

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

RSA No.1958 of 1987
Date of decision : 27.04.2016

Sant Ram (deceased) through LRs

...Appellants

Versus

Om Parkash and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Bhupeshwar Jaswal, Advocate for
Mr. Sameer Sachdeva, Advocate for appellants.

Mr. M.S. Khaira, Sr. Advocate with
Mr. R.S. Khaira, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the judgment and decree rendered by the lower Appellate Court whereby judgment and decree rendered by the trial Court has been set aside and the suit for possession, has been dismissed.

It has been contended that agricultural land measuring 43 bighas 14 biswas, described in the plaint situated in Village Chhana Nathu Wali, Tehsil Nabha, was allotted to plaintiff-Sant Singh vide order dated 20.03.1975 after deposit of the requisite charges. The aforementioned land

as per the terms and conditions of the allotment could not be sold for 15 years. It is a matter of record that aforementioned land has been sold by Lal Chand General Attorney of plaintiff vide sale deed dated 22.04.1975 in favour of defendants-respondent. The aforementioned sale has been challenged by the plaintiff by filing the suit bearing No.105 dated 13.03.1979 on the ground that he was not competent to sell land as per the terms and conditions of the allotment, much less, specific bar, in essence, sale was in violation of the terms and conditions of the allotment. The trial Court decreed the suit but the lower Appellate Court reversed the finding. It is submitted that once the sale is in violation of the terms and conditions of the allotment letter, the sale could not have been done and the suit for possession was filed. Lower Appellate Court has committed illegality and perversity in not noticing the aforementioned fact and thus urges this Court to formulate following substantial question of law:-

1. Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity?
2. Whether the provision of para 11 of the Punjab Utilization of Surplus Area Scheme 1973 would be applicable or not?

Mr. M.S. Khaira, learned Senior Counsel assisted by Mr. R.S. Khaira, learned counsel appearing on behalf of respondent No.1 submits that para No.11 of the aforementioned scheme entails into cancellation of the allotment letter by the authorities but does not give any right to appellant-plaintiff to seek possession. He submits that no declaration has been sought for setting aside the sale deed dated 22.04.1975 and, therefore, simpliciter suit for possession was not maintainable and thus urges this

Court to affirm the findings rendered by the lower Appellate Court.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the present case for the reasons, for, it would be apt to reproduce para No.11 of the scheme, which reads thus:-

“11. Cancellation of allotment in certain cases:- If an allottee makes any default in the payment of the amount due from him or infringes any of the conditions of allotment, he shall render himself liable to cancellation of the allotment:

Provided that if default is made in paying part of the amount determined under paragraph 10(c), the Collector may cancel the allotment of an area proportionate to the amount which has remained unpaid.”

On perusal of the same, it is evident that in case there is violation of the terms and conditions of the allotment, allotment would entail into cancellation. No order for the cancellation of the allotment letter by the authority has been placed on record except for filing the suit for possession. The plaintiff has also failed to seek declaration by setting aside the registered sale deed dated 22.04.1975.

In my view, simpliciter suit for possession in the absence of declaration in view of facts noticed above was not maintainable. Lower Appellate Court has rightly exercised jurisdiction and discharged the obligation being last court of facts and law while appreciating the oral and documentary evidence, much less, provision of law i.e. provision of 1973 Scheme and held that suit was not maintainable.

I do not intend to differ with the findings rendered by the lower

Appellate Court.

No ground is made out for interference.

Judgment and decree of the lower Appellate Court is affirmed.

Appeal resultantly stands dismissed.

27.04.2016

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**(AMIT RAWAL)
JUDGE**