

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

RSA-632 of 2015 (O&M)

Date of decision:21.02.2015

State of Haryana and another

..... Appellants

VERSUS

Ratia and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Mr. Gourav Goyal, AAG, Haryana, for the appellants.

MAHAVIR S. CHAUHAN J. (ORAL)

Judgment/decreed dated August 30, 2013 passed by learned District Judge, Yamuna Nagar at Jagadhri ("First Appellate Court" for short) reversing the judgment/decreed dated September 12, 2012 passed by learned Additional Civil Judge(Senior Division), Yamuna Nagar at Jagadhri ("Trial Court" for short) whereby suit of the plaintiff/appellant-Ratia to seek declaration and mandatory injunction was dismissed, is under challenge in this appeal brought by the defendant-State.

The appeal is barred by time but I have heard learned counsel for the appellants on merits.

Learned counsel for the appellants argues that sale of the land in favour of plaintiff-respondent was found to be unauthorized and illegal and, as such, was undone by the Government and the plaintiff-respondent did not apply for sale of the land in his favour, in view of the new policy framed by the

Government. According to him the very basis of sale of the land in question to plaintiff-respondent being unauthorized, he has no right to grant of a decree of declaration and injunction as awarded by the learned First Appellate Court in his favour.

Nothing more has been urged.

A perusal of the impugned judgment would reflect that the suit land was firstly allotted to the plaintiff-respondent as a tenant and was later on sold to him in view of Government policy. He even deposited the sale consideration amounting to Rs.400/- on 17.04.1973. However, he was not given compensation for damage to the crop on account of heavy rains during the rabi crop of 2007. He was even threatened of being dispossessed from the land under his occupation. On these averments, plaintiff-respondent approached the learned trial Court for grant of a decree of declaration and mandatory injunction. The claim was resisted by the appellant-State by submitting in the written statement that sale of the land in favour of plaintiff-respondent was unauthorized as he was not eligible for such sale of the land in his favour, accordingly, entries in the revenue record were got rectified and steps were taken to evict him from the land in suit.

Learned trial Court, from the pleadings of the parties, framed issues as under:-

- 1. Whether the entries showing the plaintiff as tenant are wrong, illegal and liable to be set aside? OPP*
- 2. Whether the plaintiff is owner in possession of the suit land? OPP.*
- 3. Whether the plaintiff is entitled to the relief of mandatory injunction, as prayed for? OPP*
- 4. Whether the suit of the plaintiff is not maintainable? OPD*
- 5. Whether the suit of the plaintiff is time barred? OPD*
- 6. Relief.*

Both the sides adduced evidence.

Learned trial Court, after hearing the parties and on appraisal of evidence concluded that the sale of land in question in favour of plaintiff-respondent was illegal and, as such, he had no right to seek a decree of declaration and mandatory injunction. However, in appeal learned First Appellate Court found that notwithstanding the assertion of the appellant-State that sale of the land in favour of plaintiff-respondent was unauthorized, he deserved an opportunity of hearing before he was divested of that land, which, concededly, was not afforded to the plaintiff-respondent. Accordingly, findings recorded by the learned trial Court were reversed and appeal was allowed and suit of plaintiff-respondent was decreed by the learned First Appellate Court vide judgment/decreed dated August 30, 2013.

Learned counsel for the appellant-State has not been able to contradict the observations made by the learned First Appellate Court as regards non-affording of an opportunity of hearing to the plaintiff-respondent before divesting him of his rights in respect of the suit land and that being so, the judgment recorded by the learned First Appellate Court cannot be interfered with.

In view of the above, coupled with the fact that the appeal is not shown to involve any question of law, much less a substantial one, I regret my disinclination to interfere with the well reasoned judgment recorded by the learned First Appellate Court.

Dismissed.

No costs.

February 21, 2015
m. sharma

(Mahavir S. Chauhan)
Judge