

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

SAO 59 of 2014 (O&M)

Date of Decision: August 10, 2015

Baljit Kaur and others

.....Appellants

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Ms. Promila Nain, Advocate
for the appellants.

Mr. Neeraj Sharma, AAG, Punjab.

Ms. Deepali Puri, Advocate
for LR of respondent No.4.

Mr. Arihant Jain, Advocate
for respondents No.8 and 9.

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M.M.S. BEDI, J.

The appellants in this appeal are the successors of Jaswant Singh, plaintiff who had filed a suit for declaration against State of Punjab, Deputy Commissioner and Tehsildar, besides defendant-respondents 4 to 7 for a declaration that land measuring 4 kanals 14 marlas mentioned in the heading of the plaint vests in the plaintiff and that defendant- respondents

No.4 to 6 who are owners in possession and defendants No.1 to 3 have got no concern i.e. right, title and interest in the property and that the revenue entries pertaining to the land in dispute has got no effect on the rights of the plaintiff and defendants No.4 to 6.

The suit of the plaintiff was decreed holding that the plaintiff was co-owner with other co-sharers as per Civil Court judgment and decree dated September 29, 1976 which had attained finality having not been challenged by the defendants. It was further held that the defendants are at liberty to claim their title as per law. The plaintiff filed an appeal before the Additional District Judge, Ludhiana. During the pendency of the appeal, an application under Order 1 Rule 10 CPC was filed by Mohinderpal Singh S/o Kalu Ram and Kashmiri Lal Malik son of Jiwan Dass for impleading them as party in the appeal. The Appellate Court allowed their application observing that they are necessary and proper parties for the adjudication of the matter holding that as the matter in dispute cannot be determined in their absence, the appeal filed by Jaswant Singh was dismissed and case was remanded back to the trial Court for providing an opportunity to Mohinderpal Singh and Kashmiri Lal Malik by arraying them as parties for determination of the real questions involved in the present case. Aggrieved against the said order of impleadment and remand, the plaintiffs have filed this appeal.

Learned counsel for the plaintiff- appellants Ms.Promila Nain has vehemently contended that the impugned order dated July 10, 2014 is

illegal as the appeal of the plaintiff- appellants has been wrongly dismissed on the basis of an application filed by respondents No.8 and 9 under Order 1 Rule 10 CPC. It was urged that in case the lower Appellate Court had found that any case was made out on behalf of respondents No.8 and 9 then it should have framed an issue and sent for the report of the trial Court by recording evidence of the respective parties and should have decided the appeal on merits or in the alternative, the rights of respondents No.8 and 9 could have been determined by the lower Appellate Court itself.

On the other hand, learned counsel for respondents No.8 and 9, Mr. Arihant Jain has vehemently urged that the adjudication of the controversy regarding land in dispute without impleading respondents No.8 and 9 would have been illegal in view of the prima facie strong case regarding ownership of respondents No.8 and 9.

I have heard learned counsel for the plaintiff- appellants and with an objective to understand the controversy involved in the case and the impact of the decree which was passed in favour of the plaintiff- Jaswant Singh by trial Court, I have carefully gone through the facts and circumstances of the case. The suit of Jaswant Singh – plaintiff was decreed to the extent that he was co-sharer as per Civil Court judgment and decree dated September 29, 1976 which had attained finality. With the assistance of counsel for the appellants I have gone through the judgment dated September 29, 1976, which has been appended with this appeal as annexure P-3, and it indicates that one Hira Singh as plaintiff had filed a suit against

Gram Panchayat, Habowal Kalan, Gram Sabha, Habowal Kalan and 62 other defendants, for declaration that the land measuring 162 kanals 9 marlas situated in the revenue estate of Habowal Kalan, Had Bast No. 102, Tehsil and District Ludhiana, mentioned in the heading of the plaint of that suit vested in plaintiff and defendants No.3 to 64 claiming that they are owners in possession of the same. The suit was not contested by defendants No.3 to 64 but the Gram Panchayat and Gram Sabha, Habowal Kalan merely filed written statement and were proceeded against ex-parte on September 9, 1976. The operative part of the judgment dated September 29, 1976 reads as follows:-

