

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3574 of 2003 (O&M)

Date of Decision: 18.05.2016

State of Haryana and Another

... Appellant(s)

Versus

Dr. Krishan Kumar Vashishat

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Kapil Bansal, Deputy Advocate General,
Haryana for the appellant(s).

Mr. Gurinder Pal Singh , Advocate
for the respondent(s).

Shekher Dhawan, J.

Present regular second appeal, filed by State of Haryana, against concurrent findings of facts having been recorded by both the Courts below in suit for declaration.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

Relevant facts of the case as set up by the plaintiff that he filed suit for declaration to the effect that he is owner in possession of the land measuring 30 kanals 4 marlas comprising khasra No. 9//15/3,

10/11, 12 & 19 as per jamabandi for the year 1985-86 situated within the revenue estate of village Buria Jagir. As per plaintiff, he had purchased land measuring 30 kanals 4 marlas on the basis of two different sale deeds dated 19.2.1981 & 11.5.1981, respectively from Rattan Anmol Singh son of Lachhman Singh, resident of Buria Jagir. Mutation Nos. 423 & 424, on the basis of above said sale deeds, have already been sanctioned. Since then plaintiff is in cultivating possession of the suit land. He also raised construction on the suit property and installed a tubewell, which is being operated by electric motor. A sum of ₹ 1,00,000 was spent on the construction raised on the land in dispute. More so, plaintiff is a bonafide purchaser of the suit land. Subsequently, he came to know that the State Government had been recorded as owner of the suit land and that suit land has been mutated in the name of State of Haryana vide mutation No. 611 dated 27.7.1989. Neither any notice was issued to the plaintiff by the authorities at any point of time nor any opportunity of hearing was given to him despite the fact that mutation Nos. 423 & 424 were duly sanctioned in his favour. At the time of purchase of the suit property, vendor Rattan Anmol Singh had assured that land was not included in the surplus area nor his ownership was adversely effected by enactment of the Haryana Ceiling of Land Holdings Act, 1971. More so, successors of the vendor had already made statement before the appropriate authority to the effect that the area, which was sold after 24.1.1971, was sold out of permissible area and in case the land sold by them is found to be in excess of their permissible area, then khasra Nos. 22//12, 13, 18/1,

19/1, 29//20 & 29 situated at village Buria Jagir be included in the permissible area. That way, suit land measuring 30 kanals 4 marlas, which was purchased by the plaintiff, was within the permissible area of the original land owner. The deficiency, if any, was to be made good from the remaining area still in possession of the successors of the vendor. Since plaintiff is owner in possession of the suit property, defendants have no right to interfere into his peaceful possession over the suit land.

Defendants contested the suit *inter alia* taking the plea that State is not bound by any sale made by Rattan Anmol Singh in favour of the plaintiff. The land has already been declared surplus and vested in the State Government. Mutation No. 611 dated 27.7.1989 has rightly been sanctioned. However, the fact was admitted that successors of Rattan Anmol Singh had made statement before Special Collector that the land sold after 24.10.1971 may be treated as permissible area. Defendants also admitted the fact that plaintiff had raised construction over some part of the suit land and installed tubewell therein. However, defendants took the plea that State is not bound by any construction raised by the plaintiff over the suit land and prayed for dismissal of the suit.

On these facts, the Court of first instance settled the issues and parties were asked to lead their respective evidence. The Court of first instance, after appreciating the entire evidence, decreed suit of the plaintiff that he is owner in possession of the suit land measuring 30 kanals 4 marlas comprised in khasra No. 9//15/3, 10//11, 12 & 19

situated within the revenue estate of village Buria Jagir and mutation No. 611 dated 27.7.1989 is held to be not binding upon the rights of the plaintiff in any manner. First appeal was preferred by the State and the same was dismissed by first Appellate Court and as such present regular second appeal before this Court.

At the time of arguments, learned State counsel submitted that the suit land had already been declared surplus and as such, the same stood vested with the State and on that basis, mutation No. 611 dated 27.7.1989 was sanctioned. The purchase of land having been made by the plaintiff does not create any right in his favour because the land in the State vests with the State Government and this fact was duly recorded in the revenue record vide mutation No. 611 dated 27.7.1989. However, the Courts below completely ignored this fact while deciding the suit. Thus, present appeal be accepted and suit of the plaintiff be dismissed.

