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

(1)

**Regular Second Appeal No.948 of 1988 (O&M)
Date of Decision: March 22, 2016.**

Sarvshri Ajit Singh and others

..........APPELLANT(s).

VERSUS

Department of Agrarian Reform, Punjab and others

........RESPONDENT(s).

(2)

Regular Second Appeal No.949 of 1988 (O&M)

Smt. Gurmeet Kaur

..........APPELLANT.

VERSUS

Department of Agrarian Reform, Punjab and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by : Mr. M.S. Rakkar, Senior Advocate
for the appellant (s).

Mr. L.C. Aggarwal, A.A.G. Punjab
for respondents No.1 and 2.

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SURINDER GUPTA, J.

This judgment will dispose of two appeals captioned above as the matter in issue in both the appeals is similar.

Brief facts of Civil Suit No.60 of 1985 (RSA No.948 of 1988)

Ajit Singh, Deep Singh, Gian Singh and Mehnga Singh sons of

Sohan Singh filed suit seeking declaration to the effect that they are in possession of the suit land measuring 5 kanals 17 marlas comprised in khata/khatoni No.72/122, khasra No.25/8/1 as per jamabandi for the year 1979-80 of village Behani Ram Dayal, Tehsil Baba Bakala, District Amritsar and are bona fide purchaser of the same for valuable consideration without notice of any defect in the title of Sohan Singh, defendant No.3 and are entitled to protect their possession against any order or proceedings under the Punjab Utilisation of Surplus Area Scheme or under any other law for the time being in force, initiated by Department of Agrarian, Punjab or Collector, Amritsar, District Amritsar. The plaintiffs also sought relief of permanent injunction to restrain defendants No.1 and 2 from dispossessing the plaintiffs from the suit land till he is paid back the amount which they had paid to defendnat No.3 along with sundry charges i.e. registration, scribe fee, expenses on the sale deed etc. along with amount spent by them on improvement of the suit land.

The case of the plaintiffs, in brief, is that they purchased the suit land out of total land measuring 13 kanals 7 marlas bearing killa No.16/24/22, 25/1 and 25/8/1 from defendant No.3 Sohan Singh and mutation No.146 dated 05.04.1983 was sanctioned by the revenue authorities in their favour. At the time of purchase, defendant No.3 was recorded as owner of the suit land in the jamabandi. The sale certificate issued in favour of defendant No.3 or the entry in the jamabandi did not reflect that defendant No.3 had any restricted right of transfer of the suit land. The plaintiffs are bona fide purchasers in good faith treating defendant No.3 as full owner in possession of the suit land vide sale deed dated 06.04.1984 for a sale consideration of ₹8,775/-. Thereafter, plaintiffs spent about ₹8,000/- on improvement of the land and making it fit for cultivation. Defendant No.3 had also represented to the plaintiffs that he had unrestricted right to sell the suit land.

On 15.01.1984 (sic 15.01.1985), the plaintiffs came to know from the *Patwari* that there was condition put on the sale made by defendant No.3 and on inquiry, they came to know that defendant No.1 vide ex parte order, had cancelled the allotment/sale of the suit land to defendant No.3. Plaintiffs filed appeal to the Commissioner, Jalandhar Division, Jalandhar, who stayed the dispossession of the plaintiffs and directed them to seek redressal of their grievance from the civil Court. Hence, this suit.

Defendants No.1 and 2 contested the claim of plaintiffs in the written statement, inter-alia, pleading that civil Court has no jurisdiction to try the present suit which is also premature and is not maintainable in the present form. Allotment of the suit land to defendant No.3 was cancelled and the plaintiffs have no locus standi to step into shoe of allottee-defendant No.3, who while alienating suit land contravened the provisions of para 10 (e) of the Utilisation of Surplus Area Scheme, 1973 which reads as under:-

> "That the allottee shall not be competent to transfer his rights in the land allotted to him to any person till he becomes the owner of the land or before the expiry of fifteen years of the date of possession, <u>whichever is later</u>."

Para 10 of that scheme clearly lay down that breach of term as incorporated in the scheme shall render the allotment of surplus area cancelled. Allottee was not authorised to transfer his right in the allotted land for a period of 15 years from the date of possession or when he becomes owner of the land. Allotment of defendant No.3 was rightly cancelled as he had contravened the above statutory provisions. The plaintiffs were well-aware that the land in dispute had been allotted being 'surplus land' to defendant No.3 and it was necessary for them to look into the condition of allotment. Mandatory provisions of allotment could not be over-looked simply because the plaintiffs had only checked the revenue record.

