India defendant No.1. Sale certificate was issued in favour of defendants No.3 to 5 and possession of the land was delivered by the Tehsilidar (Sales) on 07.10.1994 at the spot. Rapat roznamcha No.680 dated 01.07.1995 was also effected. Defendants No.3 to 5 subsequently transferred the suit land by way of sale in favour of plaintiff vide sale deed dated 01.08.1996 in lieu of Rs.1,10,000/-. However, the auction held on 11.08.1994 in favour of defendants No.3 to 5 was cancelled, vide order dated 18.09.1998 by the Joint Secretary (Rehabilitation)-cum-Settlement Commissioner, Haryana, Chandigarh and the name of the plaintiff was deleted from the revenue record and mutation No.1602 was sanctioned in favour of plaintiff was rejected vide order dated 12.06.2004 passed by the AC 2<sup>nd</sup> Grade Taoru.

On notice, the defendants appeared and filed written statement. The suit land was property of Government of Rehabilitation

Department and Roshan is recorded in column of cultivation as gair marusi. The auction in favour of defendant Mohd. Iliyas was set aside on the basis of a complaint made by Subhan Khan. The sale certificate issued on 13.07.1995 was also quashed. The alleged purchase by the plaintiff from defendants No.3 to 5, vide sale deed dated 01.08.1996 was not binding upon the defendants. Order dated 18.09.1998 was challenged by Mohd. Iliyas by way of a revision before the Commissioner, which was dismissed on 20.10.2005. The Assistant Collector 2<sup>nd</sup> Grade had also set aside mutation dated 12.06.2004. The trial Court dismissed the suit of the plaintiff. The lower appellate Court taken into consideration the admitted fact that the property was auctioned in favour of defendants No.3 to 5 and thereafter mutation was sanctioned in their favour. The sale made in favour of the plaintiff, vide registered sale deed dated 01.08.1996. Thereafter mutation No.1602 was sanctioned. On 18.09.1998 the auction in favour of defendants No.3 to 5 was cancelled. The sale order of cancellation of auction was passed after the execution of registration of sale deed dated 01.08.1996 in favour of the plaintiff. The plaintiff was a resident of Gurgaon and defendants No.3 to 5 were residents of Buraka. There was no occasion for the plaintiff to have a doubt that defendants No.3 to 5 had colluded in getting the auction in their favour. Hence they were held to be bonafide purchasers for a valuable consideration without notice. The lower appellate Court further examined the conduct of the official of the concerned department. No

action was taken against even the Naib Tehsildar (Sales) who had auctioned the land. There was no evidence that defendants No.3 to 5 have colluded with Naib Tehsildar (Sales) for purchasing the land from the auction. Noting has been mentioned in the affidavit of DW1 Smt. Sudarshan Kumari that there was any collusion between defendants No.3 to 5 with any official. In the absence of any evidence of collusion of defendants No.3 to 5 with Naib Tehsildar (Sales), the order dated 18.09.1998 and order dated 20.10.2005 passed by the Commissioner, Gurgaon were held to be illegal and were not binding upon the rights of the plaintiff as the plaintiff had no knowledge regarding proceedings of both the Courts. No notice was given to the plaintiff by the Joint Secretary and Commissioner, Gurgaon before cancellation of auction made. She stepped into the shoes of defendants No.3 to 5 and both the orders have been passed at the back of the appellant-plaintiff. The suit of the plaintiff was decreed as stated above.

Counsel for the appellant while arguing the case has not been able to show any evidence led by the official defendants that there was any collusion of the Naib Tehsildar as well as with defendants in conducting the auction proceedings in question. No departmental action has been initiated against Naib Tehsildar, Sales after the impugned orders were passed in the year 1998. In the absence of any evidence with regard to the collusion, the judgment of the lower appellate Court decreeing the suit of the plaintiff does not require any

interference. Moreover, the impugned orders have been passed without giving notice to the plaintiff. There is no substantial question of law for entertaining the regular second appeal.

Dismissed.

**23.04.2015**  
Vinay

**(RITU BAHRI)**  
**JUDGE**