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

Date of decision : 27.05.2016

1.

RSA-4737-2013 (O&M)

Mukhtiar Singh and others

... Appellants

Versus

Jalandhar Improvement Trust and others

... Respondents

2.

RSA-2457-2011 (O&M)

Mukhtiar Singh and others

... Appellants

Versus

Jalandhar Improvement Trust and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Kumar Bakshi, Advocate
for the appellant(s) (in both the appeals)

Mr. J.S. Toor, Advocate
for respondent No.1 (in both the appeals).

Mr. K.S. Khehar, Advocate
for respondent No.4 (in RSA-4737-2013).

Mr. K.S. Dhillon, Advocate
for respondent No.4 (in RSA-2457-2011).

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

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing **RSA**

No.4737 of 2013 titled as “Mukhtiar Singh and others V/s Jalandhar Improvement Trust and others” and RSA No.2457 of 2011 titled as “Mukhtiar Singh and others V/s Jalandhar Improvement Trust and others” filed at the instance of the appellant-Mukhtiar Singh.

Mr. Arun Kumar Bakshi, learned counsel appearing on behalf of the appellant(s)-plaintiff(s) submits that Mukhtiar Singh was the owner of the land measuring 9 kanals 3 marals. On promulgation of the Scheme under the Punjab Town Improvement Act, 1992, the Jalandhar Improvement Trust (hereinafter called 'JIT'), acquired the land for making the scheme successful and in lieu thereof, JIT allotted a plot bearing No.1400 measuring 1 kanal, vide allotment letter dated 05.02.1988. As per the allotment letter, a sum of ₹ 18,055/- being 25% of the amount was deposited within 30 days. The said allotment was suspended by the Regional Deputy Director vide order dated 25.03.1988. The appellant(s)-plaintiff(s) filed a suit on 26.11.1988 seeking the permanent injunction against the respondent-defendant i.e. JIT not to allot the aforementioned plots to anybody else except the appellant(s)-plaintiff(s). The said suit was withdrawn on 18.09.1995 and thereafter on 21.09.1995, the suit seeking declaration challenging the alleged cancellation or non-allotment of the plot as per the allotment letter and alternative relief of mandatory injunction was sought to allot and hand over the possession of the plot to the appellant(s)-plaintiff(s) and also for cancellation of the allotment in favour of respondent No.3- Gurbachan Kaur, to whom JIT, in the execution proceedings arising out of the passing of the judgment and decree in a suit titled as "Gurbachan Kaur V/s Jalandhar Improvement Trust", offered an plot, in question and

further sale deed in favour of respondent No.4-Bhupinder Singh Dhillon was also challenged. He submits that the aforementioned facts came to the knowledge of the appellant(s)-plaintiff(s), during the pendency of the injunction suit. The trial Court on the basis of the oral and documentary evidence decreed the suit granting the following relief:-

"In the light of my findings on the above discussed issues, the suit of the plaintiff is decreed with costs and a decree for declaration that the cancellation of plot No.1400 in 143-56 Acres Scheme of JIT more fully detailed and described in the head note of the plaint from the name of plaintiff and allotting the same to defendant No.3 is an illegal act and not binding upon the plaintiffs. Similarly the sale made by defendant No.3 to defendant No.4 is also illegal and defendant No.1 and 2 are hereby directed to re-allot the land of plot No.1400 in favour of the plaintiff. Decree sheet be drawn and file be consigned to the judicial record room, Jalandhar."

In essence, the cancellation of the plot No.1400 in 143.56 acre Scheme from the name of the plaintiff and allotting the respondent-defendant No.3-Gurbachan Kaur, has been held to be illegal act and not binding upon the plaintiff(s) and the sale deed made by respondent-defendant No.3-Gurbachan Kaur in favour of Bhupinder Singh-respondent No.4 has also been held to be illegal and defendant No.1 and 2 i.e. judgment debtor has been directed to re-allot the plot in favour of the appellant(s)-plaintiff(s).

