

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

RSA No.1314 of 1989 (O&M)

Date of Decision : 13th October, 2017

The State of Punjab

..... Appellant

Versus

Baldev Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. H.S.Sullar, DAG, Punjab
for the appellant.

Mr. H.S.Dhandi, Advocate
for the respondents.

RAJ SHEKHAR ATTRI, J.

The defendant-State has come up in this regular second appeal assailing the judgment & decree of learned first appellate court vide which appeal was accepted and suit filed by plaintiffs (respondents herein) was dismissed.

Undisputedly, earlier Harnam Dass *chela* Jamuna Dass was a big land owner having land in excess of the permissible area. Out of his total holding, the suit property measuring 90 kanal 19 marla was declared surplus under the provisions of Punjab Land Reforms Act, 1972 (in short 'Act of 1972'). As such same was vested with the State and was mutated in its name vide mutation Nos.08 and 09 (Ex.D1 and Ex.D2 respectively). However, the Punjab Utilization of Surplus Area Scheme, 1973 (for brevity 'the Scheme') has been formulated for the purpose of utilization of the surplus area with certain conditions as provided under clauses 10 and 11 thereof. In

pursuance of the Scheme, the suit land was proposed to be allotted to Kaka Singh son of Mangal Singh vide order dated 01.07.1975 (Ex.D3) under certain conditions as stipulated under the Scheme. However, it has been stipulated in allotment order Ex.D3 that the fair rent has not been assessed and after its assessment, the compensation shall be recovered from the allottee and allotment certificate shall be issued to him on payment of the entire compensation/consideration.

It is pertinent to mention here that under Clause 10 (d) of the Scheme it is specifically provided that allottee shall become owner only on the payment of entire amount of compensation as assessed by the Collector. Further, the condition is imposed under Clause 10 (e) of the Scheme that the allottee shall not be competent to transfer his rights in the land allotted to him to any person till he becomes the owner or before the expiry of 15 years of the date of possession, whichever is later. Clause 11 thereof makes it abundantly clear that if there is any violation in the conditions imposed under clause 10, then the allotment shall be cancelled.

It is apparent on the record that said Kaka Singh or aforesaid vendees Baldev Singh and others had paid nothing towards the compensation as required under clause 10 of the Scheme. Resultantly, the allotment in favour of Kaka Singh was liable to be cancelled on this score.

However, in pursuance of the order of allotment Ex.D3, mutation No.10 (Ex.D4) was entered and sanctioned in the name of Kaka Singh on 24.07.1975.

Said Kaka Singh, while wrongly asserting himself to be the exclusive owner had transferred the suit land by way of sale deed No.3854 dated 05.11.1982 (Ex.P1) in favour of Baldev Singh, Tehal Singh sons of

Fateh Singh to the extent of 1179/1819 share (*which comes to 58 kanal 19 marla land*) and in favour of Subhash Chand son of Sant Ram and Avtar Singh son of Mehar Singh to the extent of 640/1819 share (*which comes to 32 kanal land*) for a total consideration of Rs.49,000/-.

When it came to the notice of the State that abovesaid Kaka Singh had not paid the requisite compensation, rather he had transferred the allotted area in favour of abvoesaid Baldev Singh and others in complete violation of Clause 10(e) *ibid*, the said allotment was cancelled vide orders Ex.D7 and Ex.D8 which are dated 12.10.1984 by Collector, Agrarian, Kharar. Resultantly, mutation No.39 (Ex.D9) was re-entered and sanctioned in the name of State of Punjab by Assistant Collector, vide his order dated 12.02.1985.

After sanctioning of the mutation Ex.D9, instant suit No.479 dated 15.11.1985 was filed by abovesaid vendees namely Baldev Singh, Tehal Singh, Subhash Chander and Avtar Singh (all respondents before this court) for declaration to the effect that they are the owners in possession of the suit land and sought permanent injunction restraining the State of Punjab from alienating the same in favour of anybody and from interfering in any manner into their proprietary rights and also restraining the appellant from dispossessing the plaintiffs from the suit land except in due process of law. It is specifically averred in the plaint that the plaintiffs had purchased the suit land from said Kaka Singh after making all possible inquiries in respect of title of their vendor and paid entire consideration before the Sub Registrar. Thus, they are bonafide purchasers for consideration without any notice, restriction, limitation or defect in the title of the vendor.