“4. The plaintiffs in order to prove their case, produced Harnek Singh, Patwari (PW1). He stated that boundaries of Municipal Committee, Ludhiana have been extended, he brought the notification the copy of which is Ex.PW1/1. Karam Chand (PW2) produced the consolidation record of village Haibowal Kalan. Amit Chand (PW3) stated that in the consolidation during the year 1958-59 and 1960, a cut was applied to the holdings of the owners to deduct land for common purposes. A list of Kami Peshi during the consolidation was prepared and the same is Ex.PW3/1. PW4 is Malkiat Singh Patwari. He stated that consolidation in village took place on the basis of the jamabandies for the year 1952-

53. The Shamlat Deh “Hissa Barabar Andrun Patis Hasat Paimana Hakiat” was entered in the name of Gram Panchayat. After the consolidation, the land measuring 496K-7M was recorded in the name of Gram Panchayat, PW5 Nirmal Singh, Amrik Singh (PW6) and Hira Singh (PW7) was stated that the land is being used for common purposes of the village.

5. On the consideration of the above evidence, produced by the plaintiffs, I hold that the land which was taken out from the holdings, of the owner should revert back to the co-sharers and the owner. Rule 3 of the Punjab Gram Panchayat Rules, 1965 clearly (sic) down that the management and control of the land which vests in the Panchayat, shall revert to the co-sharers and the owners thereof. It has been proved by the exparte evidence of the plaintiffs that the land in dispute was collected after applying the cut to the land of the proprietors. This ex-parte evidence of the plaintiffs goes un rebutted and unchallenged and there is no reason to reject the same.

6. As a result of my above discussion, I hereby exparte decree the suit of the plaintiff, granting them a declaration that the land measuring 162K-5M in dispute

shall vest in the plaintiff and defendants No.3 to 68, who are the owners in possession of the same. Decree sheet be prepared accordingly, and the file be consigned to record room.”

A perusal of the above said judgment passed in favour of Hira Singh who is not a party in this case indicates that by an ex-parte decree in his favour the Civil Court had determined the rights of the villagers vis-à-vis the land which was recorded in the name of Gram Panchayat after consolidation in the village in the year 1952-53. It appears that the land was being used for common purposes of the villagers. Though the Gram Panchayat was a party in the case but by an ex-parte judgment and decree, a controversy whether the land vested in Gram Panchayat had been adjudicated. This Court is not required to determine the legality and propriety of the judgment and decree dated September 29, 1976 but it is always open to the Court to determine the legality and propriety of an order which also include the exercise of jurisdiction by a particular forum. It is settled principles of law that any judgment passed by a Court without jurisdiction would be a nullity. Whether the judgment dated September 29, 1976 is a collusive decree or the said judgment and decree is a fraud on the ground or it is barred by Section 13 of the Punjab Village Common Land Act, 1961, is not to be determined by this Court. It is also not to be determined by this Court whether the judgment dated September 29, 1976 is a void order or it is voidable at the instance of any authority but the said

judgment reflects that the boundaries of the Municipal Committee, Ludhiana had been extended and the land in dispute had been brought under the notification which was produced on the record as Ex.PW1/1 by Patwari Harnek Singh. Plaintiff Jaswant Singh had claimed right, title and interest in 4 kanals 14 marlas of land mentioned in the heading of the plaint which appears to be part of the earlier decree dated September 29, 1976. The suit of the plaintiff was decreed in the light of the judgment and decree dated September 29, 1976 on the ground that it had attained finality. So far as the rights of the defendants are concerned, it was ordered that they would be at liberty to claim their title as per law. Since by implication the order dated September 29, 1976 determined the rights of 62 villagers alongwith the rights of Hira Singh who was also a resident of same village, the trial Court appears to have left defendants No.4 to 7 to claim their rights independently as per law.

Jaswant Singh dissatisfied with the decree appears to have filed an appeal despite the fact that the decree had been passed in his favour as per the terms of earlier decree dated September 29, 1976.