Aggrieved against the aforementioned findings, two appeals were filed, one by the JIT and another by Bhupinder Singh Dhillon and the lower Appellate Court vide judgment and decree dated 10.01.2011 partly

allowed the appeal of Bhupinder Singh Dhillon, holding therein that the appellant(s)-plaintiff(s) is entitled to get the vacant possession of the plot measuring 200 square yards and vacant possession of plot of 100 square yards to defendant No.4 and further held that Gurbachan Kaur-respondent-defendant No.3, was wrongly allotted the plot measuring 1 kanal, in execution of the judgment and decree in their favour and the remaining plot has been held to be in ownership of the JIT, for which, they have been given liberty to proceed in accordance with law.

He further submits that in ***RSA No.2479 of 2011*** titled as **“Bhupinder Singh Dhillon V/s Jalandhar Improvement Trust, Jalandhar, Punjab and others”** at the instance of respondent No.4 i.e. Bhupinder Singh Dhillon, was preferred in this Court and the same attained finality vide judgment dated 30.05.2011, whereby the order of the lower Appellate Court dated 10.01.2011 was upheld.

Against the aforementioned order, an **SLP bearing No.31604 of 2011** was preferred and which was vide order dated 22.07.2014 disposed of in the following manner:-

"In view of subsequent developments have taken place, namely, that a remand order was passed for taking a decision on the additional issues by the trial Court and that remand order is pending challenge before the High Court, we are of the opinion that nothing substantive survives in this petition.

Accordingly, we dispose of this petition, but make it clear that any observation made by the High Court in the impugned judgment will not influence either the trial Court or the High Court in taking the decision on the

pending matters.

The parties are at liberty to raise all contentions in the courts below in accordance with law.

The special leave petition stands disposed of.”

He submits that Hon'ble Supreme Court, though had not remanded back the matter to this Court, but disposed of the petition bearing **SLP No.31604 of 2011** on the premise that against the judgment and decree of the trial Court, JIT had also filed an appeal, which was dismissed in default and on restoration, an application for placing on record certain documents by way of additional evidence and as well as the amendment of the written statement, filed at the instance of respondent No.4- Bhupinder Singh Dhillon. The aforementioned appeal was restored at the back of the appellant(s)-plaintiff(s) and the lower Appellate Court, after taking into consideration the evidence in record, remanded back the matter to the trial Court. In this regard, he has drawn the attention of this Court to the order dated 10.09.2012 which reads thus:-

"13. As is apparent from the facts of the present case, my learned predecessor has allowed the application filed by the respondent for amendment of the written statement and for leading additional evidence vide order dated 29.11.2011. Additional issues No.1-A to 1-G numbering seven were also framed on which evidence has been concluded before this Court. Thus, as per law findings are required to be given by the trial Court on these issues also. As such, the judgment and decree passed by the trial Court on the earlier framed issues framed becomes redundant. Thus, the contentions of learned counsel for both the parties are acceptable for the reason that the suit has to be remanded back to the trial

Court, so that the findings are given by the trial Court on Additional issues No.1-A to 1-G also. So, the judgment and decree under challenge is hereby set aside having become redundant. The present appeal stands accepted and the suit is remanded back to the trial Court to give its findings on issues no.1-A to 1-G also after appreciating the evidence already led before this Court. No fresh opportunity to lead evidence is required to be given to both the parties in order to dispose of these issues. Ahlmad is directed to send the authenticated record of the statements, framing of issues etc., along with copy of this judgment to the trial Court well before the date fixed. The parties, through their counsel are directed to appear before the trial Court on 26.09.2012. Decree Sheet be drawn. Appeal file be consigned to record room.

Pronounced in open court

10.09.2012

*Harpreet Kaur Randhawa
ADJ, Jalandhar”.*

The aforementioned order has been assailed by the appellant(s)-plaintiff(s) in **RSA No.4734 of 2013.**

He submits that the appellant(s)-plaintiff(s) is entitled to the allotment of plot measuring 1 kanal as per the 1975 Rules and the JIT could not, during the execution proceedings in a suit at the instance of Gurbachan Kaur, allot her the same very plot when his suit was pending for adjudication, though there was no interim stay. The finding rendered by the lower Appellate Court for holding the appellant(s)-plaintiff(s) entitled to the allotment of the plot measuring 200 square yards, is totally erroneous, much less, against the terms of allotment letter whereby, the plot bearing No.1400

measuring 1 kanal, had been allotted. The trial Court, after examining the oral and documentary evidence, rightly held the appellant(s)-plaintiff(s) to be entitled to the allotment of the aforementioned plot and thus, urges this Court for affirming the findings rendered by the trial Court.

