

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

RSA No. 3327 of 2014 (O&M)

Date of decision: November 19, 2015

Harijan Society

...Appellant

Versus

Pushpinder Pal Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

- 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?**

Present: Mr. KS Hissowal, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

CM No. 11585 C of 2015

For the reasons stated in the application, the appeal is restored to its original file.

Main case

1. The plaintiff-Society sought for a declaration that though the property belonged to the government they were in possession of the same for the last 50 years and that the sales made by the Tehsildar (Sales) to some defendants and in turn transferred to other defendants by various transaction of sales are null and void. Originally, the trial court decreed the suit, but on appeal by a few defendants, the judgment was reversed by the lower appellate court. The reversal was on a plea that the plaintiff-Society itself not seen to be in possession and in the mutation 4014 the revenue officials

had recorded the plaintiff was not in possession and that the property was originally an evacuee property that vested with the custodian and transferred to the State government under the Package Deal Property Act. The Tehsildar (Sales), as a Managing Officer, had sold the property being vested in the government to some of the defendants and there have been subsequent sales of the property by the allottees. The objection taken by the defendants was that the documents of sales which were sought to be annulled as void were actually transactions of sales that commenced with the sale by the Managing Officer and the only remedy that would be possible to assail a sale by the competent authority under the Displaced Persons (Compensation and Rehabilitation) Act and the suit for a declaration in the manner sought was impermissible.

2. Admittedly, the plaintiff Society did not obtain any allotment for the benefit of its members from the actual owner; the State government. If the State government had transferred the property to some persons, who, according to the plaintiff, were not competent to secure the allotment, the plaintiff's grievance ought to have been under the provision of the said Act itself to assail the allotment. If the suit is filed after the sales have taken place for a declaration that they were the persons in possession previously, the appellate court's reliance on the fact that the plaintiff did not possess and the mutation entry of 4014 itself has not been challenged, it was a matter of logic that the plaintiff's suit would also fail. If the suit were to be construed as one for recovery of possession on possessory title by the fact that the plaintiff was already in the previous possession, it could be exercised only against a person who has no right to the property. If the

defendants were resisting the possession on the basis of allotment from the government or their successor in interest, then the civil court will be incompetent to provide for such a relief of recovery of possession or recognize the possessory right when the defendants have shown better right sourcing the title to the admitted owner i.e. the government.

3. There is no merit in the appeal. The second appeal is dismissed as it does not involve any substantial question of law.

November 19, 2015
prem

(K.KANNAN)
JUDGE