

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

**R.S.A No.49 of 2013(O&M)
Date of decision :23.11.2016**

Union of India and others

..... Appellants

Versus

Gurmeet Kaur

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Subhash Chander, DAG, Haryana
for the appellant.

Mr. C.B.Goel, Advocate
for the respondent.

DARSHAN SINGH,J

CM No. 148-C of 2013

This application has been filed under Section 5 of the Limitation Act for condonation of delay of 114 days in filing the present appeal.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 114 days in filing the present appeal is hereby condoned.

R.S.A No. 49 of 2013(O&M)

The present appeal has been preferred against the judgment

and decree dated 15.06.2012 passed by the learned Additional District Judge, Ambala, whereby the appeal filed by appellant-defendant against the judgment and decree dated 25.11.2011 passed by the learned Additional Civil Judge (Sr. Division), Ambala has been dismissed.

2. As per the averments in the plaint, the suit land along with other land was allotted to Smt. Sant Kaur widow of Sh. Ladha Singh resident of Village Dera Tehsil Naraingarh in the year 1995, who thereafter sold the suit property to Shiv Raj Singh son of Hardhian Singh vide registered sale deed dated 23.01.1996. After that said Shiv Raj Singh sold the suit land to plaintiff-Gurmeet Kaur vide registered sale deed dated 08.07.1996 for a valuable consideration of Rs. 30,000/- and she was put in possession of the same. Since then, the plaintiff continued to be in possession of the suit land. The mutation has also been sanctioned in her favour. She is the *bona fide* purchaser for valuable consideration. It is further pleaded that taking *suo moto* notice and in the absence of the plaintiff without giving her any opportunity of being heard, the allotment in favour of Sant Kaur was set aside and mutations were illegally cancelled. It is pleaded that the said order is not binding on the rights of the plaintiff. She is the *bona fide* purchase and is protected under the provisions of Section 41 of the Transfer of Property Act, 1882(for short Act). Hence the suit for declaration with consequential relief for permanent injunction.

3. Appellant-defendant contested the suit on the grounds *inter alia* that 4-1 ¼ standard acres of land situated in Village Dera Tehsil Naraingarh, District Ambala was allotted to Smt. Sant Kaur through

Ishwar Chand son of Shanti Sarup, her general power of attorney. The permanent rights of this land were issued in her favour on 11.08.1994. Later on, the said allotment was not found proper as it was a double allotment. Therefore, the Chief Settlement Commissioner, Haryana vide order dated 07.05.1998 cancelled the said allotment. In between the plaintiff has purchased the land in dispute in the year 1996 i.e. after one month of the allotment. It is further pleaded that the said cancellation order has been incorporated in the revenue record and has become final. The plaintiff had never approached the department before purchasing the suit land to confirm the title of the vendor. It was further pleaded that possession of the plaintiff over the suit land if any is illegal and unauthorised. It was further pleaded that the provisions of the Act are not applicable to the evacuee properties in view of Section 4 of the Administration of Evacuee Property Act. With these pleas, the appellant pleaded for dismissal of the suit.

4. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 31.01.2009:-

1. Whether the plaintiff is owner in possession of the land in dispute as alleged?OPP
2. Whether the plaintiff is entitled to consequential relief of permanent injunction as prayed for?OPP
3. Whether the suit of the plaintiff is not maintainable in the present form?OPP
4. Whether the suit is bad for mis-joinder and non joinder of necessary parties?OPD
5. Whether the plaintiff has no cause of action to file the present suit against the defendants?OPD
6. Relief.

5. On appreciation of the evidence and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit of the plaintiff vide impugned judgment and decree dated 25.11.2011.

6. Aggrieved with the aforesaid judgment and decree, the appellant-defendant preferred the appeal. The same has also been dismissed by the learned District Judge, Ambala vide impugned judgment and decree dated 15.06.2012. Hence this Regular Second Appeal.

7. I have heard Mr. Subhash Chander, learned Deputy Advocate General, Haryana, Mr. C.B.Goel, Advocate, learned counsel for the respondent and have carefully gone through the paper book.