It has also been alleged in the plaint that subsequently mutation

(Ex.D9) has been sanctioned in favour of State of Punjab without any notice and without providing an opportunity of hearing to the plaintiffs.

The suit was contested by the appellant-State, However, it is admitted that aforesaid Kaka Singh was allotted the land under the provisions of the Scheme on 01.07.1975 vide order Ex.D3 subject to certain conditions. It is further averred in the written statement that said Kaka Singh had executed abovesaid sale deed Ex.P1 in favour of the plaintiffs/respondents in complete violation of the conditions as laid down under Clause 10(e) of the Scheme, as such, said allotment has been cancelled by the Collector (Agrarian), Kharar vide Office Order dated 12.10.1984 and thereafter mutation No.39 has been sanctioned in favour of the State.

From the pleadings of the parties the following issues were framed:-

- (i) Whether the plaintiffs are the bonafide purchasers for consideration without any notice of any restriction or limitation or defect in the title of the vendor regarding the suit land. If so, its effect ? OPP*
- (ii) Whether the plaintiffs are entitled for declaration as prayed for ? OPP*
- (iii) Whether the plaintiffs are entitled for the injunction as prayed for ? OPP*
- (iv) Whether no notice under Section 80 CPC has been served by the plaintiffs upon the defendant. If so, its effect ? OPD*
- (v) Whether the suit suffers from laches, if so, its effect ? OPD*
- (vi) Whether the civil court is not the proper forum. If so, its effect ? OPD*
- (vii) Whether Ram Singh sold the suit land to the plaintiffs*

before the expiry of 15 years and as such violated the provisions of Section 10 of the Punjab Utilization of Surplus Area Scheme, 1973. If so, its effect ? OPD

(viii) Whether this Court has no jurisdiction to try the suit as provided under Section 21 (1) of the Punjab Land Reforms Act, 1972 and Section 25 of the Punjab Security of Land Tenure Act, 1953 ? OPD

(ix) Relief.

The learned trial Court has afforded adequate opportunities to the parties to adduce evidence. On appreciation of evidence, it was held that the plaintiffs are not the bonafide purchasers, they have knowingly purchased the suit property from Kaka Singh in violation of clauses 10 (d) and (e) of the Scheme. As such, the suit was dismissed. However, the first appellate court took a different view and held that plaintiffs are bonafide purchasers as such, the appeal was accepted and suit filed by plaintiffs was decreed by observing in para No.9 of the judgment as under:-

“According to rule 9 (a) of the Scheme, the mutation in favour of the allottee, has to be sanctioned only when he had paid the whole of the installment. Since the mutation has already been sanctioned in favour of Kaka Singh, the appellants were justified in presuming that he might had paid the installments. State Government thought of mutating the suit land in its name only in 1985. The land had already been sold in the year 1982 and mutation in favour of the appellant had already been sanctioned before the State Government thought of remutating the suit land in its favour. There was another occasion for the respondents at that time when the mutation was sanctioned in favour of the appellants to object to the sanctioning of the mutation the ground that Kaka Singh was not competent to transfer the suit land. The appellant cannot be punished for the lapses of the officials of the State. If a cause lies with the

State that lies only against Kaka Singh to recover the amount of the installments as it was Kaka Singh who has not complied with the terms of the allotment.”

I have heard learned counsel for the parties and scanned the evidence on the record.

It is undisputed fact that allotment in favour of Kaka Singh was made vide order dated 01.07.1975 (Ex.D3). However, it is specifically mentioned in Ex.D3 that the fair rent has not been assessed yet and compensation would be imposed after determination of the fair rent. No amount of evidence has been adduced by the plaintiffs if anybody had paid the fair rent or compensation to the State.