Mr. J.S. Toor, learned counsel appearing on behalf of the respondent No.1-JIT, submits, that the cancellation of the allotment was perfect, legal and justified, for, the notification under Section 36 of the Punjab Town Improvement Act, was promulgated on 04.02.1984 and at that time, 1983 Rules were in vogue and as per the said Rules, a person, whose land less than 2 Acres is acquired, would be entitled to a plot measuring 200 square yards. It is, in this background of the matter, the lower Appellate Court held the appellant(s)-plaintiff(s) to be entitled of the plot measuring 200 square yards and given the liberty to the JIT to take steps to seek the possession of the balance area of the land from Gurbachan Kaur substituted by Bhupinder Singh Dhillon.

Mr. K.S. Dhillon and Mr. K.S. Khehar, learned counsel appearing on behalf of respondent No.4-Bhupinder Singh Dhillon, submit, that de hors of fact that regular second appeal bearing No.2479 of 2011 had been dismissed, but Hon'ble Supreme Court vide order dated 22.07.2014 observed that since matter had been remanded back the matter to the trial Court, in essence, the entire suit has re-opened and gave the opportunity to the appellant(s)-plaintiff(s) to re-agitate the matter thus the trial Court would decide the matter uninfluenced to the findings rendered by High Court and as well as the lower Appellate Court.

They further submit that in pursuance to the remand order dated

22.07.2014, the matter is pending for adjudication before the trial Court, even the appellant(s)-plaintiff(s) has submitted to its jurisdiction and filed certain applications in this regard, but no further proceedings have been held. They also submit that vide notification dated 03.09.1974, the land of Gurbachan Kaur was acquired and at that relevant time, 1975 Rules were in vogue, thus, Gurbachan Kaur was entitled to the allotment of the plot measuring 1 kanal and therefore, the finding rendered by the lower Appellate Court granting the liberty to the JIT to seek the possession of the balance area, is not only illegal, but erroneous, much less, fallacious. They further submit that his client has stepped into shoes of Gurbachan Kaur, original oustee by raising construction thereon i.e. house has been erected and it is, too late in a day to put the clock back.

They further submit that the suit of the appellant(s)-plaintiff(s) is not maintainable as it was hit by Order 2 Rule 2 CPC as relief sought in the subsequent suit, could have been availed in the first suit, even would fall within the provisions of Order 23 Rule 1 CPC as while withdrawing the first suit, no permission was sought to file the second suit on the same cause of action.

They further submit that there is no challenge to the judgment and decree dated 10.04.1985, whereby the suit at the instance of Gurbachan Kaur against the JIT had been decreed and a direction had been given to allot plot bearing No.338 or equivalent plot measuring 1 kanal.

Mr. Arun Kumar Bakshi, in rebuttal submits that the following substantial questions of law would arise for determination:-

1. Whether the judgment and decree dated 10.01.2011 of the

lower Appellate Court, holding the appellant(s)-plaintiff(s) for entitlement and delivery of possession of land measuring 200 square yards is legal and justified?

2. Whether the appellant(s)-plaintiff(s) is entitled to the allotment of plot measuring 1 kanal?

3. Whether the act of JIT in re-allotting the plot to Gurbachan Kaur, during the pendency of the first suit, is legal and justified?

4. Whether the case of Gurbachan Kaur would fall in zone of consideration of 1974 Rules or 1983 Rules?

5. Whether the judgment and decree dated 10.09.2012 rendered by the lower Appellate Court, after having taken the evidence on record remanding back the matter to the trial Court is legal and justified?

I have heard the learned counsel for the parties and appraised the paper book and of the view that the view expressed by the lower Appellate Court regarding the entitlement of the appellant(s)-plaintiff(s) to a plot measuring 200 square yards is perfectly in consonance with the 1983 Rules which were in vogue at that time, owing to the fact that the notification of the aforementioned Scheme was promulgated on 04.02.1984. The appellant(s)-plaintiff(s) cannot take the benefit of the omission and commissions, when the Rules do not envisage the allotment of the plot measuring 1 kanal.

