

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

RSA No.4826 of 2009(O&M)

Date of decision : 28.11.2016

Amrit Lal Gupta

..... Appellant

versus

Smt.Swarni and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate for the appellant.

Mr.Vijay Lath, Advocate for respondents No. 1 to 3.

AMIT RAWAL, J. (Oral)

The appellant-defendant No.1 is in regular second appeal against the concurrent findings of the Courts below whereby suit filed by the plaintiff-respondents seeking a declaration to the effect that they are entitled to purchase the property bearing khasra No.32//8/1(0K-17M) situated at Ropar within municipal limits, Ropar for a sum of Rs.3062/- after adjusting the instalments paid by the plaintiff-respondents, further seeking a declaration that the property bearing No. 801-B(P) measuring 552 square yards is in the Abadi and Lal Lakir and property bearing khasra No. 32//8/1(0K-17M) is a different property, with a consequential relief of permanent injunction restraining appellant-defendant No.1 not to interfere and forcibly dispossess them from the property bearing No. 32//8/1(0K-17M), has been decreed.

Mr.Amit Jain, learned counsel appearing for the defendant No.1-appellant submits that the defendant No.1-appellant was owner of the property vide allotment letter dated 27.1.1969(Annexure P-1) and was

allotted a plot measuring 801-B(P) on payment of usual charges with the following description:-

North : Local property now in occupation of Ajit Singh Duggal

South : Evacuee property in occupation of Kalu and Puran Harijans

East : Open site

West: Evacuee property

The aforementioned transfer was challenged by the plaintiffs before the Tehsildar (Sales) and the Tehsildar (Sales) vide order dated 29.12.1978 (Annexure P-4)/Ex.DW7/A upheld the transfer in essence dismissed the application of respondent-plaintiffs. The same attained finality before this Court in CWP No. 7281 of 1993. The order of this Court rendered in aforementioned CWP was assailed in the Hon'ble Supreme Court and the same was dismissed, however, liberty was granted to the plaintiffs to seek identity of the property in independent proceedings. It is in this aspect of the matter that the present suit for the aforementioned relief has been filed. The case of the the plaintiff-respondents is primarily based upon the averments made in para 1 of the plaint i.e. as per the order dated 27.09.77 of the Chief Settlement Commissioner, the predecessor-in-interest of the plaintiffs was transferred aforementioned khasra number but submits, that the above mentioned order has not seen the light of the day. In essence the plaintiffs have miserably failed to establish the right of transfer. Both the Courts below though appointed the Tehsildar, Malkiat Singh as local commissioner who has submitted his report Ex.OX and gave erroneous finding holding that both the properties are separate and distinct whereas in cross-examination he admitted that he had not conducted the demarcation of

the property by putting permanent point. In essence the demarcation was not done in accordance with the High Court Rules and Orders. There is no challenge to the transfer of the appellant-defendant No.1 which has attained finality and, therefore, the claim of the respondent-plaintiffs seeking preferential right to alienate that very plot is neither here nor there. Even the kanungo in the cross- examination admitted that there is no order of any officer of the department showing that the property bearing khasra number 32//8/1 and 801-B(P) are distinct properties, yet the courts below have granted the relief which is totally against the documentary evidence on record and thus there is a grave misconception and preposterous much less, an aberration. Learned counsel for the appellant-defendant No.1, on instructions from his client, submits that since appellant-defendant No.1 is in possession of the property, he has no intention to dispossess the plaintiffs who have not been found to be in possession of any khasra number in absence of any documentary evidence on record . Though the plaintiffs have failed to prove the identity of the property and also have no objection but in case the plaintiffs are found to be in possession of some area falling within their transfer, he will take the remedy in accordance with law and has further no objection in case the department reconsiders the case of the respondent-plaintiffs in allotting alternative plot.

Per contra Mr.Vijay Lath, learned counsel appearing on behalf of the respondent-plaintiffs submits that the concurrent finding of fact cannot be interfered until and unless there is gross illegality and perversity and the findings recorded by the courts below are perfectly legal and justified. The liberty granted by the Hon'ble Supreme Court has yielded result in establishing that both the properties are distinct and not the same.

He further submits that the department should consider the matter afresh in considering the allotment of the plot in lieu of receipt of certain instalments and urges that appeal of appellant-defendant No.1 should be dismissed.

I have heard learned counsel for the parties and gone through the record of the case.

Concededly the transfer in favour of appellant-defendant No.1 has not been challenged but has been upheld up to the Hon'ble Supreme Court, therefore, I do not feel it appropriate to reopen the matter and form a different opinion. The order of the Tehsildar(Sales), Financial Commissioner, Chief Settlement Commissioner and this Court, in essence, have been upheld but the Hon'ble Supreme Court granted liberty to the respondent-plaintiffs to establish the identity of the property in civil court intriguingly the relief, as noticed above, do not warrant any challenge to the transfer. Accordingly the transfer of the property in favour of the appellant-defendant description of which is mentioned above, is hereby upheld. Resultantly the findings of the trial Court much less that of the Lower Appellate Court in granting direction to the department to allot the same very plot i.e.801-B(P) in favour of the plaintiff-respondents is hereby set aside but this order of mine shall not preclude or disentitle the respondent-plaintiffs in establishing allotment in pursuance to the additional instalments i.e. 5 in number having been paid by the predecessor-in-interest particularly in view of the acknowledgement of the requisite department made in para 1 of the written statement which reads as under:-

“That the contents of this para are admitted to the extent that this property was to be transferred in the name of Devi Das after depositing the total amount i.e. 3062/- in 12 equal instalments. Only five instalments were deposited and the remaining

instalments were not deposited by Sh.Devi Dass or by his legal heir so due to this default, no Sale Certificate was issued in favour of Sh.Devi Dass. The Punjab State is still the owner of the property in dispute and is entitled to get the possession from the plaintiff in due course of law. Rest of the para is denied for want of knowledge.”

Since the respondents have not been able to establish or bring on record the order dated 27.09.1977 alleged to have been issued by Chief Settlement Commissioner, I am of the view that plaintiffs would not be persistent and obstinate in claiming the allotment to be their preferential right as area of the plot has not been prescribed therein though there is a reference in the plaint measuring it to be 552 square yards, they would be entitled to seek allotment of alternative plot and the exercise aforementioned shall be done by the department i.e. defendants No. 3 to 4 as expeditiously as possible preferably within a period of six months from the date of receipt of a certified copy of this order. Mr. Jain has made a statement that in case of a short fall in regard to the allotment, appellant-defendant No.1 would take the remedy in accordance with law but not forcibly.

Accordingly the judgment and decree are corrected and modified. The transfer of the allotment in favour of the appellant-defendant No.1 is upheld with a direction to defendants No. 3 and 4 in the manner indicated above. Appeal stands disposed of in the above terms.

(AMIT RAWAL)
JUDGE

November 28, 2016
sunita

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