

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

**RSA No.4983 of 2014 (O&M)
Date of decision : August 17, 2016**

Shamsher Chand and others

.....Appellants

Versus

Smt. Sonia

..... Respondent

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

Present : Mr. Som Nath Saini, Advocate
for the appellants.

Mr. Akshay Jindal, Advocate
for the respondent.

GURMIT RAM, J.

This appeal is preferred by abovesaid appellants-herein (defendants) for setting aside the impugned judgments and decrees passed by both the Courts below and further to dismiss the suit filed by respondent-herein (plaintiff) before the learned trial Court.

2. The facts in brief of the suit as presented by respondent-herein (plaintiff) before the learned trial Court were that she was the owner of the land in dispute measuring 21 kanals 4 marlas situated in village Dera as detailed in headnote of the plaint. Defendant-Kundan Lal, the predecessor of the appellants-herein challenged the allotment made in favour of Darshan

Singh, grandfather of respondent-herein (plaintiff) by initiating various litigation. In LPA Nos. 320 and 465 both of the year 1988, this Court rejected his plea wherein he challenged the allotment made in favour of said Darshan Singh vide judgment dated 09.09.2004. The operative part of the judgment was also mentioned in the plaint and there is no need to mention the same herein in detail. Resultantly, CWP No.5013 of 1985 filed by Kundan Lal in this regard was dismissed and order of learned Single Judge passed in this writ petition was also set aside vide the abovementioned judgment. Possession of defendant Kundan Lal of the land of in dispute was stated to be unauthorized one. Plaintiff requested him to deliver the possession of this land to her, but defendant did not do so, hence was the present suit seeking decree for possession in respect of land in dispute, for the recovery of mesne profit for the use and occupation of this land w.e.f. 09.09.2004 to 09.03.2006 and also for permanent injunction whereby restraining the defendants from raising any kind of construction/change in nature of this land.

3. On receipt of summons in this case, defendant appeared and filed written statement taking preliminary objections that suit in the present form in respect of suit land is not legally maintainable since a civil miscellaneous petition under Section 151 of CPC read with Section 5 of Limitation Act as well as a review application No.10 of 2004 in LPA No.465 of 1988 is pending in this Court. It was further his plea that from the very beginning of the allotment, possession of the suit land was delivered to him and still he is in its possession. He is in authorized occupation of this land. Further, he also referred to one CWP No.5013 of 1985 which was filed by him before this Court and decided in his favour vide judgment dated

19.01.1988. State of Haryana filed LPA No.320 of 1988 against this judgment dated 19.01.1988 which was decided in favour of the State. As abovementioned since review petition filed by him in the abovesaid LPA was pending when this suit was filed, so this suit was also stated to be premature one.

Further, he took the additional pleas that suit land was purchased by him in a restricted auction held on 05.05.1977, being the highest bidder and earnest money was deposited by him on the same very date, but this auction was not confirmed. He again purchased this land in its re-auction being the highest bidder on 23.11.1977 and deposited the earnest money. Possession of this land was delivered to him by the concerned rehabilitation authority in November, 1977 of which he is in possession till date since then. Sh. Tejinder Singh, uncle of present plaintiff, met him in May, 1985 and disclosed about the allotment of the land in dispute to his father Darshan Singh. Then ensued the litigation between auction purchaser, allottee and the State which was not culminated till the filing of written statement. Rest of the averments except the jurisdiction of the Court were denied.

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

- i. Whether the plaintiff is entitled to possession of suit property on the grounds as mentioned in the plaint? OPP
- ii. If issue No.1 is proved, whether the plaintiff is entitled to recovery of mesne profits as prayed for? OPP
- iii. Whether suit is not maintainable in the present form? OPD
- iv. Relief.

After hearing learned counsel for both the parties and going through the record, learned trial Court recorded the findings on all the issues in favour of respondent-herein (plaintiff) and decreed her suit with costs vide judgment and decree dated 31.10.2012 passed by the Court of Additional Civil Judge (Senior Division), Naraingarh.