It is also matter of record that on promulgation of 1983 Rules, 1975 Rules were repealed. This aspect has not been noticed by the trial Court.

After noticing the aforementioned factual aspect, Mr. J.S. Toor, had sought adjournment in order to enable him to seek instructions and on

receipt of the instructions, submits that the JIT would not be averse to allot an alternative plot measuring 200 square yards to the appellant(s)-plaintiff(s), but subject to the availability of the 1983 Rules.

As regards the claim of Gurbachan Kaur with regard to the entitlement of the plot measuring 1 kanal or a lesser area, I am of the view that she has already had a decree dated 10.04.1985 in her favour, whereby a plot bearing No.338 measuring 1 kanal was ordered to be allotted or alternative plot having same area. Though, the JIT in execution proceedings conceded the claim of Gurbachan Kaur and offered to allot same very plot which had at one point of time was allotted to the appellant(s)-plaintiff(s), but that does not entitle the appellant(s)-plaintiff(s) to stake a claim as he has only a right of consideration, in other words, cannot seek the allotment of a particular plot.

There is another aspect of the matter that the aforementioned judgment and decree attained the finality, though the property has exchanged hands way back in the year 1993, whereby defendant No.4 had stepped into his shoes.

Dismissal of the regular second appeal bearing No.2479 of 2011 would not even cause any impediment in protecting the allotment, in view of the fact that this Court had also not taken into consideration the judgment and decree dated 10.04.1985.

There is no force in the submissions of Mr. K.S. Dhillon that the suit at the instance of appellant(s)-plaintiff(s) would be fall within the mischief of Order 2 Rule 2, much less, Order 23 Rule 1 CPC as the claim in the previous suit was only for permanent injunction, whereas a cause of

action to claim declaration and mandatory injunction had accrued to the appellant(s)-plaintiff(s) after acquiring the knowledge of offering the plot in execution of the judgment and decree dated 10.04.1985.

Keeping in view the judgment and decree dated 10.04.1985, the finding rendered by the lower Appellate Court in directing the JIT to take the appropriate steps for taking back the balance area is not sustainable, even otherwise, it tantamounts to putting clock back as much water had flowed.

During the course of the hearing, photographs have been shown which shows that on the entire plot, residential house has been constructed.

In view of the fact that the JIT has offered to allot alternative plot to the appellant(s)-plaintiff(s) as per the 1983 Rules, I am of the view that the judgment and decree dated 10.09.2012 assailed in **RSA No.4737-2013**, remanding back the matter to the trial Court, tantamounts to re-opening the already settled matter, is not sustainable in the eyes of law and accordingly, the judgment and decree dated 10.09.2012 is hereby set aside. The substantial question of law bearing No.5 is answered in favour of the appellant(s)-plaintiff(s) and against the respondent(s).

Accordingly, the appeal bearing **RSA No.4737 of 2013** is hereby allowed.

As regards the judgment and decree dated 10.01.2011 assailed in **RSA No.2457 of 2011** is hereby modified to the extent that the allotment in favour of the appellant(s)-plaintiff(s) in respect of the plot measuring 200 square yards as per the 1983 Rules, shall be maintained. However, the rest of the findings regarding giving right and liberty to the JIT to take

appropriate steps for recovery of the excess area is hereby set aside, in essence, the allotment of plot bearing No.1400 measuring 1 kanal, in favour of the respondent-defendant No.4 is upheld.

Keeping in view the chequered history of this case, while disposing of the regular second appeal, I deem it appropriate to issue the following direction:-

In case the appellant(s)-plaintiff(s) approaches the JIT for allotment of alternative plot along with the documents, by offering 25% of the price of the plot, as per the rates prevailing at the time of the acquisition of the land and eligibility, JIT shall offer the allotment of plot within a period of 2 months thereafter. In case, the aforementioned direction is not complied, the appellant(s)-plaintiff(s) shall be at liberty to move an appropriate application.

Accordingly, the appeal bearing **RSA No.2457 of 2011** is partly allowed.

27.05.2016
yogesh

**(AMIT RAWAL)
JUDGE**