The allotment vide Ex.D3 was made under the Scheme and it was subject to the conditions as stipulated thereunder. Clause 10(e) of the Scheme prohibits the allottee to transfer the allotted land for a period of 15 years. This provision reads as under:-

“the allottee shall not be competent to transfer his rights the land allotted to him to any person till he becomes the owner or before the expiry of a period of 15 years of the date of possession whichever is later:”

From a bare perusal of said provisions of the Scheme, it is abundantly clear that the allottee shall be competent to transfer the allotted land in two conditions, firstly on payment of entire consideration and till he becomes owner thereof and secondly, for a period of 15 years, whichever condition falls later.

Undisputedly, allottee Kaka Singh had paid nothing to the State in the shape of compensation or in lieu of consideration and in fact the fair rent or compensation was not assessed. Thus, ostensible transferor Kaka

Singh was neither owner nor he waited for a period of 15 years as stipulated in Clause 10(e) of the Scheme as one of essential conditions of allotment. Further, Clause 11 of the Scheme provides for the cancellation of allotment in case of infringement of any of the conditions laid down under the Scheme. This clause is absolute and based upon the public policy. The purpose behind utilization of the surplus land was to strengthen the social and economic justice as engraved in our Constitution. The said purpose has been completely defeated by executing sale deed Ex.P1 in utter violations of clauses 10 and 11 of the Scheme. Apart from it the transaction between Kaka Singh and the plaintiffs was indeed fraudulent with the sole purpose to defeat the very purpose of the scheme.

In this view of the matter, Kaka Singh was not competent to transfer the proprietary rights in favour of the plaintiffs/respondents and mere sanctioning of mutation in his favour does not confer any right or title upon him. Similarly, the appellants failed to derive any title on the basis of sale deed Ex.P1.

Now coming to issue No.1 with regard to plaintiffs being the bonafide purchasers. It has been strenuously argued before this Court that the plaintiffs are bonafide purchasers as they had made an enquiry and verified that mutation had already been sanctioned in favour of transferor Ram Singh and they have paid entire sale consideration. Strong reliance has been placed upon the judgment of the co-ordinate bench of this court in case *State of Punjab versus Natha Singh and others (Regular Second Appeal No.1364 of 1989, decided on 13.05.1991)*. This Court has considered these contentions but they carry no weight.

Provision under Section 41 of the Transfer of Property Act is

in the nature of an exception to the rule that a person cannot confer better title than he has. The said provision provides that a transfer shall not be voidable on the ground that the transferor was not authorized to make it where, with the consent express or implied of the real owner, the transferor is the ostensible owner of such property and transfers the same for consideration. The said provision obliges the transferee in all the transfers for consideration, and in addition, the transferee must have acted in good faith. This is based on the principle of equity that one, who allows another to hold himself out as the owner of an estate and a third party purchased the value from the apparent owner in the belief that he is the real owner, the man, who so allows the other to hold himself out, shall not be permitted to recover upon his secret title, unless he can overthrow that purchaser by showing either that he had direct notice/knowledge or something which amounts to constructive notice of the real title, or that there existed circumstances which ought to have put him upon an enquiry, which if prosecuted would have lead to a discovery of it.

However the principle as laid down under Section 41 of the Transfer of Property Act is not applicable in following situations:-

- (i) where the transferee failed to conduct a reasonable enquiry with regard to the title of the vendor;
- (ii) where he (transferee) does not act in good faith;
- (iii) the transaction is against the public policy;
- (iv) the transaction has violated any of the provisions of a statute.
- (v) where the transfer was invalid as being forbidden by law.

