

312

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

RSA-1902-1987

Date of decision : 04.05.2016

Daro and others

... Appellants

Versus

Lal Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Khunger, Advocate
for the appellants.

Mr. S.C. Chhabra, Advocate
for the respondent(s).

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?

AMIT RAWAL, J. (ORAL)

The appellant(s)-plaintiff(s) are aggrieved of the judgment and decree rendered by the lower Appellate Court whereby the judgment and decree of the trial Court decreeing the suit for possession of the suit land has been set aside.

The case set up by the appellant(s)-plaintiff(s) was that he purchased the land in open auction from the Government, but the defendant(s) trespassed into land measuring 10 kanals without right and title. The trial Court on the basis of the oral and documentary evidence decreed the suit. The

aforementioned order was assailed in the lower Appellate Court. The lower Appellate Court while relying upon the interim order passed in a suit filed by the defendant(s) against the confirmation of the auction as there was an interim order only, dismissed the suit of the plaintiff.

Mr. Sandeep Khunger, learned counsel for the appellant(s)-plaintiff(s) submits that the aforementioned interim order in a suit was also vacated vide order dated 21.08.1987 and thus, submits that the lower Appellate Court ought not to have been swayed away by the interim order and being the last Court of fact and law was enjoined obligation to rely upon the oral and documentary evidence while adjudicating the appeal. He further submits that the document i.e. Copy of Jamabandi for the year 1980-81 (Ex.P-2) brought on record shows that the defendant(s) was in an illegal possession of land measuring 10 kanals out of the land 68 kanals 1 marlas which has been purchased from the Government in open auction held on 25.08.1975 and confirmed by Competent Authority on 24.10.1975, thus, urges this Court to formulate the following substantial questions of law:-

1. Whether the judgment and decree of lower Appellate Court by relying upon the interim order, is sustainable or not.
2. Whether the lower Appellate Court being the last Court of fact and law was enjoined upon the obligation in referring to the oral and documentary evidence while deciding the appeal filed under the provisions of Section 96 of the Code of Civil Procedure?

No steps have been taken for bringing on record the LRs of the respondent(s) despite have been ordered, but the fact remains that the respondent(s) has also not moved an application to do the same. As per the

provisions of High Court Rules and Orders vide amendment dated 21.02.1992, there is no need to bring on record the LR's of respondent(s).

Mr. S.C. Chhabra, learned counsel appearing on behalf of the respondent(s) submits that there is no illegality and perversity in the impugned judgment and decree of the lower Appellate Court and prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and merit in the submissions of Mr. Sandeep Khunger, for, the trial Court on the basis of oral and documentary evidence found the the respondent(s)-defendant(s) was in occupation of the land measuring 10 kanals. It is a conceded position on record that the appellant(s)-plaintiff(s) had purchased the land measuring 68 kanals 1 marla in open auction and the land is measuring 10 kanals comprised in Khatauni no.275, Khewat No.57, Rect. No.18, Killa No.24(8-0), 25min(2-0) situated in Village Bore Ke, Tehsil and District Ferozepur. Even, no effort has been made by the respondent(s)-defendant(s) to place on record the finding with regard to the civil appeal having been filed challenging the sale in favour of the appellant(s)-plaintiff(s). For the sake of brevity, the order dated 21.08.1987 vacating the interim stay reads thus:-

“The learned counsel for the applicant argued that Lal Singh filed an appeal in this Court assailing the order dated 8.10.1984 passed by the Sales Commissioner, Ferozepur. In the said appeal this Court vide order dated 13.11.1984 passed an order staying the operation of the impugned order of Tehsildar (S), Ferozepur, dated 24.8.1982, till the decision of appeal pending before the Sales Commissioner. He drew my attention to the Memorandum of

appeal filed by Lal Singh in the court of Sales Commissioner, Ferozepur. He stated that in the said appeal only the State was impleaded as respondent. He stated that on 19.9.1984 when he filed an application to implead the legal heirs of Sadiq as respondent, it was allowed by the S.C. Ferozepur, vide his orders dated 8.10.1984. Continuing his arguments, he stated that since Sadiq was not impleaded as respondent in the original appeal, the order allowing impleading of LR's of Sadiq subsequently was bad in the eyes of law. He further stated that while filing appeal in this court Lal Singh impleaded the LR's of Sadiq but no notice was ever issued to them prior to the issuance of the ex-parte stay. In the end he prayed that the order issued by this court be vacated & appeal heard on merits.

The learned counsel for Lal Singh argued that in Civil Writ No.1698 of 1976 Bakar Singh, Munsha Singh Vs. State it was held by the Hon'ble High Court that the general proclamation was not in sufficient compliance of the principles of natural justice, therefore, the auction made in favour of Sadiq was illegal. Continuing his arguments, he stated that in view of this finding of the Hon'ble High Court, the order of the CSC granting the stay was valid and justified.

In reply to the contentions of the learned counsel for Lal Singh, the learned counsel for Smt. Daro argued that in the said writ petition only a direction was given to decide the application of the petitioners namely Bakar Singh and Munsha Singh after giving them adequate opportunity of being heard. However, Lal Singh was not party to the said writ petition, therefore, he cannot claim any benefit on the basis of the said writ petition.

2. After careful consideration of the contentions of the learned counsel for the parties and perusal of the record, it is evident that Sadiq was not impleaded as party in the lower court while presenting the appeal. It is further evident from the record that even after allowing the impleading of LR's of Sadiq in the said

appeal vide orders dated 8.10.1984, no notice was served upon them and case was fixed for arguments on 12.11.1984. Similarly, an ex-parte stay was granted on 13.11.1984. Under these circumstances, there appears no justification in allowing that stay to continue any more & accordingly the said stay order is ordered to be vacated. To come up on 11.9.1987 for final arguments in the main appeal.”

In my view, the lower Appellate Court ought not have relied upon the interim order. Encroachment of 10 kanals has been proved on record vide Jamabandi Ex.P-2. This aspect has not been noticed, thus, findings rendered by lower Appellate Court is hereby set aside and that of trial Court is restored. The substantial questions of law as noticed above are answered in favour of the appellant(s)-plaintiff(s) and against the respondent(s)-defendant(s).

With the aforesaid observations, the appeal is allowed.

04.05.2016
yogesh

(AMIT RAWAL)
JUDGE