Learned counsel for the appellants, during the course of arguments had submitted that since the suit of the plaintiff-appellants had been decreed by the trial Court in favour of the plaintiff as such the appellants are ready to withdraw the first appeal which has led to the controversy involved in this appeal by impleadment of respondents No.8 and 9. The lower Appellate Court appears to have ignored the fact that

defendants No.4 to 6 Mohinder Singh, Harbans Kaur and Harbans Kaur who are successors of Babu Singh had admitted the claim of plaintiff Jaswant Singh and defendant No.7 had been made a party on the basis of his application under Order 1 Rule 10 CPC. Defendant No.7 had claimed that he was bonafide purchaser having purchased the property for a sale consideration and the property being 'Arazi Matruka' i.e. the ownership of State of Punjab, he had become owner in an auction which has been confirmed by sale deed dated June 24, 1995. The rights of defendant No.7 Pritam Singh, the added defendant were similar as that of claimed by respondents No.8 and 9 in the appeal. The trial Court had safeguarded the interests of the added defendant No.7 permitting him to establish his rights by claiming title as per law. So far as defendant- respondents No.8 and 9 are concerned, had they moved an application before the trial Court, their claim would have been determined in the same terms as that of defendant No.7- Pritam Singh. The lower Appellate Court could have decided the application under Order 1 Rule 10 CPC taking into consideration their rights being at par with Pritam Singh, defendant No.7. It is pertinent to mention that plaintiff- Jaswant Singh, the predecessor-in-interest of the appellants had not claimed any right against either defendant No.7 or added defendants No.8 and 9.

Mr. Arihant Jain, learned counsel for respondents No.8 and 9 has vehemently contended that their application under Order 1 Rule 10 CPC has been rightly allowed by the lower Appellate Court as they have got right,

title and interest in the property as Mohinderpal Singh and Kashmiri Lal were allotted the property in dispute in public auction on November 25, 1992 being the highest bidders on payment of sale consideration. It was argued that after making full payment, letter of allotment had been issued on December 27, 1995. It has been claimed that plaintiff- Jaswant Singh was aware of the allotment of the property to Mohinderpal Singh and Kashmiri Lal but he intentionally and deliberately did not array them as party.

I have considered the contention of Mr. Arihant Jain also and I am of the opinion that the rights of the defendants qua the plaintiff cannot be determined in a suit of the plaintiff for declaration. In case any decree is passed in favour of the plaintiff, it will not be binding on the rights of a person who is not a party to the litigation. The lower Appellate Court appears to have ignored the principle that plaintiff is the dominus litus of the case and he cannot be compelled to contest his rights against a party. The lower Appellate Court has not arrived at a conclusion that the plaintiff had been colluding with defendants No.1 to 3 who are the State authorities. It is apparent from the judgment passed by the trial Court that the State had filed an application denying the title of the plaintiff- appellants. It does not appear to be a case where defendants No.1 to 3 had been colluding with the plaintiff. A heavy onus lies on the State authorities to establish the actual ownership of the property. In case any attempt is being made by any person to claim a property vesting in Gram Panchayat, the Municipal Corporation or the State Authorities, it is the bounden duty of the State Authorities to

protect the same. The lower Appellate Court appears to have wrongly impleaded defendants No.8 and 9. The order impleading respondents No.8 and 9 as party to the case deserves to be set aside without prejudice to the rights of Mohinderpal Singh and Kashmiri Lal to establish their title in accordance with law in case any cloud is cast on their alleged title. The order dated July 10, 2014 is hereby set aside. However, it will be open to the legal representatives of Jaswant Singh to withdraw the appeal in case so advised.

This appeal is disposed of in the above said terms directing the plaintiff- appellants to appear before the lower Appellate Court on September 19, 2015 for adjudication of the appeal on merits. It is directed that the lower Appellate Court shall decide the appeal expeditiously in case it is not withdrawn by the plaintiff- appellants. Nothing said in this order will prejudice the rights of defendants No.8 and 9 to establish their claim in accordance with law in case the controversy is left open regarding the title of respondents No.8 and 9 to be established in an independent litigation pending or otherwise.

August 10, 2015
sanjay

(M.M.S.BEDI)
JUDGE