IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4958 of 2014
Date of Decision: 30.05.2016

Joginder Kaur and another

.... Appellants

Vs.

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Ramesh Chand Sharma, Advocate
for the appellants.

Amol Rattan Singh, J.

This is the second appeal of the plaintiffs who had filed a suit for declaration against the respondent-State, seeking therein that land measuring 14 marlas, existent in khasra No.1//16/1, has been illegally converted from "Gair Mumkin Taur" to "Gair Mumkin Sarak", in village Nangli-Veeran and consequently, a mandatory injunction be issued directing the respondent-defendant (hereinafter to be referred to as the defendants) to change the nature of the above said land to "Gair Mumkin Taur" and thereafter to restrain the defendants from taking the possession of the aforesaid land of the plaintiffs.

2. The facts, as taken from the judgments of the Courts below, are that as per the plaintiffs, they had purchased the suit land vide a registered

sale deed dated 12.06.1998, which was duly reflected to be in the ownership of their vendor, one Mohinder Kaur, in the jamabandi for the year 1998-99 and in the said jamabandi also, it was shown to be “Gair Mumkin Taur”. Possession of the plot was stated to have been delivered to the plaintiffs by their vendor.

Subsequently, when they obtained a copy of the jamabandi for the year 2003-04 on 18.12.2007, they came to know that the defendant had changed the nature of the land, illegally, without even a notice issued to the plaintiffs, before doing so.

Allegedly, the Halqa Patwari told them that the land had been acquired for the State Government for a public purpose but even in that regard, no notice of acquisition was issued, nor was any compensation paid to them.

Consequently, the suit was filed on 16.09.2008.

3. On notice issued to by the learned Civil Judge (Junior Division), Jalandhar, the defendant appeared and filed a written statement, taking preliminary objections with regard to the locus of the plaintiffs, their having come with unclean hands, non-joinder of necessary parties and no notice having been issued under Section 80 CPC, before filing of the suit.

On merits, it was contended that the suit property was actually in the absolute ownership of the Central Government and the alleged sale deed of 1998 was forged and fabricated. In fact, it was further contended, that the land was “Banjar Kadim” as per the revenue record and at present vested inn the National Highways Authority of India.

Thus, it was further contended, that any mutation entered in favour of any person other than the Central Government, is wholly illegal and without any validity.

4. A replication having been filed by the plaintiffs, the following issues were framed by the Civil Judge:-

“.1. Whether the plaintiff is entitled to relief of declaration as prayed for? OPP

2. Whether the plaintiff is entitled to relief of mandatory injunction as prayed for? OPP

3. Whether plaintiff is entitled to relief of permanent injunction as prayed for? OPP

4. Whether suit of the plaintiff is not maintainable in the present form? OPD

5. Whether the plaintiff has got no locus standi to file the present suit? OPD

6. Whether plaintiff has no cause of action against the defendants to file the present suit? OPD

7. Whether plaintiff has not come to the court with clean hands and if so its effect? OPD

8. Whether suit is bad for non-joinder of necessary parties? OPD

9. Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD

10. Whether a legal or valid notice u/s 80 CPC was not served upon the defendants? OPD

11. Relief.”

5. Appellant-plaintiffs No.1 and 4, i.e. Joginder Kaur and Baljit Kaur, examined themselves as PWs1 and 2 respectively and further examined two Patwaries, Vijay Kumar annd Prabodh Kumar as PWs3 and 4,

and a clerk in the office of the Sub-Registrar as PW5.

The defendants examined one Dharmendera Kumar Badekar as DW1 and also tendered a copy of a jamabandi as Ex.D2.

6. On appraising the evidence, the learned Civil Judge found that the registered sale deed, Ex.P2, dated 11.06.1998, was indeed a registered document but that the land actually was shown to be in the ownership of the Central Government in the jamabandi for the year 1967-68, Ex.D2. Thereafter, without much discussion of the evidence, the Civil Judge dismissed the suit of the plaintiffs.

7. In the first appeal filed by them, the learned District Judge, Jalandhar, dealt with the evidence led in detail and found that though indeed the sale deed was a registered document (referred to in his judgment as being of the date, 12.06.1998) and that at that time, the suit property was uncultivable vacant land ("Gair Mumkin Taur") but that, as a matter of fact, the ownership of the suit property was indeed in the name of the Central Government.

