

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

**Regular Second Appeal No.1511 of 2014 (O&M)
Date of Decision: September 16, 2016.**

Randhir Singh and another

.....APPELLANT(s).

VERSUS

Union of India and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Shubham Kaushik, Advocate for
Mr. Naveen S. Bhardwaj, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is regular second appeal against the concurrent judgments of the Courts below dismissing the suit filed by the plaintiffs for declaration to the effect that they are owners in possession of the suit land measuring 48 kanals 11 marlas under Section 3 of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 and are entitled to correction of their names in revenue record as owners instead of '*gair marusi* tenants' in possession of suit land. They also sought the relief of injunction restraining the defendants from alienating or auctioning the suit land.

Plaintiffs claim to be in possession of the suit land for the last more than 100 years through their ancestors and it was alleged that the land was given to them by the Muslim owners on lease and they made the same cultivable.

The plea raised by the appellants-plaintiffs was discarded by the Courts below as in the revenue record, the plaintiffs were not recorded in possession in the jamabandi for the year 1961-62. There was no evidence on record that they ever came into possession prior to partition of the country in the year 1947.

Learned counsel for the appellants has admitted that the suit property is evacuee property and it was allotted to appellants by the Tehsildar (sales). In his application (Ex.D1) while requesting for allotment of the suit land, appellants submitted that they are in possession over the suit land since the year 1960.

The facts as discussed by the first Appellate Court in para 15 of the judgment elucidate the plea raised by the appellants-plaintiffs, which is reproduced as follows:-

“15. It is worthwhile to mention here that admittedly after migration of original owners to Pakistan at the time of partition of the country, the ownership of the suit land came in favour of the Central Government. Inder Singh plaintiff moved an application Ex.D1 on 29.8.1962 to Tehsildar (Sales) for purchase of 44 kanals 18 marlas land and it was allotted to Inder Singh on 12.2.1963 on sale price of Rs.789/-. After initial deposit, he failed to deposit the instalments despite repeated demands of the government and allotment to Inder Singh was cancelled vide order dated 14.4.1964. Inder Singh preferred an appeal against this order after four years before Assistant Settlement Commissioner and that was dismissed on 23.6.1966 vide order Ex.D7 by Additional Settlement Commissioner (Sales), Karnal. Order dated 12.2.1963 is Ex.D2 on the record and copy of order dated 14.4.1964 is

Ex.D5 on the record. Thereafter, the suit land was allotted to Amar Singh son of Chandgi in a restricted auction on 21.10.1966 for sale consideration of Rs.17,100/- as per auction proceedings Ex.D8 and he deposited initial amount of Rs.855/-. The possession of the suit land was given at the spot to Amar Singh on 14.12.1966, but Amar Singh purchaser failed to deposit remaining instalments and his initial amount was forfeited on 4.3.1975 and same land was allotted to one Saiditta son of Hawa Singh in open auction on 4.3.1975 and this allotment was cancelled later on and the same was allotted to Bhola son of Udai Ram in open auction. Original plaintiff Inder Singh challenged this allotment before Settlement Officer (Sales) and allotment was cancelled and fresh orders for re-auction were made as per copy of judgment Ex.D11 and this order was again challenged by Inder Singh by filing revision petition before Settlement Commissioner, Haryana, Chandigarh and that was dismissed on 10.5.1982 as per copy of judgment Ex.D12. Thereafter, again on 5.10.1981, the original plaintiff Inder Singh moved an application Ex.D13 for allotment of the land on government/reserved price and various notices including notice Ex.D14 were issued to Inder Singh for necessary action on his application but he did not appear and his application was filed.”

Learned counsel for the appellant has not contested the judgments of the Courts below so far as the fact that the suit property is evacuee property and the claim of the plaintiffs for its allotment are concerned. He has argued that even after declaring the property as evacuee property, possession of the same is recorded to be that of appellants after 1961 and the Courts below have declined the relief of injunction claimed by

the plaintiffs to restrain the respondents from interfering in their possession except in due course of law.

The above plea of the appellants-plaintiffs was also taken note by the first Appellate Court in para 19 and the relief of permanent injunction was declined as the same was sought against the true owners.

As the observations of the Courts below that the suit property is evacuee property and right of the appellants-plaintiffs claimed under the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 has not matured into title, have not been challenged, I find no legal or factual infirmity in the judgments of the Courts below, calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

September 16, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***