Learned counsel for the respondent submitted that the Courts below have already appreciated the entire evidence. The facts are not disputed that plaintiff had purchased the suit land on the basis of two different sale deeds dated 19.2.1981 & 11.5.1981, respectively from Rattan Anmol Singh and on that basis, possession thereof was handed over to him. His possession was duly recorded in the revenue record and mutations were duly sanctioned in favour of the plaintiff. The State had never issued any notice nor any opportunity was afforded to him before sanctioning of mutation No. 611, though the State was legally bound to do the same as per view taken by the Division Bench of

this Court in ***State of Haryana and Another v. Hari Singh and Others 1973 PLJ 811***. It is admitted case of the defendants that plaintiff has already raised construction over the suit property, meaning thereby plaintiff is in possession of the suit property. Successors of vendor Rattan Anmol Singh had made statement before the Special Collector that the sale deed executed by them after 24.10.1971 be treated as permissible area, meaning thereby if there was any deficiency in the permissible area, which was vested with the State, that was to be made good out of the land owned and possessed by vendor Rattan Anmol Singh and not from the land of present plaintiff, who is bonafide purchaser and is recorded as owner in possession of the suit land as per revenue record. The Courts below have already recorded concurrent findings of facts and as such present appeal be dismissed.

Having considered the submissions made by learned counsel for the parties and perusal of the entire record of the case, this Court is of the considered view that most of the facts are not disputed that earlier, land was owned and possessed by Rattan Anmol Singh. Plaintiff had purchased the suit land from Rattan Anmol Singh on the basis of sale deeds dated 19.2.1981 & 11.5.1981. The successors of Anmol Rattan Singh had made statement before the Special Collector that the land sold after 24.10.1971 was to be treated as permissible area. That way, the deficiency, if any, was to be made from the land owned and possessed by Rattan Anmol Singh and the land which was sold to present plaintiff could not be declared surplus. This fact is most relevant because on the basis two different sale deeds dated 19.2.1981

& 11.5.1981, mutation Nos. 423 & 424 were duly recorded in the revenue record on 15.6.1981. Right from 15.6.1981, plaintiff was recorded as owner in possession of the suit land in the revenue record and if the State was to pass any order subsequently or to sanction mutation, notice was required to be given to the plaintiff and he should have been given an opportunity of being heard as per view taken by the Full Bench of this Court in ***Harnek Singh and Another v. The State of Punjab and Others 1971 PLJ 727***. But that has not been done in the instant case. Order dated 18.11.1986 was passed by the Special Collector, Haryana, thereby declaring specific khasra numbers of the land to be surplus area completely ignoring the fact that the suit property was mentioned in the list under the land declared surplus. But it was further mentioned that khasra No. 29//29 measuring 30 kanals 3 marlas be read in place of khasra Nos. 9//15/3, 10//11, 12 & 19. That way, the suit land was not intended to be declared as surplus. But the order passed by the Special Collector completely ignored the facts and that too without giving any opportunity of being heard to the plaintiff, who was recorded as owner in possession of the suit property prior to that. Both the Courts below have recorded concurrent findings of facts and there is no reason or justification to set aside the said findings of facts and no substantial question of law involved in the present appeal.

As per view taken by Hon'ble the Supreme Court in ***Deity Pattabhiramaswami v. S. Hanymayya and Others AIR 1959 SC 57***, the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of

finding of fact. As per view taken by Hon'ble the Apex Court in ***Commissioner, Hindu Religious & Charitable Endowment v. P. Shanmugama & Others JT 2005(1) SC 201*** and ***Biswanath Ghosh (Dead) by LRs and Others v. Gobinda Ghosh alias Gobindha Chandra Ghosh & Others AIR 2014 SC 1582***, second appeal cannot be entertained if there is no substantial question of law involved therein.

In view of the above, present appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and the same stands dismissed.

(Shekher Dhawan)
Judge

May 18, 2016

"DK"