8. Before arriving at the aforesaid conclusion, the learned first Appellate Court first referred to the cross-examination of plaintiff-PW1 Joginder Kaur and in fact, reproduced it in its judgment as follows:-

> "I have verified the revenue record of the suit property at the time of its purchase. It is correct that the suit property is the ownership of Central Government. It is correct that at the time of alleged purchase the property in question was bunjar kadim and the same was lying vacant. It is correct that the suit property was never allotted to me by any government office. It is incorrect to suggest that the alleged sale deed in my favour is

forged and fabricated as I had not purchased the same from any government office. It is correct that I have not impleaded the central government as party in the present suit. It is correct that before filing of suit I had not served any notice u/s 80 CPC to the state. It is correct that at present the suit property is in possession of central government. It is correct that at present the road belonging to national highways/central government is constructed in the suit property. It is incorrect to suggest that the suit property being ownership of central government cannot be transferred to any private person without allotment of the same from the government because it is a part of national highways. It is correct that I have no placed on record any original document regarding my ownership."

Thus, on the basis of the above testimony, the learned Court came to the obvious conclusion that the plaintiff very well knew that the land was actually the property of the Central Government but despite that, had purchased it from Mohinder Kaur.

9. The learned District Judge then first referred to the testimony of PW3, Patwari Vijay Kumar, who admitted that as per the jamabandi for the year 1967-68, the property was in the exclusive ownership of the Central Government and that it had only been allotted to any person.

Referring to the testimony of the other Patwari, i.e. PW4 Prabodh Kumar, the learned Court noted that he, in fact, tried to conceal the truth from the Court, by suppressing the factual ownership shown of the Central Government, in the jamabandies for the year 1967-68 and 1972-73, highlighting, on the other hand, the ownership recorded in the names of

Inderjit Singh and Mohinder Singh, in the jamabandi for the year 1977-78 and thereafter, the ownership of Mohinder Kaur in the year 1993-94. This was despite the fact that he had been directed to produce the earlier jamabandies for the year 1967-68 and 1972-73.

This witness' cross-examination was also reproduced by the learned first Appellate Court as follows:-

> "...... it is correct that as per the jamabandi/revenue record of 1967-68 khasra no.1/16/1 is the ownership of Central Govt. being Banjar kadeem land. It is also correct that the land of khasra no.1/16/1 is now gair mumkin sadak. It is correct that the sadak always belong to Central Govt. volunteer if it is acquired. I cannot tell that any private person cannot become owner of a sadak. As per my record, the ownership of above said khasra no. alongwith khasra no.1/24/2 was changed in the year 1975. I have no order on the record with regard to this change of ownership. However, there is only a report. It is correct that this report is not in my hand. It is correct that this report does not bear any name or seal of the any officer who made this report. Is is wrong to suggest that the said report is forged and fabricated. It is correct that apart from this entry there is no other entry regarding this allotment. It is correct that the change in ownership cannot be effected without any proper order and it is also correct that there is no such order regarding change of ownership except this report. However, there is a number JLI/124/1 which is allotment number. It is correct that this number does not bear any authority by whom it was issued. It is wrong to suggest that it is forged and fabricated and does not issued by a proper authority. It is correct that as per my record, there is a road at the spot of khasra no.1/16/1. It is wrong to suggest that I have deposed falsely."

10. Thus, from the aforesaid testimony, read with that of the plaintiff herself (present appellant No.1), the learned District Judge came to the conclusion that a property which had been in the absolute ownership of the Central Government, was changed in the revenue record to be shown in the name of private persons, but with no order sanctioning such reflection in the revenue record. PW4 admitted that a change of ownership in the revenue record cannot be effected without any prior order but even so, the entry was recorded, changing the ownership.

That all was not right with the entry, was further found by the learned first Appellate Court from the fact that though the Patwari (PW4) quoted an allotment number from the 'roznamcha' (daily diary/register), however, he admitted that even the allotment number was not shown to have been given by any authority sanctioning such allotment.

11. On the other hand, DW1 testified that the property was always in the ownership of the Central Government and as such, there was no question of any acquisition proceedings having been initiated to acquire it.

It was further found as a matter of fact by that Court that firstly, at least since the year 1967-68, the ownership was that of the Central Government, and on the ground, even as per the revenue map, the property was situated between the G.T.Road and the railway line in the revenue estate of village Nangli-Veeran, District Jalandhar.

