

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

R.S.A No. 2359 of 2015 (O&M)

Date of decision :04.02.2016

Didar Singh

..... Appellant

Versus

Nar Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Gurdial Singh Jaswal, Advocate
for the appellant.

DARSHAN SINGH,J

The present Regular Second Appeal has been preferred against the judgment and decree dated 19.11.2014 passed by the learned Additional District Judge, Kaithal, vide which the appeal preferred against the judgment and decree dated 24.12.2012, passed by the learned Civil Judge (Sr. Division), Kaithal, has been decreed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The defendants-respondents have filed the suit for declaration to the effect that they are entitled to get 75 % of the amount awarded as compensation for the acquisition of the suit land detailed and described in para no.1 of the plaint situated within the revenue estate of Patti Gaddar, Kaithal, Tehsil and District Kaithal. They also sought a decree of mandatory injunction directing defendant no.1 to recover the total compensation amount paid to defendant no.2 and further pay 75 % of the same to the plaintiffs along with interest at the rate of 18 % per annum since the date of acquisition till its actual realization or in the

alternative defendant no.1 may be directed to send the objection filed by the plaintiff under Section 30 and 31 of the Land Acquisition Act, 1894 (for short 'Act') to the Competent Court of jurisdiction for adjudication and for apportionment of the compensation as per the provisions of law.

4. As per the averments in the plaint, Narinder Singh, the predecessor-in-interest of defendant no.2(appellant) was owner in possession of the suit land. He inducted Daulat Ram son of Nathu Ram resident of Amar Garh Gamri, Kaithal as a tenant at Will over the suit land on payment of Rs. 675/- per annum as rent/lease money vide agreement dated 04.07.1977. Since, 04.07.1977, till his death on 25.01.1999, aforesaid Daulat Ram remained in possession of the suit land in the capacity as tenant. After his death, his tenancy rights were inherited by plaintiffs no.1 and 2 and Prem Singh, the predecessor-in-interest of plaintiffs no.3 to 5. Said Prem Singh had died in June 2007. After his death his tenancy rights were inherited by plaintiffs no. 3 to 5. The tenancy rights of Daulat Ram have been upheld by the Revenue Courts in various judgments and plaintiffs-respondents have been paying rent to appellant-defendant no.2 regularly in those cases in the Court of Assistant Collector-II Grade, Kaithal. Aforesaid Narinder Singh had also entered into an agreement to sell the suit land to Daulat Ram on 08.08.1978 and the date for completion of the sale was extended from time to time. But, he failed to comply with the terms of the agreement to sell. Ultimately, Daulat Ram filed a suit for specific performance of agreement and the said litigation is pending in this Court in R.S.A No. 564 of 1987. The suit land has been acquired by the State of Haryana for carving out Sector 18,

Urban Estate, Kaithal and award no.4 dated 16.07.2005 was passed by the Land Acquisition Collector, Hisar. At that time, the plaintiffs were in possession of the suit land in their capacity as tenant at Will. They were dispossessed by defendant no.1/respondent no.6 in pursuance of the aforesaid award. As per the provisions of the Act, a tenant at Will is entitled to 75 % of the amount of the compensation awarded for the acquisition of the land. The plaintiffs raised their claim before defendant no.1. By filing the objections under Section 30 and 31 of the Act. But, without getting their objections adjudicated upon from the Competent Court of jurisdiction, defendant no.1 in collusion with defendant no.2 disbursed the compensation amount to defendant no.2. Defendant no. 2 also filed a civil suit no. 162 of 2006, titled as Didar Singh VS. Nar Singh in collusion with defendant no.1 on 14.06.2006 seeking declaration that revenue entries showing possession of Daulat Ram were wrong and illegal and restraining the plaintiffs from availing any benefit from the department on the basis of those revenue entries. That suit was got dismissed as withdrawn on 20.05.2009. The plaintiffs served a notice under Section 80 of the Code of Civil Procedure, 1908 (for short CPC) upon defendant no.1, but of no avail. Hence the suit.

5. Both the defendants contested the suit by filing the separate written statements.

6. Defendant no.1 the Land Acquisition Collector, contested the suit on the grounds *inter alia* that the plaintiffs had never approached his office to get the payment and since the compensation has already been disbursed, the case under Section 30 of the Act is not liable to be referred

to the concerned Court. All other pleas raised in the plaint were refuted.

7. Appellant-defendant no.2 contested the suit on the grounds *inter alia* that plaintiffs or their predecessor-in-interest never cultivated the land as lessee or in any other capacity. It was further pleaded that the suit filed by plaintiffs is hit by the principle of *res judicata* as Daulat Ram, the predecessor-in-interest of the plaintiffs had filed a suit against the answering defendant, which was dismissed and appeal was also dismissed. With these pleas they pleaded for dismissal of the suit.

8. From the pleadings of the parties, the following issues were framed by the learned trial Court on 25.01.2010:-

1. Whether Daulat Ram son of Natha Ram was a tenant at Will over the suit land, whose tenancy rights have been inherited by plaintiff no.1 and 2 and Narender, predecessor-in-interest of the defendant entered into an agreement to sell the suit land in favour of Daulat Ram on 08.08.1978 and therefore, are entitled to declaration to get 75 % of the amount of compensation of acquisition to be paid to them and mandatory injunction is liable to be issued to defendant no.1 to recover that share of the plaintiff from defendant no.2 and further that payment of that amount to be made to the plaintiff along with interest at the rate of 18 % per annum?OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the alleged agreement to sell is not binding upon the defendants?OPD
4. Whether the matter regarding apportionment amount of compensation is to be decided by learned District Judge, if so, to what effect?OPD
5. Whether the civil court has got no jurisdiction to try and entertain the present suit?OPD
6. Whether the plaintiffs who have objected to disbursement of amount to Didar Singh have no suit to maintain in the Court? OPD

7. Whether the plaintiffs have no cause of action to file the present suit?OPD
8. Whether plaintiffs are estopped from filing the present suit by their own act and conduct as alleged?OPD
9. Relief.

