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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.569 of 2016 (O&M)

Date of decision: May 09, 2016

Narinder Kaur and others

.....Appellants

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Mr. Santosh Sharma, Advocate
for the appellants.

1. Whether Reporters of Local papers may be allowed to see the judgment? **yes**
2. To be referred to the Reporters or not? **no**
3. Whether the judgment should be reported in the Digest? **no**

A.B. CHAUDHARI, J.

The present intra court appeal is directed against the judgment and order dated 11.07.2014 passed in CWP No.19741 of 2010 by which the learned Single Judge dismissed the said writ petition filed by the appellants, so also the order dated 19.09.2015 in review petition.

In support of the appeal, learned counsel for the appellants submitted that, (i) the learned Single Judge committed an error in holding that the principles of *res judicata* were applicable in relation to the earlier judgment of the lower Appellate Court, when as a matter of fact, the said Court had reserved the liberty in favour of the appellants to raise a claim for the purchase of the disputed

land and to seek appropriate relief, (ii) the learned Single Judge committed an error in ignoring the fact that the predecessors of the appellants were shown in the possession of the suit land as tenant for the year 1954-1955 and when application to Naib Tehsildar was made to supply *khasra girdawari* from *Kharif* 1959 to *Rabi* 1967 to show the possession of the appellants, the *Halka Patwari* had expressed his inability to supply the same on the ground that the same was not available, (iii) the learned Single Judge ought to have considered the material aspect namely, that the application under Section 18 of the Punjab Security of Lands Tenures Act, 1953 (for short 'Act') was allowed by the State on 30.10.1991 by which the applicants were asked to deposit ₹12,000 per acre, total ₹1,27,650/- and out of which the appellants in fact had deposited ₹90,440/-. The appellants are still ready and willing to deposit the balance amount. The Act of 1953 being a beneficial legislation, protection to the tenant was required to be liberally given. Learned counsel for the appellants, therefore, prayed that the CWP No.19741 of 2010 be allowed.

We have heard learned counsel for the appellants for considerable length. We have perused the entire record so also the documents referred to us by him. We have also perused the reasons given by the learned Single Judge.

The appellants were claiming tenancy through

Harnam Singh son of Diwan Singh, the alleged tenant in respect of the suit land. *Khasra girdawaries* for *Kharif* 1956 indicated the name of Harnam Singh for the first time. Before that record indicated that upto 02.10.1955, Hazara Singh etc. were shown in possession as tenants. Indisputably the suit land was sold to Government on 24.03.1958 by a sale deed. There is no record earlier to *Kharif* 1956 or after execution of sale deed dated 24.03.1958 showing possession of Harnam Singh much less as a tenant. The uninterrupted and continuous possession for six years is *sine qua non* for claiming right to purchase such land. As stated earlier, Harnam Singh's possession can be found in the record only from *Kharif* 1956 till the Government purchased it on 24.03.1958 and not thereafter, i.e. for a period of two years only. Apart from that the appellants have not made it clear as to how, in what capacity and under what circumstances, Harnam Singh came in possession of subject land. In the light of these admitted facts, the tenancy right for the purchase of the suit property as tenants cannot be held in favour of the appellants. We therefore, find that the claim for purchase of the land as a tenant was rightly turned down by the learned Single Judge holding him to be in unauthorized possession. The protection under Section 16 read with Section 21 of the Act would not be available.

The submission that the principles of *res judicata* was wrongly applied by the learned Single Judge, also must fail. The learned Single Judge held that the findings recorded in summary proceedings cannot be treated as *res judicata* but the findings inter-parties recorded by the civil court would operate as *res judicata*. It is true as contended by learned counsel for the appellants that in the earlier decree, lower Appellate Court had held that the dismissal of the suit would be without prejudice to the rights of the plaintiff therein to claim to purchase the disputed land and to seek appropriate relief. But then the appellants had pleaded that they were protected under Section 16 read with Section 21 of the Act and the lower Appellate Court while allowing the appeal filed by the State held against the appellants. Even if those proceedings in the civil suit were of summary nature, in our opinion the Court had still the limited jurisdiction and within the meaning of Section 11 Explanation VIII of Civil Procedure Code, 1908, a finding recorded by such Court of limited jurisdiction inter-parties would also operate as *res judicata* in the subsequent proceedings. Be that as it may, on merits, we concur with the finding of fact recorded by the learned Single Judge that the appellants could not claim any right as a tenant for want of continuous possession for six years.

The fact that the appellants had been asked by

the State to pay the price at the rate of ₹12,000/- per acre and that appellants had deposited ₹90,440/- would be of no consequence since the very legal right to purchase the land claimed by them has been negated by the learned Single Judge as well as by us.

The up-shot of the above discussion is that the appeal must be dismissed.

Hence, we make the following order:

ORDER

LPA No.569 of 2016 is summarily dismissed.

[SURYA KANT]
JUDGE

[A.B. CHAUDHARI]
JUDGE

May 09, 2016
mahavir