5. Herein it is also made clear that defendant-Kundan Lal died during the pendency of suit and his LRs were impleaded as a party to the suit by learned trial Court vide order dated 10.01.2008.

The appellants-herein who were the LRs of original defendant-Kundan Lal (since deceased) being dis-satisfied with the impugned judgment and decree passed by learned trial Court filed an appeal against this judgment and decree which was dismissed by the Court of learned Additional District Judge, Ambala vide judgment and decree dated 30.07.2014.

Being dissatisfied with the impugned judgments and decrees passed by both the Courts below, the appellants have approached to this Court vide the instant regular second appeal, notice of which was given to the respondent. Record of learned trial Court was also requisitioned.

6. I have heard learned counsel for both the parties and have also analyzed the record with their eminent assistance.

7. Learned counsel for the appellants has contended that both the Courts below have failed to appreciate the facts on record properly. His further contention is that both the Courts below fell in error in passing the impugned judgments and decrees in favour of respondent-herein (plaintiff). In fact, it was a case of no evidence in favour of the plaintiff. Herein he has also submitted that both the Courts below while passing the impugned

judgments and decrees mainly relied upon the judgment Ex.P2 delivered by this Court in LPA No.320 of 1988 decided on 09.09.2004 without taking into consideration, whether any valid allotment was made in favour of Darshan Singh as alleged by respondent-herein (plaintiff). It is his further contention that any entry made in the copy of *Jamabandi* does not confer any title on any person and such like entries are merely for the fiscal purpose to collect the land revenue. Then he has also referred to the cross-examination of PW-1 Ravinder Kaur, general power of attorney of the plaintiff, wherein she failed to give proper answers to certain material questions. For instance she stated that she was not present at the time of alleged allotment nor she could tell about the exact date of this allotment. They never remained in possession of the land in dispute either before or after its allotment. Further, she admitted the possession of defendant-Kundan Lal of the land in dispute for the last more than 50 years. Then it was further her admission that auction of this land was twice made in favour of Kundan Lal by custodian department. Further, she also showed her ignorance as to who were the attesting witnesses of general power of attorney Ex.P1. This general power of attorney is also not bearing her signatures in any capacity. In this regard, learned counsel for the appellants has also contended that in the light of above cross-examination of PW-1, her statement carries no value in the eyes of law. Being the attorney of the plaintiff, she could have deposed about the facts which were within her knowledge or about the acts which she did as her (plaintiff's) attorney, but she could not have deposed about the facts which were within the knowledge of the original allottee or his successors on his death with regard to the alleged allotment made by the Rehabilitation Department in favour of Darshan Singh. Then it is also a fact that original allotment letter or its copy was

never brought on record by any of the parties to this litigation. The learned counsel for the appellants in support of his above contention has referred to the case law as laid down by the Hon'ble Apex Court in ***Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. and others, AIR 2005 (SC) 439.***

8. But on the other hand, learned counsel for the respondent has contended that the matter in controversy involving in the instant suit has already been adjudicated upon by this Court vide judgment Ex.P2 dated 09.09.2004 delivered in LPA No.320 and 465 both of the year 1988. Herein, he also submitted that the findings recorded by the High Court vide judgment Ex.P2 had got the finality since no further appeal against this judgment was preferred by any of the parties to litigation before the Hon'ble Apex Court. For this reason, this judgment is vital and relevant piece of evidence upon which the fate of this appeal depends. Then it is also his contention that any entry made in the copy of *Jamabandi* carries the presumption of truth unless the same is rebutted by leading evidence to rebut the same.