In the case in hand, there is no evidence to establish, much less, to suggest that defendant No.1 made an enquiry with regard to the title of vendor Kaka Singh. The plaintiffs are claiming the ownership solely on the basis of mutation and revenue entry in the name of their vendor Kaka Singh. A mutation entry of agricultural land in the revenue record is only fiscal entry and that by itself is not a document of title and on the basis of that entry it cannot be assumed that the person in whose favour the entry stands is the title holder of the land. The plaintiffs were required to enquire and verify as to whether their vendor had valid title. For this purpose, they must have delve into reasonable enquiry and must have gone through the order of allotment but they have done nothing in this regard. Thus, it is clear that the reasonable care of ordinary man of business, at the time of transaction, was lacking and plaintiffs failed to establish if they had taken reasonable steps in making enquiry in the title of the vendor before purchasing the property in question and, therefore, they cannot be said to be the bona fide purchasers for valuable consideration and without notice.

On independent analysis of the evidence available on the record establishes that the plaintiffs had failed to conduct an enquiry, much less, bonafide enquiry to ascertain the title of Kaka Singh. Defendant State of Punjab has placed on record jamabandi Ex.D5 for the year 1978-79 wherein a note is given with red ink to the effect that allottee Kaka Singh shall not be competent for making transfer of the land in favour of any person for a period of 15 years. The vendees / plaintiffs could easily ascertain from the revenue record that their vendor Kaka Singh could not sell the suit land for a specific period . This fact is itself an express notice of the ostensible title of the vendor.

It was the duty of the plaintiffs to ascertain and to verify as to whether Kaka Singh had a saleable interest in the suit property but they completely failed to discharge the same. It is a bald assertion of the plaintiffs that they made enquiries before purchase of the land. But the mere assertion does not prove a reasonable enquiry as required under Section 41 of the Transfer of Property Act.

Surprisingly, a bare perusal of mutation No.39 (Ex.D9) transpires that the land was mutated in the name of State of Punjab and this mutation was sanctioned on 12.02.1985 i.e. much earlier from filing the suit. Even in para No.4 of the plaint, it is specifically averred that the revenue officials have sanctioned the mutation in favour of the State of Punjab. Thus, the plaintiffs were having the knowledge of sanctioning of mutation Ex.D39 The instant suit had been filed on 15.11.1985, but order of cancellation of the allotment was never challenged by the plaintiffs.

Apart from it, the sale deed in question is hit by the clauses 10 and 11 of the Scheme. In other words we can certainly say that the sale transaction between Kaka Singh and the plaintiffs has violated the provisions of the Scheme which is a special enactment and will prevail upon the provisions of section 41 of Transfer of Property Act. The Full Bench of this Court in *Smt. Niranjana Kaur and others versus The Financial Commissioner AIR 2011 P&H 01(FB)* has already discussed a similar proposition of law. In that case the land was allotted under the displaced persons (Compensation and Rehabilitation) Act, 1954 (in short 'Act of 1954'). Under the said Act of 1954, the allottee was debarred from further transferring the allotted property for a period of 10 years but the allottee had violated this condition. In this view of the matter, the sale transaction was

cancelled by Chief Settlement Commissioner. It was observed that Act of 1954 is a Special Act whereas Transfer of Property Act is a general one, therefore, the provisions of Special Statute would override the provisions of Section 41 of the Transfer of Property Act, as such, the subsequent vendee cannot claim himself to be a bona fide purchaser, however, he can claim refund of damages from his vendor. This court would like to reproduce para Nos. 41 to para 44 from the judgment of the Full Bench hereunder:-

“41. It cannot be disputed that the Act is a special Act, whereas the Transfer of Property Act, is a general Act. Therefore, the provisions of the Property Act, would have no application to orders passed under Sections 19 and 24 of the Act.

*42. In support of this conclusion, reference can be made to the judgment of the Hon'ble Supreme Court in **Harishchandra Hegde v. State of Karnataka and others, (2004)9 SCC 780**, wherein the Hon'ble Supreme Court while interpreting the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 vis-a- vis Section 51 of the Property Act, has laid down as under :-*

"13. By reason of an order passed under Section 4 of the Act, the lands are directed to be restored in the event the illegalities specified therein are discovered. The consequences contained in Section 5 of the Act apply automatically in the event an order under Section 4 of the Act is passed. Section 4 of the Act contains a non obstante clause. The said provision would, thus, apply notwithstanding anything contained in any agreement or any other Act for the time being in force. The Act is a special Act whereas the Transfer of Property Act is a general Act and in that view of the matter also Section 51 of the Transfer of Property Act will have no application and the consequences contained in Section 5 would

prevail."