8. Initiating the arguments, learned Deputy Advocate General, Haryana for the appellant contended that the sale in favour of the plaintiff was illegal as Sant Kaur has already died and her power of attorney on the basis of which the sale deed was executed had come to an end. He further contended that it was a case of double allotment and the allotment has been cancelled by the Competent Authority by following the due procedure of law. He further contended that the title of the vendor was not perfect and she had no legal authority to transfer the suit land in favour of the vendor of the plaintiff due to her defective title. Thus, he contended that the order dated 07.05.1998 passed by the Chief Settlement Commissioner, Haryana is perfectly legal and valid. He further contended that the plaintiff was also not entitled to any protection under Section 41 of the Act and is not proved to be the *bona fide* purchaser.

9. On the other hand, Mr. C.B.Goel, Advocate, learned counsel for the respondent contended that the order of cancellation of the allotment passed by the Chief Settlement Commissioner Haryana, was illegal as no opportunity of being heard was given to the plaintiff, though she has purchased the land on 08.07.1996 for valuable consideration and

even the mutation was sanctioned in her favour. She was recorded as owner in the revenue record and has also received the actual possession vide Rapt Rojnamcha Ex.D-1. Thus, he contended that the order dated 07.05.1998 is violative of the principles of the natural justice and has been rightly set aside by the learned Courts Below. He further contended that the plaintiff-respondent is also the *bona fide* purchaser of the suit property for valuable consideration and without any notice. So, she is protected under Section 41 of the Act. He relied upon case **Madan Gopal son of Sh. Mohan Dass and others Vs. Financial Commissioner (Revenue) and Secretary to Government, Haryana and others C.W.P No. 12023 of 1990, d/d 03.06.2011.**

10. I have duly considered the aforesaid contentions.

11. The learned trial Court in the impugned judgment dated 25.11.2011 has held that the plaintiff-respondent to be the owner in possession of the suit property as *bona fide* purchase as per the sale deed dated 08.07.1996 and the order of cancellation passed by the Chief Settlement Commissioner, Haryana was held to be bad in law. Learned First Appellate Court in the impugned judgment and decree dated 15.06.2012 came to the conclusion that the Displaced persons (Compensation and Rehabilitation) Act, 1954 being a special act will override the provisions of the Act qua the plea of the plaintiff that she is a *bona fide* purchaser. However, the order dated 07.05.1998 passed by the Chief Settlement Commissioner, Haryana was held to be nonest and void qua the rights of the plaintiff-respondent. Thus, the appeal filed by the appellant-defendant was dismissed.

12. Learned Deputy Advocate General, Haryana for the appellant has contended that the sale in favour of the plaintiff was illegal as the general power of attorney on the basis of which the sale was made by Ishwar Chand, the general power of attorney to the vendor of the appellant has come to an end as Sant Kaur, the allottee had already died before the said sale deed. But, he has fairly conceded that no such plea has been raised in the written statement, so the factual plea which is beyond pleadings cannot be raised for the first time in the second appeal.

13. It is an admitted fact that the plaintiff-respondent has purchased the suit property vide registered sale deed dated 08.07.1996 and even the mutation no. 3717 was sanctioned in her favour on the basis of the said sale deed. The allotment in favour of Sant Kaur has been cancelled by the Chief Settlement Commissioner, Haryana vide order dated 07.05.1998 (Copy Ex.D-3). It is also an admitted fact that no notice of the said cancellation proceedings was issued to the plaintiff. The plaintiff had come into the possession of the suit land even the revenue entries were showing her to be in possession of the suit property. The Chief Settlement Commissioner, Haryana has not afforded any opportunity of being heard to the plaintiff at the time of passing the order regarding cancellation of the allotment in favour of Sant Kaur. Thus, the order dated 07.05.1998 passed by the Chief Settlement Commissioner, Haryana was violative of the principles of natural justice and has been rightly held to be illegal by the learned Courts below. However, the appellant can certainly take the benefit of the observations of the learned Appellate Court in para no. 23 of the judgment dated 15.06.2012. Thus,

as the order dated 07.05.1998 passed by the Chief Settlement Commissioner, Haryana was nonest, void and ineffective qua the rights of the plaintiff in the suit property. So, the plaintiff has been rightly held to be the co-owner in possession of the suit property.

14. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

15. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

16. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

November 23, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No