Thus, coming to the conclusion that with the plaintiffs also having admitted to the ownership of the Central Government, and with the record produced by PW4, it showed that the entries from the year 1977-78, were entered in the name of various private persons wholly illegally.

Further, a mutation entry, or any entry in the revenue record, though has a presumption of truth to it, under Section 44 of the Punjab Land Revenue Act, 1887, however, the said presumption being rebuttable, the appellants were held not entitled to the relief of declaration sought by them, and consequently, the first appeal was dismissed with special costs of Rs.10,000/-.

12. Before this Court, after seeking various adjournments since the year 2014, the matter was finally argued, upon a last opportunity to do so having been given to learned counsel for the appellants.

Mr. Sharma, learned counsel for the appellants, submitted that the revenue record since 1977-78 duly having reflected the ownership of the predecessors-in-interest of the appellants-plaintiffs, i.e. private persons other than the Central Government, the Courts below have wholly erred in dismissing the suit of the plaintiffs.

However, on specific query to learned counsel, he could not deny that the rebuttal of the presumption in favour of revenue entries apart, it could not be denied that the plaintiffs in any case were not in possession of the suit property, which fell within the road reservation area and actual physical possession was with the National Highways Authority of India. Also, it naturally could not be denied that no order sanctioning the change of mutation from the ownership of the Government to private persons was ever produced by the plaintiffs, to show that there was a valid transfer based on some consideration or for some other legally valid reasons.

13. That being so, no doubt the revenue entries having continued for long, i.e. from 1977-78 to 2003-04, for a period of about 26 years, there would be a presumption in favour of the revenue entries. However, as already noticed by the lower Appellate Court in the opening lines of its judgment, that this is very obviously a typical case of an attempt to grab public land by unscrupulous elements, in obvious connivance with wholly unscrupulous revenue officials.

Further, the illegality committed in the years 1975 to 1977, was attempted to be perpetuated even now, as is obvious from what has been recorded by the learned lower Appellate Court, in respect of the testimony of PW4 and his deliberate attempt to try and play down the factum of ownership of the Central Government over the suit property and conversely, to play up the ownership shown in the revenue record, from 1977-78 onwards, of private persons.

14. The aforesaid being the situation and in any case, even no adverse possession having ever been proved, or even attempted to be proved by the plaintiffs, the suit property admittedly not being in their possession at the time of filing of the suit in 2006, the revenue entries, by themselves, even for over a long period of time, cannot create any right in favour of the plaintiffs.

The questions of law framed by the learned counsel, alongwith the grounds of appeal, are as follows:-

> "i) Whether the appellants have rightly sought the declaration that they have become the owner of the plot on the basis of registered sale deed dated 12.6.1998?

ii) Whether the Ld. Courts below did not consider the sale deed dated 12.6.1998 vide which the appellants have purchased the suit land?"

Obviously, the aforesaid are no questions of law and are wholly questions of fact, which also are not based in fact, inasmuch as, the sale deed dated 12.06.1998, by which the plaintiffs are stated to have purchased the suit land from their vendor, Mohinder Kaur, has been duly noticed by both the Courts below and has been, effectively, found to be a transaction by a person not competent and not the real owner of the suit land, such actual owner being the Central Government.

15. The only question of law which possibly could have arisen in this appeal was as to whether the revenue entries created any indefeasible right in the plaintiffs-appellants. Such revenue entries having been duly proved to be without any legal basis, even that question of law does not arise for consideration of this Court.

Consequently, the second appeal filed by the plaintiffs is also dismissed, with further costs of Rs.20,000/-, to be deposited in the Treasury of the Central Government.

16. Further, though this is an appeal, but looking at the manner of deposition of PW4, as reflected in the judgment of the learned District Judge, Jalandhar, even by invoking jurisdiction under Article 226 of the Constitution, the Financial Commissioner Revenue, Punjab, is directed to hold an enquiry to determine the culpability of the person who appeared as PW4 before the learned Courts below, i.e. Prabodh Kumar, Patwari, and to

take action against him as per law, if found warranted.

A copy of this order be sent immediately by the Registry of this Court to the Financial Commissioner Revenue, Punjab, Chandigarh.

30.05.2016 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**