

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1140 of 1988 (O&M)
Date of decision: 16.02.2017

State of Punjab

... Appellant

Vs.

Nand Kaur (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Baljinder Singh Sra, Addl. AG, Punjab
for the appellant.

None for the respondents.

RAMESHWAR SINGH MALIK, J. (ORAL)

This regular second appeal, at the hands of the State of Punjab-defendant, is directed against the judgment of reversal dated 25.01.1988 passed by learned Additional District Judge, whereby the judgment and decree dated 12.02.1987 of the learned trial Court, dismissing the suit for possession, was set aside and first appeal of the plaintiff was allowed.

Brief facts of the case, as recorded by learned first appellate Court in paras 3 and 4 of its judgment, are that the case that was set up by the plaintiff is that he was the owner of the land measuring 5 kanals 17 marlas, comprised in khasra No.8/1(2-0), 13/1 (1-7) and 14/1 (2-10) of Rect. No.33 of Bir Kauli and was recorded as such in the Jamabandi for the year 1980-81, but was in the

possession of Health Deptt. of the Punjab Govt. which wanted to raise some construction and some was raised after the services of notice under Section 80 of the Code of Civil Procedure and as such he was entitled to mandatory injunction for direction to the said department to recover the construction raised illegally. The claim of the plaintiff was refuted by the State Govt. in its written statement on the plea that the land in question was purchased by it from Raja of Nalagarh in the year 1975 and that the Health Deptt. was in its possession since then and that building was being constructed on that land. Objection to the jurisdiction of the Civil Court to entertain and adjudicate the claim made was also raised and challenged the legality of the order dated 09.07.1981 of the Consolidation Officer referred to in para 2 of the plaint with record to the claim of ownership, adding that it was barred by time.

On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is owner of the suit land? OPP
2. Whether the defendants have become owners by virtue of purchase as alleged? OPD
- 2-A Whether this Court has no jurisdiction to entertain this suit? OPD
- 2-B Whether the order dated 9.7.81 of Consolidation Officer is illegal, void without jurisdiction? OPD
- 2-C Whether there is any order dated 17.2.1981 of Settlement Officer? If so, its effect? OPD
- 2-D Whether the Gram Panchayat is a necessary party to this suit? OPD
- 2-E Whether the suit is time barred? OPD

2-F Whether the defendants have come owner of the suit land by adverse possession? OPD

In order to substantiate their respective stand taken, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiff-Manjit Singh failed to prove his case. Accordingly, the suit was dismissed vide judgment and decree dated 12.02.1987. Dissatisfied, legal representatives of the plaintiff Manjit Singh (deceased) filed their first appeal, which came be allowed by the learned first appellate Court vide its impugned judgment and decree dated 25.01.1988. Hence this second appeal at the hands of the defendant-State of Punjab. Appeal was admitted for regular hearing vide order dated 15.07.1988. That is how, this Court is seized of the matter.

Heard learned counsel for the appellant-State of Punjab.

It is a matter of record that suit of the plaintiff was based on title. Plaintiff purchased land measuring 21 bighas 6 biswas equivalent to 35 kanal 6 marla vide registered sale deed Ex.P2 dated 10.08.1973 from one Jai Kishan. Mutation Ex.P3 dated 30.09.1977 was entered and sanctioned in favour of the plaintiff on the basis of abovesaid sale deed. His ownership also came to be recorded in the jamabandi for the year 1978-79 Ex.P22. During consolidation, as per the quality and value of land, area measuring 36 kanal 16 marla came to be allotted in favour of the plaintiff Manjit Singh. Vide order dated 09.07.1981 passed by the Consolidation Officer, entry qua land measuring 5 kanal 17 marlas came to be corrected regarding the possession of State Government, however, it did not affect the ownership of plaintiff. The cogent and voluminous evidence, though available on record, was altogether ignored by the learned trial

Court, while dismissing the suit of the plaintiff.

Under the peculiar facts of the case in hand, referred to hereinabove, the learned first appellate Court was well justified in setting aside the judgment and decree passed by the learned trial Court and the first appeal filed by the legal representatives of the plaintiff was rightly allowed, by passing the impugned judgment and decree dated 25.01.1988. It is so said because ownership of the plaintiff had never been in dispute. He was rightly found to be bonafide purchaser of pre-consolidation time. The suit land was rightly allotted to him at the time of consolidation, in lieu of his old ownership. Accordingly, the learned first appellate Court rightly found the order dated 28.11.1985 Ex.D11 as void and inoperative qua the right of the plaintiff.

This order dated 28.11.1985 came to be passed by Director, Consolidation of Holdings, Punjab during pendency of the suit of the plaintiff, which is available at page 109 of the lower Court record as Ex.D11. A bare perusal of this order would show that the absolute ownership of the plaintiff was altogether ignored and that too for no good reasons. Having said that, this Court feels no hesitation to conclude that the learned first appellate Court was well justified in reversing the findings recorded by the learned trial Court and the first appeal filed by the legal representatives of the plaintiff was rightly allowed, because of which the impugned judgment and decree passed by the learned first appellate Court deserve to be upheld.

