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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-340-1988

Date of decision : 30.11.2016

Balwant Singh and others

... Appellants

Versus

Resham Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: None for the appellants.

Mr. A.K. Ahluwalia, Advocate
for respondent Nos.1 & 3.

AMIT RAWAL, J. (ORAL)

The appellant(s)-plaintiff(s) aggrieved of the concurrent findings of fact, whereby the suit seeking following relief has been dismissed by both the Courts below:

“Suit for declaration that the plaintiff No.1 is owner of land measuring 140 kanals 6 marals bearing Khewat No.25/24, Khatoni No.67, 68, 69, 70, 71 and 72, bearing Killa Nos.13M//17(0-5), 22, 13 M//23(2-11), 24(6-17), 16M//1/2(1-6), 2(6-0), 3(8-0) 16M//4(8-0), 5/1(4-0), 5/2/(4-0), 8(6-13), 9/1(7-4), 16M//10/1(0-9), 6(8-0). 17(8-0), 18/1(4-0), 18/2(4-0), 16M//19(2-2), 24/1(1-13), 26(1-0), 16(8-0), 23/2 (6-12), 16M//12/2(5-4), 13(8-0), 14(8-0), 7(8-0), 15(8-0), 13M//25/2(4-0), situated in the area of village Ferozewala Bada Tehsil Zira District Ferozepore as shown in the jamabandi for the year 1980-81 and with the consequential relief of permanent injunction restraining the defendant No.1 from alienating and from forcibly dispossessing or interfering

in any way from any portion of lawful cultivating possession of land of plaintiff No.1 to 3 as shown in the jamabandi 1980-81.

The case set up by the appellant(s)-plaintiff(s) in the suit was that plaintiff No.1 and defendant No.1 are the resident of Village Bhalerian, District Lahore. They migrated to India at the time of partition and settled in Village Ferozewala Badda. Their father, Desa Singh, during the partition, died in the year 1946-47, whereas mother Nando, in the year 1940-41. The land bearing khasra numbers as described above was allotted to the plaintiff by the Government of India under allotment No.P2/253/1 and other land was allotted to defendant No.1 vide allotment No.F2/253/2. The separate possession of the land was given to the parties. However, during the consolidation proceedings, the plaintiff(s) was allotted the land, in dispute, in lieu of the old land, but defendant No.1 in connivance with the Managing Officer, succeeded in getting the entries of ownership made in the name of Desa Singh in respect of the land, therefore, the orders dated 31.12.1965, 29.02.1973 passed by the Managing Officer and the orders dated 09.10.1973 and 12.12.1974 of the Assistant Settlement Commissioner have been challenged. In alternative, they also set up a plea of continuous cultivation and possession of the land i.e. for the last 28 years and therefore, they become owners by way of adverse possession.

It has further been alleged in the memorandum of appeal that order dated 31.12.1965 was challenged by the appellant(s)-plaintiff(s) under Section 22 of the Displaced Person (Compensation and Rehabilitation) Act, 1954, by way of filing of an appeal before the Settlement Commissioner, who vide order dated 09.03.1987 accepted the appeal and set aside the order dated 31.12.1965 passed by the Managing Officer. Against the

aforementioned order dated 09.03.1987, respondent-defendant, namely, Resham Singh had filed a revision petition before the Chief Settlement Commissioner, which was accepted and the same have been brought on record by way of additional evidence and therefore, the dispute is still open, thus, the defendant(s) cannot take the benefit from the order dated 31.12.1965. Both the Courts below have committed illegality and perversity in not appreciating the aforementioned facts, therefore, the concurrent findings are not sustainable and urges this Court for setting aside the same.

Per contra, Mr. A.K. Ahluwalia, learned counsel appearing on behalf of respondent Nos.1 and 3, submits that in fact the Officers concerned noticed the mistake of double allotment in favour of the appellant-Balwant Singh, which was rectified and correction, in this regard, was made. As per the provisions of the Displaced Persons (Compensation And Rehabilitation) Act, 1954, as then applicable, Section Officers or any Officer had powers, under Section 19 of the Act, to cancel the allotment. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Om Parkash and others V/s Union of India and others” AIR 1971 Supreme Court 771.** There is no illegality and perversity in the findings under challenge and urges this Court for affirming the same.

I have heard the learned counsel for the respondent Nos.1 and 3 and appraised the paper book and record of Courts below and of the view that there is no merit and force in the present appeal, for, as per *ratio decidendi* culled out by the judgment of the Hon'ble Supreme Court in **“Om Parkash's case** (supra), The Managing Officer has the power, after verifying the relevant revenue record, to cancel the allotment. In fact, the

Authorities found that originally the land was allotted, vide Sanad (Ex.P-23), in the name of the plaintiff-Balwant Singh and subsequently vide order dated 31.12.1965, the Managing Officer ordered for the change of the ownership from the name of Balwant Singh to that of sons of Desa Singh, namely, Balwant Singh, Resham Singh and Fauja Singh. Even, no explanation has come forward in challenging the order as way back in the year 1982, whereas the orders are of 1965, 1973 and 1974. The additional evidence sought to be placed on record would be meaningless as the appellant(s)-plaintiff(s) had set up the plea of adverse possession, meaning thereby, did not admit their ownership. Such plea cannot be taken in affirmative.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

30.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No