In support of the above contentions, learned counsel for the respondent has relied upon the case laws as laid down by the Hon'ble Apex Court in ***Madhukar D. Shende vs. Tarabai Aba Shedage, 2002 (1) R.C.R. (Civil) 724*** and ***V.O. Vakkan & Sons vs. George, 2011(1) CivCC 429 of Kerala High Court (D.B.).***

9. In order to deal with the above contention of learned counsel for the respondent, firstly I deem it appropriate to discuss the evidence which the respondent-herein (plaintiff) brought on record before the learned trial Court in order to establish her claim that she is owner of the land in dispute

since same having been allotted to her grandfather Darshan Singh.

In the copy of *Jamabandi* Ex.P3 for the year 1983-84, Central Government is shown to be the owner of the property in dispute, whereas Kundan Lal, the original defendant of the suit, was shown to be in its cultivating possession as *Gair Marusi*. Then in the remarks column, there is an entry regarding change of ownership of this property and vide Rapat No.289 dated 13.02.1985, the symbolic possession of this land was delivered to Darshan Singh s/o Malook Singh. Further, there is an entry in this column that this land was allotted to said Darshan Singh through his son Tejinder Singh. Then in the copy of *Jamabandi* Ex.P4 for the year 1998-99 present plaintiff Sonia d/o Satinder Singh s/o Darshan Singh is recorded to be owner of the land in dispute, whereas defendant is shown to be in its cultivating possession as *Gair Marusi*. These entries are further incorporated in the copy of *Khasra Girdawri* Ex.P5 and Ex.P6 pertaining to years *Kharif* 1999 to *Kharif* 2005.

10. Then it is an admitted fact that Kundan Lal, predecessor of the present appellants, filed CWP No.5013 of 1985 before this Court against State of Haryana and others including Tejinder Singh s/o Darshan Singh, Pardeep Singh s/o Tejinder Singh as the respondents. In this petition, he sought the relief of writ in the nature of certiorari for quashing the orders Annexure P-1 and Annexure P-2 passed by respondents No.3 and 2 respectively of that writ petition and also for quashing allotment made in favour of respondent No.5-Tejinder Singh of that petition. It was the case of petitioner in that petition that he purchased the land in dispute in restricted auction held on 05.05.1977 being the highest bidder and deposited the earnest money, but this auction was not confirmed. Then he again purchased this land in subsequent restricted auction held on 23.11.1977

being the highest bidder and deposited the earnest money and this auction was also not confirmed till the year 1985. Possession of this land was also delivered to him in November, 1977 by Rehabilitation Authorities. He contacted Tehsildar (Sales) Ambala-respondent No.4 of that petition who informed him that this land was required for drilling experiments by the Senior Hydrologist, Central Ground Water Board (for short - "CGWB"). Thus vide order dated 04.01.1978, it was decided by respondent No.3 of that writ petition to refund earnest money deposited by the petitioner and further to inform him whenever this land is again put to auction after the said drilling operations are over. In the light of these circumstances, while disposing of abovesaid LPAs vide judgment Ex.P2 dated 09.09.2004, this Court came to the conclusion that the alleged offer given by the petitioner in the subsequent auction of the land in dispute was not accepted by the competent authority. After discussing the law on this point, it was held that no right was accrued in favour of the petitioner since the offer given by him was never accepted by the competent authority and as such the contract was never concluded. Right accrues only in favour of the auction purchaser in property in question if bid offer given by him is accepted by the competent authority and the factum of its acceptance is conveyed to the auction bidder, but prior to that he has no right of any kind in the property put to auction.

Regarding the question pertaining to allotment of land in dispute in favour of Darshan Singh, it was held that order/letter vide which the land was allotted to Darshan Singh was not based on record. Therefore, the learned Single Judge, did not have occasion to examine the legality thereof. In this view of the matter, it must be held that Kundan Lal's challenge to the allotment made in favour of Darshan Singh is liable to be

rejected. As abovesaid, judgment Ex.P2 has got the finality since the appellants-herein/their predecessor-in-interest Kundan Lal did not lead any evidence to show that they have filed any Special Leave Petition before the Hon'ble Apex Court whereby challenging judgment Ex.P2.