9. The learned trial Court on appreciation of the factual as well as legal position, decreed the suit filed by the plaintiffs to the effect that they are entitled for relief of mandatory injunction and consequently defendant no.1 was directed to consider the case of the plaintiffs for making reference in terms of Section 30 of the Act to the Court of Competent Jurisdiction for adjudication of rival claims within three months from the date of judgment.

10. Aggrieved with the aforesaid judgment and decree dated 24.12.2012, defendant no.2 preferred the appeal and the same was also dismissed by the learned Additional District Judge, Kaithal, vide impugned judgment and decree dated 19.11.2014. Hence, this Regular Second Appeal.

11. I have heard Mr. Gurdial Singh Jaswal, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

12. Initiating the arguments, learned counsel for the appellant contended that the plaintiffs have no concern with the suit land. They or their predecessor-in-interest had never remained in possession of the suit land in any capacity. The plaintiff or their predecessor-in-interest was never held to be a tenant over the land in dispute. So, they were not entitled for any share out of the compensation amount disbursed in his

favour. Learned counsel for the appellant further contended that the amount has already been disbursed to defendant no.2. So, the plaintiffs have not availed the appropriate remedy under Section 30 of the Act at the appropriate stage and now the direction given by the Courts below is contrary to law.

13. I have duly considered the aforesaid contentions.

14. This fact is not disputed that originally Narender was the owner in possession of the land in dispute. Appellant-defendant no.2 has inherited the suit land after the demise of said Narender. The plaintiffs are claiming that they and prior to them their predecessor-in-interest Daulat Ram was in possession of the suit land as a tenant since 04.07.1977 on the basis of the agreement executed by Narender, the predecessor-in-interest of appellant-defendant no.2. But, it is not disputed that in the previous litigation, it was found that though the lease agreement dated 04.07.1977 was executed, but the possession was never delivered to Daulat Ram. The learned trial Court has given the following findings:-

“I have carefully perused the evidence adduced on the record. Though in the revenue record, plaintiffs are recorded in possession as tenants but as per findings recorded in judgment Ex.P15 and Ex.P-17, Daulat Ram son of Natha was never delivered possession of the suit land by Narender Singh son of Santokh Singh. Though it was found that lease agreement dated 4.7.1977 was executed but it was held that possession was never delivered. The matter is now pending before Hon'ble High Court in RSA and therefore, status of Daulat Ram son of Natha whether he was in possession as tenant or not is still to be adjudicated. In these circumstances, entries in the revenue record cannot be relied upon. When there is a disputed as to status of the plaintiffs, therefore, it would not be worthwhile to pass decree of declaration in their favour. Since, plaintiffs have not sought recovery of the compensation amount by filing a suit for recovery, therefore judgments cited by Ld. Counsel for plaintiffs are not applicable.”

Learned First Appellate Court has also not interfered with the aforesaid conclusion of the learned trial Court. So, there is no reason to differ with the aforesaid conclusion of the learned trial Court.

15. It is not disputed that the plaintiffs have raised the objection before the Land Acquisition Collector against disbursement of the entire compensation amount to defendant no.2-appellant and had also moved the application under Section 30 of the Act. So, the learned Courts below have rightly observed that instead of making the entire payment to appellant-defendant no.2, he ought to have considered the matter for making reference to the Court for adjudication of the rival claims of the parties under Section 30 of the Act, which specifically deals with the dispute with respect to the apportionment of the compensation amount. Defendant no.1 was required to act judiciously. In the written statement filed by defendant no.1, the stand taken that the plaintiffs never approached his office to lay their claim with respect to the compensation stands falsified from the written statement filed in the civil suit titled as Didar Singh Vs. Narsi and others. The learned trial Court observed as under:-

“Defendants have taken the stand that plaintiffs had never agitated the matter before defendant no.1 to the effect that they were entitled to $\frac{3}{4}$ share out of the total compensation amount awardable. However, the stands to this effect stands falsified when written statement Ex.P29 filed by Land Acquisition Collector, Hisar in civil suit titled as Didar Singh Versus Narsi and others is perused. In para no.6 on merits of the said written statement, LAC Hisar had submitted as under:-

That in reply to the para no. 6 of the plaint it is submitted that the plaintiff is owner of the land in dispute but the name of Daulat Ram has been incorporated as patedar in the

revenue record. The plaintiff is not entitled to take the entire compensation amount because the sons of Daulat Ram has raised objections for appointment of compensation. The plaintiff has taken the compensation illegally and wrongly and the answering defendants is legally entitled to issue the notice to the plaintiff to refund the compensation for depositing the amount in the Court of District Judge Kaithal for apportionment.”

16. Thus, it is evident that the plaintiffs have raised the objection and made a prayer for apportionment of the compensation in terms of Section 30 of the Act when the compensation was being disbursed. Thus, it was incumbent upon defendant no.1 to take a decision as to whether the matter was fit to be referred to the Court of Competent Jurisdiction for deciding the rival claims in terms of Section 30 of the Act. Therefore, there is no illegality in the decree for mandatory injunction passed by the learned Courts below directing the defendant no.1 to consider the claim of the plaintiffs for making reference in terms of Section 30 of the Act to the Court of Competent Jurisdiction for adjudication of rival claims of the parties.

17. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

18. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

February 04, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**