Before arriving at its just conclusion, learned first appellate Court reconsidered and appreciated true facts of the case as well as relevant principles of law applicable thereof, in the correct perspective. Cogent findings recorded by the learned Additional District Judge in paras 9 to 14 of the impugned judgment, which deserve to be noticed herein, read as under: -

“The plaintiff as noticed at the outset, based his claim for possession on title and made averment to that effect in para 1 of the plaint. It is rather unfortunate that he did not disclose in his pleadings as to the manner in which he acquired the ownership and instead of referring to the sale deed in his favour from the original owner mentioned in para 2 of the plaint that he is recorded as owner in the jamabandi from the year 1981-82 and that it was allotted to him in consolidation proceedings. This averment though apparently misleading, did not justify the inference that the trial Court had drawn about the claim of ownership being based on the order of the Consolidation Officer dated 9.7.1981. That order forming part of the plaint merely sought to connect the entry regarding possession of the Health Deptt. and did not touch the ownership of the land.

The plaintiff purchased the land measuring 21 bighas 6 biswas equivalent to 35 kanals 10 marlas vide sale deed Ex.P2 dated 10.9.1973 from Jai Kishan. The land so purchased, was mutated in favour of the plaintiff Manjit Singh vide mutation Ex.P3 dated 30.9.1977, and incorporated in jamabandi for the year 1978-79, copy of which is Ex.P22 Jai Kishan was recorded as owner of the land purchased by Manjit Singh in jambandi for the year 1973-74, copy of which is Ex.P23, with reference to the entries in jamabandi for the year 1978-79 as is apparent from Misal Haquat for the year 1980-81 (Ex.P25). After the cut imposed, the land measuring 36 kanals 6 marlas was allotted to Manjit Singh of which he was recorded in the cultivating

possession except for the land in suit measuring 5 kanals 17 marlas, which was shown to be in the possession of the State Govt.

The said entry about the State Govt being in cultivating possession of the land in suit measuring 5 kanals 17 marlas was sought to be corrected by the order of the Consolidation Officer dated 9.7.81 which as already noticed, did not affect the ownership title of Manjit Singh over this land. The trial Court however, misread the said order and accepted as valid the order Ex.D11 dated 28.11.85 passed by the Director Consolidation in the exercise of the revisional jurisdiction involved by Director Health Services to negate the said claim of the plaintiff to the ownership of the land in suit.

Learned counsel for the appellant rightly contended that the said order Ex.D11 dated 28.11.85 is void and inoperative.

The first infirmity is that the order was passed during the pendency of the suit in the revisional jurisdiction that could be invoked against the order of the consolidation officer dated 9.7.81 within six months from the passing thereof. Delay could have been condoned for valid reasons for the exercise of revisional jurisdiction, but there is nothing to indicate that any such request was made by Director Health Services or any order in this regard having been made. The decision of Full Bench in Gurdial Singh and others Vs. The State of Punjab and others, 1967 PIR 689 supports the said view. Furthermore, perusal of the order shows that the Director failed to appreciate the true nature of the order of the Consolidation Officer dated 9.7.81. That order merely sought

to correct entry with regard to possession and not ownership. If the Director had come to the conclusion about the land in suit having been allotted to the plaintiff in re-partition in lieu of the pre-consolidation khasra numbers owned by him, contrary to the scheme envisaging the reservation of the land in the abadi in occupation of the owners for residential or other purpose then he could invoke his revision jurisdiction to direct that the land in suit be given to the Health Deptt. of the State Govt. for the construction of Health Centre, being in its possession to the consolidation and an equivalent area belong allotted to the plaintiff from the parcel of land allotted to the State Govt. in lieu of the pre-consolidation khasra numbers. That course will still be open to him. Alternately State Govt. can acquire the land in suit for Health Centre.

In this view of the matter, the only conclusion that can justifiably be reached is that the plaintiff is the owner of the land in suit and the order Ex.D11 dated 28.11.85 is without jurisdiction and inoperative as against the rights of the plaintiff till he is allotted equivalent area of land out of the land allotted to the Health Deptt. of the State Govt. in that village in accordance with law.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgment passed by the learned first appellant Court and rightly so, it being a matter of record. He also could not support the patently illegal findings recorded by the learned trial Court. In fact, learned counsel for the State was rightly feeling handicapped, because there was no supporting material available on record to

dispute the absolute ownership of the plaintiff. Under these circumstances, it can be safely concluded that the learned Additional District Judge committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason as well.

Learned counsel for the appellant also could not point any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reference can be made to the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present Regular Second Appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant Regular Second Appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

16.02.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No