So findings on above vital issues recorded by the competent Court in the abovesaid earlier proceedings cannot be ignored. Herein the principles as laid down in ***Madhukar D. Shende's case*** (supra) are followed. In this case law, it was held as under:-

“Res judicata is a mixed question of fact and law.

We do not find the plea of res judicata having been raised in the plaint. Copies of pleadings and issues framed in the earlier suit have not been tendered in evidence and we do not find any issue on res judicata having been framed and tried between the parties in the present suit. No submission raising the plea of res judicata was made before any of the Courts below or the High Court. We do not think such a plea can be permitted to be raised before this Court for the first time and at the hearing. However, still it cannot be lost sight of that the earlier litigation was between the same parties wherein this very will was relied on by this very plaintiff in support of his title to the property in dispute therein. The plaintiff's right to sue based on this very will was claimed and asserted in the earlier suit and was upheld though denied by this very defendant. These facts and finding are recorded in the previous judgment and have relevance in the present suit.

Thus away from res judicata, the judgment given in

the earlier suit is relevant piece of evidence under Sections 11, 13 and 35 of the Evidence Act and has a material bearing on the controversy arising for decision in the present suit.”

Then the principles as laid down in ***Madhukar D. Shende's*** case (supra) were also followed by High Court of Kerala in ***V.O. Vakkan & Sons vs. George, 2011(1) CivCC 429***. It was also laid down in this case law that findings recorded in judgment by a competent Court in *previous suit, if they have relevance in a latter suit cannot be ignored for the reason that the essential foundation to substantiate a plea of res judicata is not made out in the pleadings and no other material of the previous case other than the judgment was produced in the latter case.*

11. Then in the case in hand, another interesting fact is that initially this suit land was belonging to the government and in the above noted writ petition No.5013 of 1985 State of Haryana, through the Secretary to Government of Haryana, Rehabilitation Department, Joint Secretary and Deputy Secretary of Rehabilitation Department of Haryana Government, and Tehsildar (Sales), Ambala were impleaded as respondents along with two other private respondents. It was the stand of official respondents in that writ petition that suit land was allotted to Tejinder Singh s/o Darshan Singh rightly instead of putting it to auction again.

Judicial notice of this fact can be taken in order to decide the matter in controversy herein effectively and completely.

12. Then the learned counsel for the appellants has also argued that suit land being surplus evacuee property was put to restricted auction. Such like property according to the Rules For Sale Of Surplus Rural Properties

means that the acquired rural evacuee property cannot be allotted to any displaced person to satisfy his claim and further the same having been purchased by State Government from Central Government under a Package Deal. But his this contention is also held to be not tenable for the reason that neither there is any pleading nor any evidence to this effect.

When the concerned Department had taken the plea in CWP No.5013 of 1985 filed earlier by Kundan Lal that the suit land was allotted to Tejinder Singh s/o Darshan Singh, then the appellants-herein/their predecessor-in-interest Kundan Lal had no right to challenge the same. Moreover, the matter in this regard as abovesaid had already been adjudicated upon by this Court vide judgment Ex.P2 dated 09.09.2004 delivered in LPA No.320 of 1988.

13. In the light of above discussed evidence and the admission made by the Government Department in above noted writ petition it does not have any effect on the merits of the case if the alleged allotment letter of the land in dispute in favour of Darshan Singh was not brought on record in the evidence led by respondent-herein (plaintiff). Matter would have been different, if the respondent-herein (plaintiff) had filed this suit on the basis of mere entries made in revenue record.

14. Then in the case law titled as ***Harish Chander and others vs. Ghisa Ram and another, 1981 PLJ 121***, it was held that entry made in the copy of *Jamabandi* carries a presumption of truth unless the same is rebutted. In the case in hand as above discussed as per the copy of *Jamabandi* Ex.P3, there was an entry regarding the transfer of ownership of suit land from Central Government to Darshan Singh, the grandfather of present respondent-plaintiff. Then it also contains the entry that this suit

land was allotted to said Darshan Singh through his son Tejinder Singh. Then in the subsequent *Jamabandi* Ex.P4 for the year 1998-99, the present plaintiff-Sonia has been shown to be owner of the land in dispute and same entry has further been carried in the copy of *Khasra Girdawaries* Ex.P5 and Ex.P6 of aforementioned subsequent years. Provision of Section 44 of the Punjab Land Revenue Act, 1887 also justifies the above legal proposition.

