

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

RSA No.1555 of 2010 (O&M)
Date of decision : 08.02.2016

Alisher and ors.

...Appellants

Versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Pawan Kumar, Sr. Advocate with
Mr. Rozer Kumar Aggarwal, Advocate for appellants.

Mr. D.K. Mittal, DAG, Haryana.

Mr. Sanjay Verma, Advocate and
Mr. S.S. Dinarpur, Advocate for respondent No.11.

AMIT RAWAL, J. (Oral)

CM No.4673-C of 2010

For the reasons stated in the application, which is duly supported by an affidavit, LRs of deceased-Rukamdeen as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

The application stands disposed of.

Main case

The appellants-plaintiffs are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit claiming declaration challenging the allotment made in the year 1979 in favour of private respondent-Faquirya-respondent No.4-defendant No.4, has been upheld.

-CMr. Pawan Kumar, learned Senior Counsel assisted by Mr. Rozer Kumar, Advocate for the appellant submits that appellant-plaintiff status, on the land as per the jamabandi Ex.P4 to Ex.P7, had been that of tenant. Application Ex.P1 and Ex.P3 for declaration of the land surplus was submitted for allotment and not by State. The allotment made in favour of defendant No.4 was challenged which was set aside by the trial Court, but the lower Appellate Court reversed the well-reasoned judgment and decree of the trial Court. As per the provision of Section 9-A of the Punjab Security of Land Tenures Act, 1953, no tenant is liable to be ejectment under Clause-I of Sub-Section 1 of Section next preceding, much less, dispossessed unless he has been accommodated in accordance with Section 10 A of the Act. The lower Appellate Court despite having reversed the findings at page 142 gave a finding that the possession of the plaintiff is of tenant. The total land allotted to the defendant No.4 was 39 kanals 10 marlas whereas the appellant-plaintiff had been in cultivation of land measuring 21 kanals. He submits that the lower Appellate Court has erroneously held that Civil Court did not have jurisdiction, such finding is against the judgment rendered by Full Bench of this Court in *State of Haryana and ors. Vs. Vinod Kumar and ors. 1987 RRR 81*, and further submits that no opportunity of hearing had been given to the tenant for the purpose of allotment, much less, non-

consideration of the application as per Section 26 of Haryana Ceiling on Land Holding Act, 1972 (hereinafter to be referred as Act No.26 of 1972) does not oust the civil jurisdiction of Civil Court. The witnesses of the State, as DW1 Sadhu Ram, deposed that application of the plaintiff for the purpose of allotment of land having declared surplus had not been considered, thus, he submits that the application cannot remain pending for time immemorial. Once there is passing reference in the impugned judgment that they have been in cultivating possession which will not taken out from the purview of the term tenant and thus prays that judgment and decree of the lower Appellate Court be set aside and that of the trial Court be restored.

Mr. Sanjay Verma, & Mr. Dinarpur, learned counsel appearing on behalf of defendant No.4 submit that suit filed in the year 1995 was ex facie time barred as the allotment of 1979 was challenged after 16 years and rightly so, the lower Appellate Court has dismissed the suit on the ground suit was barred by law of limitation. The application for allotment Ex.P1 & Ex.P3 does not specify the status of tenant and rightly so, has not been allotted any plot. Defendant No.4 is in possession of the rest of the land and the possession was taken in the year 1983. This fact was in the knowledge of the plaintiff. Nothing prevented to assail or to seek the vindication of alleged grievance within a period of three years i.e. as per provision of Article 58 of the Indian Limitation Act and as well as before the authorities under the Act and thus prays for dismissal of the appeal.

Mr. D.K. Mittal, DAG, Haryana, submits that DW1 did not depose as per the record of the State.

While Mr. Pawan Kumar, in rebuttal submits that as per the provision of

Section 4 of the Haryana Utilization of Surplus and Other Area Scheme, 1996, the appellant-plaintiff falls under the category-E. Even assuming that they are falling under the other Category yet they have right to be considered for allotment and cannot be deprived of the right for consideration.

I have heard learned counsel for the parties and appraised the paper book and as well as record of the Courts below.

No doubt that the appellants invoked the jurisdiction of Civil Court in the year 1995 when the mutation in respect of land aforementioned in pursuance to the allotment was effected in the name of the defendant No.4 and the trial Court after having found the same, negated the plea of limitation raised by the defendants. DW1 Sadhu Ram as per record deposed that the application Ex.P1 and Ex.P3 have been submitted by the appellant-plaintiff for the purposes of allotment in respect of land having been declared surplus. Though, lower Appellate Court has negated the plea of the appellant being tenant but in the same breath, it found that none of the jamabandi Ex.P4 to Ex.P7 for the year 1964-65, 1972-73, 1987-88, 1992-93 showed that plaintiff had been in cultivating possession of the land in dispute as tenant. For the sake of brevity, the relevant portion of finding rendered by the lower Appellate Court is reproduced hereinbelow:-

“In my considered view, answer to the same is in negative. Perusal of jamabandis Ex.P4 to Ex.P7 (for the years 1964-65, 1972-73, 1987-88 and 1992-93, respectively) shows that plaintiffs are duly recorded to be in cultivating possession of the land in dispute as tenants.”

The plaintiffs have taken almost 16 years in challenging the

allotment in favour of defendant No.4 but it equally has surfaced that application remain undecided. The State was required to pass an order in accordance with law enabling the appellant-plaintiff to seek redressal of the grievances in case of adverse order, if any. It being such situation not done, in my view, the appellant-plaintiff has been denied the right of consideration as per provision of Section 9-A *ibid* and as well as 1976 Scheme. Since the defendant No.4 has honoured all the terms and conditions of the allotment letter by discharging the obligation i.e. the payment of the entire outstanding amount towards allotment, I am of the view that allotment of the defendant cannot be disturbed at this stage but Court cannot keep his eyes close with regard to the non-consideration/any order having been passed on the application submitted by the appellant-plaintiff.

I am in agreement with submission of Mr. Kumar that since application of the appellant remained undecided, the jurisdiction of the Civil Court as per the dictum/ratio decidendi culled out by Full Bench (*Supra*) is not ousted, therefore, the findings of the lower Appellate Court vis-a-vis jurisdiction of Civil Court being barred is not sustainable & hereby set aside.

Accordingly, the allotment made in favour of the defendant No.4 is hereby affirmed. The plaintiff shall not disturb the possession of the defendant No.4 vis-a-vis the land beyond 21 kanals. The Haryana State or concerned Department is directed to consider the application submitted for consideration of the allotment of alternative land under the Act No.10 of 1953 and 1976 Scheme of the appellant-plaintiff in accordance with law,

preferably within a period of one month from the date of receipt of certified copy of the order of this Court and till then the possession of the appellant shall remain intact. Thereafter, the defendant No.4 shall be at liberty, in case the state decides to allot alternative plot to plaintiff and to seek the possession of area. In such situation, plaintiff is directed to hand over the possession of land to the defendant No.4 and if otherwise shall be entitled to seek the possession of the land stated to be in possession of the plaintiff in accordance with law.

With the aforementioned direction, appeal stands disposed of.

08.02.2016

pawan

**(AMIT RAWAL)
JUDGE**