

Regular Second Appeal No.301 of 1988 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.301 of 1988 (O&M)
Date of Decision: May 28th, 2016

Joginder Singh (since deceased) through L.Rs and others
...Appellants
Versus

Gurmukh Singh (since deceased) through L.Rs. & others
...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.J.S.Brar, Advocate,
for the appellants.

Mr.Gurcharan Singh, Advocate,
for L.Rs of respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant-defendants are aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby the suit claiming possession of the agricultural land comprised in Rect.No.20//19 (5-10), 22 (8-0), 22//4/2 (3-7), 5/1 (4-9), situated in Village Mial Kalan, Tehsil Samana, District Patiala, has been decreed by reversing the judgment and decree of the trial Court, whereby the aforementioned suit was dismissed.

Mr.J.S.Brar, learned counsel appearing on behalf of the appellant-defendants submits that the genesis of the suit was based upon the judgment and decree dated 11.1.1967, i.e., pre-emption decree, vide which the respondent-plaintiff had become owner. The aforementioned decree was conditional as the pre-emption amount was required to be deposited by 1.5.1967. The trial Court, on examination of the evidence, found that the aforementioned amount has not been deposited. He also submits that during the pendency of the suit, an application was moved at the instance of the respondent-plaintiff for abandoning issue No.1 framed qua his title. A separate order in this regard was passed on 8.5.1986, which reads thus:-

“The plaintiff has filed this application alleging that the defendants in their application dated 25.1.86 have alleged that the suit land was exchanged by the defendants/respondents with the guardian of plaintiff-applicant, his mother Smt.Surjit Kaur, whereby admitting the plaintiff applicant to be the owner of the suit land, hence issue No.1 has become redundant. It has been replied by the counsel for the defendant-respondent No.1 to 3 that issues are framed from the pleadings of the parties and issue No.1 was rightly framed. The plaintiff having claimed to be the owner of the suit land, though the same has been denied by the defendant-respondents No.1 to 3 and issue No.1 is not to be deleted.

2. *I have heard the counsel for the parties with the respective contention.*

3. *It is correct that the defendant-respondent No.1 to 3 have stated in their application dated 25.1.86 that Smt.Surjit Kaur mother of the plaintiff-applicant as per guardian exchanged the land by way of memorandum executed on 28.11.78 and according to the oral exchange the land in dispute including the other land was taken by Hardip Singh, whereas other land was given to the plaintiff-applicant as the defendant respondent No.1 to 3 have purchased the land from Hardip Singh, who represented himself to be the owner of the land, which he got in oral exchange by way of agreement dated 28.11.78. The issues are framed from the pleadings of the parties and if the plaintiff-applicant is satisfied by the contention of the defendant/respondent No.1 to 3 of the application dated 25.1.86, the deletion of issue No.1 will be at the risk of the plaintiff applicant, to which he omits to lead any evidence. Accordingly the application for deleting issue No.1 framed on 8.2.85 is allowed, which is hereby deleted at the risk of the plaintiff applicant."*

The respondent-plaintiff failed to prove the ownership. On the contrary, the jamabandies brought on record show that Hardeep Singh, the father of the plaintiff, was owner of the property and by virtue of the same, purchased the land vide sale deed dated 8.12.1978. The

Lower Appellate Court laid heavy emphasis on the application seeking

amendment of the plaint, whereby the factum of the exchange of land between the mother of the plaintiff and Hardeep Singh was admitted, in essence it formed an opinion that the exchange would not have been there in the absence of the ownership of plaintiff and, thus, urges this Court for setting-aside of the judgment and decree of the Lower Appellate Court and affirmation of the judgment and decree of the trial Court.

He further submits that the following substantial questions of law would arise for determination by this Court:-

- 1) Whether in view of the order dated 8.5.1986, whereby issue No.1 with regard to the ownership of the respondent-plaintiff having been omitted/abandoned, the suit would succeed?
- 2) Whether in the absence of any proof qua ownership of the plaintiff, suit for possession would be maintainable?
- 3) Whether the respondent-plaintiff had become owner of the property by virtue of a decree dated 11.1.1967, which was conditional one?

Mr.Gurcharan Singh, learned counsel appearing on behalf of L.Rs. of respondent No.1 submits that there is a categorical statement of the mother of the respondent-plaintiff that the conditional decree dated

11.1.1967 was complied with by depositing the amount of pre-emption before the date fixed. He further submits that the witness of the appellant-defendants also admitted the ownership of Gurmukh Singh. Once the defendants admitted the factum of exchange of land owned by the mother of plaintiff, the order dated 8.5.1986 came to be passed on the application moved at the instance of the respondent-plaintiff. There was no occasion for the respondent-plaintiff to prove the ownership, once they have acquired the title and ownership by way of decree dated 11.1.1967 (Ex.PC) and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is merit and force in the submission of Mr.Brar.

Before advertng to the rival contentions of the parties, it would be apt to reproduce the operative part of the decree dated 11.1.1967, which reads thus:-

“11. As a result of the above discussion, the suit of the plaintiff for possession of land in suit through pre-emption is decreed on payment of Rs.6119-25 Paise (minus any sum already deposited towards 1/5th) on or before 1.5.1967.”

Except the self-serving statement of the mother of the plaintiff, no evidence has come on record to prove the factum of payment of amount of pre-emption. Since the decree, aforementioned,

was conditional one and in the absence of proof of payment, Gurmukh Singh did not acquire the title. In the absence of title, he could not have proceeded with the suit seeking possession, particularly in view of the order dated 8.5.1986. All these factors have been noticed by the trial Court, thus declined the relief.

The finding rendered by the Lower Appellate Court by heavily relying upon the admission of the appellants-defendants qua exchange of the land by mother of the plaintiff, i.e., Gurmukh Singh, in my view, is neither here nor there, for, once Gurmukh Singh had not acquired the ownership, the exchange would pale into insignificance. It is settled law that the person, who is not having the ownership, cannot pass on the better title and, thus, the judgment and decree of the Lower Appellate Court suffer from illegality and perversity. The plaintiff had taken a big risk, rather played a gamble in seeking abandonment of issue No.1. Had there been compliance of the decree of pre-emption, he would not have shirked in proving the same. No direct or corroborative evidence has been led to prove payment of amount of pre-emption. There is no discussion of this fact by the Lower Appellate Court, thus, the judgment and decree of the Lower Appellate Court suffer from illegality and perversity.

For the foregoing reasons, the judgment and decree of the

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Lower Appellate Court is hereby set-aside and that of the trial Court is restored. Resultantly, the suit is dismissed. The questions of law, noticed above, are answered in favour of the appellant-defendants and against the respondent-plaintiff.

Appeal stands allowed.

May 28th, 2016
ramesh

(AMIT RAWAL)
JUDGE