Defendant No.3 in his separate written statement took the plea that he had paid the full price of the land allotted to him and if any condition is put restraining the sale of the same, it is ultra vires, illegal, unconstitutional and not binding on the rights of defendant No.3. He raised another issue that plaintiffs have not paid him the full price of the suit land, as such, cannot claim ownership over it.

Brief facts of Civil Suit No.59 of 1985 (RSA No.949 of 1988)

Gurmit Kaur, plaintiff sought similar relief as sought by Ajit Singh and others with regard to the property purchased by her from Sohan Singh measuring 7 kanals 10 marlas bearing khasra No.16/24/2 and 25/1. The other plea raised by her and by the defendants in their written statements are similar to the plea raised in the civil suit filed by Ajit Singh and others, as such, require no repetition.

In the later part of the judgment, reference to the pleadings and evidence will be made from the civil suit titled Ajit Singh and others Vs. Department of Agrarian, Punjab and others.

Learned Additional Senior Sub Judge, Amritsar dismissed the suit with the observations that the plaintiffs are not the bona fide purchasers.

They were aware that the land had been allotted to defendant No.3 by Agrarian authorities but made no inquiry from the office of Collector, Agrarian, which could reveal them the true state of affairs about the right of defendant No.3 to alienate the suit land.

On appeal, learned Additional District Judge affirmed the finding of learned Additional Senior Sub Judge, Amritsar and dismissed the appeal.

I have heard learned counsel for the appellants, learned Assistant Advocate General, Punjab for respondents No.1 and 2 and perused the paper book of the appeal and record of the Courts below with their assistance.

Arguments

Learned counsel for the appellants has mainly relied on the plea taken by the plaintiffs that they are bona fide purchasers of the suit land for valuable consideration without notice of any defect in the title of defendant No.3 Sohan Singh. He has argued that before purchasing the suit land, the appellants have seen the letter of allotment in favour of defendant No.3, gone through the revenue record particularly the entries in the jamabandi which showed defendant No.3 as owner of the suit land. Even in the allotment letter, there was no term and condition mentioned that defendant No.3 was not competent to alienate the suit land for 15 years or that the breach of any term or condition of allotment will render the allotment in his favour, cancelled/revoked.

Learned counsel for the appellants-plaintiffs submits that the plaintiffs, who have used prudence of an ordinary person, were not required to go to the office of Collector, Agrarian to further look into the terms of allotment of land in favour of defendant No.3-Sohan Singh. Both the Courts below have committed grave error of law and fact while observing that the appellants-plaintiffs were required to make inquiries from the office of Collector, Agrarian.

Learned Assistant Advocate General, Punjab has argued that Agrarian Department has cancelled the allotment in favour of defendant No.3 Sohan Singh for breach of terms and conditions of the allotment of surplus land and jurisdiction of the civil Court in the matter is barred under Section 21 of the Punjab Land Reform Act, 1972. The appellants had filed appeal before the Revenue Commissioner, which was pending when the suit was filed, as such, this suit was premature. Both the Courts below have rightly observed that the appellants have not made any inquiry about the terms of allotment of surplus land to defendant No.3, as such, cannot claim to be bona fide purchasers of the suit land.

Discussion

Sohan Singh, defendant No.3 was allotted 15 kanals 18 marlas of surplus land under the order of SDO (Civil)-cum-Collector, Agrarian, Amritsar dated 20.09.1978. Mutation (Ex.P2) regarding allotment was sanctioned in favour of Sohan Singh. Entry in the jamabandi for the year 1979-80 (Ex.P3) was also made in column No.12 to the effect that the above land was sold by the State to Sohan Singh. The allotment was made under para 7(2) of Punjab Utilisation of Surplus Area Scheme, 1973 and the notice was given to the big land owners from whose land allotment of land was made under para 9 of the above said scheme. Learned Additional Senior Sub

Judge took note of this fact that the sale certificate was issued in Form 'K' instead of Form 'II' of the scheme.

Appellants-plaintiffs have relied on the order of allotment of Sohan Singh (Ex.P6) which shows that allotment was within para 7(2) of the Scheme which is subject to the condition of allotment as mentioned in para 10 of the scheme. It is specifically provided in para 10(e) as follows:-

> "(e) the allottee shall not be competent to transfer his rights in the land allotted to him to any person till he becomes the owners or before the expiry of a period of 15 years of the date of possession, whichever is later :
>
> Provided that the allottee may transfer the land by way of mortgage without possession in favour of a Land Mortgage Bank, the State or Central Co-operative Bank or any other Bank for the purpose of raising loan for development of such land."

The above condition clearly shows that allottee of the land was not competent to alienate the same for a period of 15 years from the day he becomes owner or from the date of possession, whichever is later.

Para 11 of the scheme specifically provides that 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.

