

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

**R.S.A. No.2401 of 2009 (O&M)**

Date of decision: 14.01.2016

Hawa Singh

...Appellant

Versus

Haryana State through its Collector, Hisar and ors.

...Respondents

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN**

Present: Mr. Ram Chander, Advocate for the appellant.

Mr. Saurabh Mohunta, DAG, Haryana

None for proforma respondent Nos.3 and 4.

\*\*\*\*

**Jitendra Chauhan, J.**

This regular second appeal is directed against the judgment and decree dated 09.03.2009, passed by the learned Additional District Judge, Hisar, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the

judgment and decree dated 24.01.2007, passed by the learned Civil Judge, Jr. Divn., Hisar, (for short, the 'trial Court'), has been dismissed. The appellant by way of this appeal has also challenged the impugned order dated 09.03.2009, passed by the learned Additional District Judge, Hisar, dismissing the application filed by the appellant under Order 41 Rule 27 of the Code of Civil Procedure for producing additional evidence.

The appellant-plaintiff filed a suit for declaration to the effect that the order dated 29.10.2009, passed by respondent No.2 SDO (Civil), Hisar, empowered as prescribed authority under the Haryana Land Ceiling and Holdings Act, 1973 as amended upto date, is wrong and illegal. The learned trial Court vide judgment and decree dated 24.01.2007 dismissed the suit.

The Ist appeal filed by the plaintiff/appellant was dismissed by the learned first Appellate Court vide judgment and decree dated 09.03.2009 by affirming the findings recorded by the learned trial Court, which were returned after discussing and evaluating the oral as well as documentary evidence on record.

Hence, this appeal at the behest of the plaintiff/appellant.

The learned counsel for the appellant states that vide

Mutation No.4424, suit land was erroneously mutated in the name of provincial Government i.e. State of Haryana, as the same was purchased by Sh. Kanshi Ram, (Grandfather) the predecessor in interest of the appellant-plaintiff and defendant Nos.3 & 4, being tenant of Smt. Bhagwanti, who was the land owner. He further states that in view of Section 18 (4) of Punjab Security of Land Tenures Act, 1953, on deposit of the purchase price of Rs.5,000/-, in pursuance of order dated 04.05.1987, passed by the Commissioner, Hisar Division, Hisar, Sh. Kanshi Ram had become the owner of the land in question. The matter stands compromised between the plaintiff and Smt. Bhagwanti vide order dated 28.01.1987. Lastly, he submits that the learned first Appellate Court has dismissed the suit by holding that the Civil Court has no jurisdiction, however, there is specific findings recorded by the learned Trial Court that the Civil Court has jurisdiction in the matter.

The learned counsel cites '**Amar Singh Vs. Ajmer Singh**' 1994(3) RRR 90, '**Dharam Pal Vs. State of Haryana**', 2002(2) RCR (Civil) 37 and '**Megh Raj and ors. Vs. Manphool and ors.**', passed in RSA NO.40 of 1984.

On the other hand, the learned State counsel submits

that respondent No.1 is owner in possession of the land in dispute as Smt. Bhagwanti herself submitted a list of her own land and the land in question was declared surplus. He further states that the plaintiff was never in possession of the suit land, thus, there was no need of giving any notice or opportunity to him regarding the impugned order dated 29.10.1990.

I have heard the learned counsel for the parties and carefully gone through the entire record on file.

From the perusal of the record and the impugned judgment passed by the learned trial Court, it reveals that the suit of the plaintiff was dismissed with the observation that without perusing the order dated 29.10.1990, to which he had laid challenge, no finding could be recorded regarding its illegality. There is no contention that the order dated 29.10.1990 is void or without jurisdiction. The civil Court will not act as Court of appeal or revision under the Act. Further, no evidence was led by him to prove that grandfather of the appellant, i.e. Kanshi Ram, had filed any application for purchase of the disputed land. The learned first appellate Court has observed that the appellant-plaintiff has not placed any order which shows that Kanshi Ram was the absolute owner in possession of the disputed land as

alleged by the appellant. As far as the alleged compromise which was entered vide order dated 28.01.1987 is concerned, the same has no consequence as the land in question was declared surplus on 30.09.1986. Therefore, Smt. Bhagwanti has no right to enter into compromise as on 28.01.1987, she was not the owner of the land, which had already been declared surplus and vested in the State of Haryana on 30.09.1986.

Section 26 of the Punjab Security of Land Tenures Act, specifically bars the jurisdiction of the Civil Court and it has been rightly held so by the the First Appellate Court. The ladder of law has been prescribed under the Act. This Court affirms that the Civil Court had no jurisdiction to entertain and try the suit. The suit of the plaintiff is liable to be dismissed on this ground alone. The argument of the learned counsel for the appellant that the trial Court has held that the Civil Court has jurisdiction in the matter, but the said finding of the trial Court was not challenged by way of cross-objections in the First Appellate Court, is repelled on the ground that it is legal point, which can be raised at any time even without filing cross-objection as there is specific legal issue regarding jurisdiction of the Civil Court to entertain and try the suit. Hence, it is held that

the Civil Court has no jurisdiction to entertain and try the suit.

There is no infirmity or illegality in the order dated 09.03.2009, passed by the First Appellate Court dismissing the application for leading additional evidence at appellate stage. The Civil Suit was filed on 19.07.2001 and dismissed on 24.01.2004. The documentary evidence was very much in the knowledge of and in possession of the plaintiff yet it was withheld. Thus, the order dated 09.03.2009, dismissing the application under Order 41 Rule 27 CPC is also affirmed.

In **Kashmir Singh Vs. Harnam Singh and another**, 2008 (2) RCR (Civil) 688, it has been held that the general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof.

On consideration, this Court finds that the contentions of the learned counsel for the appellant have no merit as these only relate to the appreciation of evidence. No

evidence has been shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for. No other point was raised.

Hence, this regular second appeal is dismissed with no order as to costs.

**14.01.2016**

ashok

**(JITENDRA CHAUHAN)**  
**JUDGE**