On the other hand, the appellants-herein (defendants) did not lead any cogent evidence to rebut the entries made in the above-discussed revenue record.

15. Then as mentioned in the written statement, defendant took the plea that this suit is premature since a review application filed by him in LPA No.465 of 1988 is pending. Then during arguments and upon query, learned counsel for the appellants has admitted that this review application did not subsist any more since the same has been dismissed.

16. So far as the present suit is concerned, it has been got filed by the plaintiff through her attorney Ravinder Kaur. This Ravinder Kaur appeared as PW-1 on behalf of plaintiff before the learned trial Court. Besides, tendering her affidavit Ex.PW1/A, she also tendered her general power of attorney Ex.P1 executed in her favour by plaintiff. If in her cross-examination, she failed to tell about the exact date of allotment, then that does not mean to ignore her entire statement. Rather she stated the facts in a truthful manner when she stated in clear terms that defendant is in possession of the land in dispute for the last more than 50 years. Then they (plaintiff) never came in possession of the land in dispute at any time either before or after the alleged allotment. Then she also admitted that defendant-Kundan Lal purchased suit land twice in restricted auction.

17. Then it also came in her cross-examination that plaintiff-Sonia is her niece, i.e. daughter of the younger brother of her husband. Darshan Singh, who was her father-in-law, expired on 15th March 1983. So it was not possible to produce this Darshan Singh, the original allottee, in the Court to state about the alleged allotment and further to face cross-examination in this connection at the hand of counsel for the defendants. Then it was also found recorded in her cross-examination that at present Sonia is residing along with her husband in Europe. Then it is also to note that alleged general power of attorney Ex.P1 executed in favour of PW-1 (Ravinder Kaur) is dated 24.10.1988. Vide this power of attorney, she was authorized by plaintiff Sonia to manage and look after her properties as mentioned in it including the suit land for all intents and purposes on her behalf. So in these circumstances statement made by PW-1 (Ravinder Kaur) in the Court as attorney of the plaintiff is as good as that of plaintiff herself. So the case law ***Janki Vashdeo Bhojwani*** (supra) is not to affect the case in hand in any adverse manner. Moreover the facts of this case law are not identical to the facts of case in hand even remotely.

Then in the case law titled as ***Man Kaur (Dead) by LRs vs. Hartar Singh Sangha, 2010(4) CivCC 792***, in its para 12 (g) it was held as under:-

“Where the law required or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the

ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.”

This case law as per the exception recorded above is helping the case of respondent-herein (plaintiff) since as above mentioned vide general power of attorney Ex.P1, PW-1 Ravinder Kaur was authorized by plaintiff to manage and control her entire properties including suit land since the date of its execution i.e. 24.10.1988. Then it also came on record in the statement of PW-1 that plaintiff Sonia who is her niece has been residing in Europe along with her husband.

18. In the light of above discussion, the plea of learned counsel for the appellants that it was a case of no evidence on the part of respondent-herein (plaintiff) is held to be not correct one. The whole endeavour of the appellants-herein (defendants) is nothingelse, but to elongate their possession over the suit land by hook and crook in order to enjoy its fruits.

19. Hence, this appeal stands dismissed being found to be devoid of

any merit and disposed of accordingly.

Since the main case has been disposed of, hence pending civil
miscellaneous application, if any, stands disposed of automatically.

August 17, 2016

Gaurav Sorot

**(GURMIT RAM)
JUDGE**

- 1. Whether reportable? Yes
- 2. Whether speaking / reasoned? Yes