Now, the question which arises for consideration is as to whether the plaintiffs were required to make inquiry regarding competence of Sohan Singh to alienate the suit land. Both the Courts have rightly answered this question in affirmative. When a person is aware that the land has been specifically allotted under a particular scheme and that scheme bars the transfer of the land for a period of 15 years from the date of delivery of possession, it was incumbent upon the vendees to make inquiry from the concerned department. In the case of ***Niranjan Kaur and Ors Vs. The Financial Commissioner, Revenue and Secretary to Government and Ors AIR 2011 P&H 1,*** the issue before the Full Bench was as to whether the vendees from the allottees of surplus land were protected under Section 41 of Transfer of Property Act, claiming themselves to be bona fide purchaser for value from the original allottee. Reference No.2 made by the Division Bench in that case is as follows:-

> "(2) The principle involved in section 41 of the Property Act is basically one of estoppel. It is well-established that the principle of estoppel cannot override the provisions of a Statute. Obviously, therefore, the provisions of section 41 of the Property Act would not be able to override the provisions of section 24 of the Act which authorises the Chief Settlement Commissioner to cancel any allotment."

While answering the above reference, Full Bench of this Court observed that the provisions of special statute would override provisions of Section 41 of Transfer of Property Act. While making this observation, Full Bench relied on the authoritative pronouncement of Hon'ble Apex Court in ***Hardev Singh vs. Gurmail Singh (dead) by LRs, (2007) 2 Supreme Court Cases 404***, and observed in para 44 as follows:-

> "44. The Hon'ble Supreme Court in ***Hardev Singh Vs. Gurmail Singh (dead) by LRs., (2007)2 Supreme Court Cases 404***, while interpreting the scope of provisions of Sections 41 and 42 of the Property Act, has laid down as under: -

"9. Application of Section 41 of the Act is based on the law of estoppel to the effect that if a man has represented that the transferor consents to an act which has been done and that he would not offer any opposition thereto, although the same could not have been lawfully done without his consent and he thereby induces others to do that from which they might have abstained, he could not question the legality of the act he had so sanctioned, to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

10. The ingredients of Section 41 of the Act are:

(1) the transferor is the ostensible owner;

(2) he is so by the consent, express or implied, of the real owner;

(3) the transfer is for consideration;

(4) the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.

11. Section 43, on the other hand, embodies a "rule of feeding the estoppel" and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts thereupon and it is immaterial whether the transferor acts bona fide or fraudulently in making the representation.

12. In order to get the benefit of the said provision, the conditions which must be satisfied are:

(1) the contract of transfer was made by a person who was competent to contract; and

(2) the contract would be subsisting at the time when a claim for recovery of the property is made.

13. However, the provisions would have no application if the transfer was invalid as being forbidden by law or

> ***contrary to public policy, as envisaged under Section 23 of the Contract Act. Thus, no estoppel can be pleaded contrary to the provisions of a statute. The "rule of feeding the estoppel" shall apply in absence thereof.***"

In the case of ***Jit Singh and Ors Vs. Piara and Anr. AIR 2003 P&H 258,*** in somewhat similar circumstances, it was observed as follows:-

> "4. A perusal of the above Rule shows that for a period of 20 years an embargo has been imposed on an auction purchaser Scheduled Caste from alienating, transferring or mortgaging with possession or in any manner part with the land wholly or partly to a person who does not belong to Scheduled Caste. A limited permission has been granted by the Rule in favour of such an auction purchaser for pledging the land, in favour of a Government or Semi-Government Corporation or Co-operative financing institution for securing loan and that too for effecting improvement on the land. **It is well-settled that there cannot be any estoppel against a Statute......"**

As is clear from the observations in above referred citations that there cannot be any estoppel against a statute. The appellants-plaintiffs are trying to protect the alienation in their favour by Sohan Singh raising the plea that they are bona fide purchasers of the suit land for consideration. The above plea is not available to them as the sale made by Sohan Singh was specifically barred under a statutory provisions. It is immaterial whether the sale certificate was issued on Form 'K' or Form 'II' or whether the terms of his allotment were mentioned in the allotment letter, jamabandi or not. The fact of the matter is the allotment of surplus land was made to Sohan Singh under the scheme of Government. The plaintiffs were aware at the time of purchasing the land that this allotment is under a scheme and onus was heavily upon them to satisfy themselves before purchasing the land that their vendor was competent to alienate his title over suit land. They have not taken any such precaution.

Both the Courts below have rightly observed that the protection of Section 41 of Transfer of Property Act is not available to the appellants-plaintiffs.

On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in these appeals, which have no merit.

Dismissed.

(SURINDER GUPTA)
March 22, 2016. **JUDGE**
Sachin M.

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Whether to be referred to reporters: Yes/No