*43. The Hon'ble Supreme Court in **Hardev Singh v. Gurmail Singh (dead) by LRs.**, (2007)2 SCC 404, while interpreting the scope of provisions of Sections 41 and 42 of the Property Act, has laid down as under :-*

"9. Application of Section 41 of the Act is based on the law of estoppel to the effect that if a man has represented that the transferor consents to an act which has been done and that he would not offer any opposition thereto, although the same could not have been lawfully done without his consent and he thereby induces others to do that from which they might have abstained, he could not question the legality of the act he had so sanctioned, to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

10. The ingredients of Section 41 of the Act are :

(1) the transferor is the ostensible owner;

(2) he is so by the consent, express or implied, of the real owner;

(3) the transfer is for consideration;

(4) the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.

11. Section 43, on the other hand, embodies a "rule of feeding the estoppel" and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts thereupon and it is immaterial whether the transferor acts bona fide or fraudulently in making the representation.

12. In order to get the benefit of the said provision, the conditions which must be satisfied are :

(1) the contract of transfer was made by a person who was

competent to contract; and

(2) the contract would be subsisting at the time when a claim for recovery of the property is made.

13. However, the provisions would have no application if the transfer was invalid as being forbidden by law or contrary to public policy, as envisaged under Section 23 of the Contract Act. Thus, no estoppel can be pleaded contrary to the provisions of a statute. The "rule of feeding the estoppel" shall apply in absence thereof."

44. In view of the authoritative pronouncements of the Hon'ble Supreme Court, question No. 2 is answered against the petitioners, by holding, that the provisions of the special statute, would override the provisions of Section 41 of the Property Act."

Similar are the observations of the single bench of this court in case Sarvshri Ajit Singh and others versus Department of Agrarian Reform, Punjab (RSA Nos.948 and 949 of 1988, decided on 22.03.2016).

Viewing from all the angles, this Court is of the considered opinion that the plaintiffs failed to make a reasonable enquiry with regard to the title of their vendor and also that the provisions of clauses 10 (d) and (e) read with clause 11 of the Scheme prohibits the seller to make transfer in their favour. Thus, the sale deed (Ex.P1) dated 05.11.1982 is not only against the public policy rather the same is also against the various provisions enshrined in the Scheme. The plaintiffs cannot be treated as bonafide purchasers and are not protected by the equitable principle as enshrined under Section 41 of the Transfer of Property Act.

However, the facts in Natha Singh's case (supra) are distinguishable. Even in that case also, it was held that allottee who had

transferred the land in violation of Clause 10(e) of the Scheme was not

competent to execute the sale deed.

It seems that first appellate court has applied the principle of estoppel against State of Punjab solely on the basis of sanctioning of mutation. This observation is palpably wrong and against law. It was never the intention of the legislature to adjudge a person as bonafide purchaser who did not make a reasonable enquiry at all. Thus, the findings of learned first appellate court on issue No.1 are against the facts as well as against the law, as such, these are not sustainable and are liable to be set aside and reversed. Thus, it is held that plaintiffs are not the bonafide purchasers. It is also held that said Kaka Singh was neither owner of the suit land nor he was competent to transfer the same. Consequently, sale deed No.3854 dated 05.11.1982 (Ex.P1) executed by Kaka Singh in favour of the plaintiffs is declared as illegal, null and void and it does not confer any right, title or interest upon the plaintiffs and the mutation on its basis is also declared as illegal, null and void and non est.

As a sequel to my above discussion, it is held that this appeal has merits and deserves acceptance. Consequently, same is hereby accepted with costs and the judgment and decree of the first appellate court are set aside, whereas the judgment and decree of the trial court stand restored.

(RAJ SHEKHAR ATTRI)
JUDGE

13th October, 2017
mamta-M

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No