

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

**RSA No.2045 of 1995 (O&M)
Date of decision: 24.07.2017**

State of Punjab

... Appellant

Vs.

Niranjan Singh (deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms. Anju Sharma Kaushik, AAG, Punjab
for the appellant.

Mr. Gunjeet Brar, Advocate for
Mr. Vikas Singh, Advocate
for the respondent.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendant-State of Punjab is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for permanent injunction filed by the plaintiff-respondent was decreed by the learned trial Court vide its impugned judgment and decree dated 03.08.1984 and first appeal filed by the defendant was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 01.03.1995.

Brief facts of the case, as noticed by learned trial Court in para 1 of its impugned judgment, are that one Harinderjit Singh son of Gurdial Singh resident of Village Ferozepur was a big land owner. On 31.01.1958, he sold half

of his land to Om Nidi and a mutation in his favour was sanctioned on 17.05.1958. Om Nidi thereafter sold his land to Rubi Gurdial from whom the plaintiff purchased it for Rs.10,000/- vide a registered sale deed dated 05.10.1969. According to the plaintiff, he was not in any way related to the land owners/vendors that he was continuing in possession of this land since 1963 but the State of Punjab was attempting to take possession of the suit land alleging that it had been declared surplus area by the special Collector vide his orders dated 09.11.1964. The plaintiff then received a notice dated 19.12.1974 under Section 9 of the Punjab Land Reforms Act (hereinafter referred to as the Act) from the State of Punjab against which he filed objections which were summarily dismissed as infructuous as per orders dated 31.12.1974. The contention of the plaintiff was that it was the land in the hands of Harinderjit Singh which was declared surplus and the land in the hands of Rubi Gurdial was never declared surplus from whom the plaintiff purchased the said property. The plaintiff filed an appeal before Commissioner, Patiala Division, Patiala against the orders dated 31.12.1974 of the Collector, which was dismissed and the revision filed by him before Financial Commissioner had also been dismissed on 04.06.1981. According to the plaintiff, it was the duty of the Collector to first determine whether the area in possession of the plaintiff was surplus or not and the Collector was bound to decide the objections raised before him and could not dismiss the same in a summary manner. It was contended that no show cause notice had been issued to the plaintiff before issuing the notice under Section 9 of the Act, that since the land with Rubi Gurdial was not declared surplus, the plaintiff cannot be dispossessed from that land which he had purchased from Rubi Gurdial unless his share was separated

under Section 13 of the Act. The order of the special Collector dated 09.11.1964 declaring the land surplus without giving a notice to the plaintiff, who was in its possession, was sold to be illegal, void and non est. The orders of the Financial Commissioner was said to be a non-speaking order. The plaintiff, therefore, filed the present suit for permanent injunction restraining the defendant from dispossessing him from the land in dispute in pursuance of the orders of the Collector, Ludhiana as confirmed by the Financial Commissioner, Punjab, Chandigarh. Before filing the suit, the plaintiff served a notice under Section 80 CPC on the defendant. It was contended that the orders of the lower revenue officers had merged with the orders of the Financial Commissioner, Punjab and this Court, therefore, had the jurisdiction to try the suit.

Having been put to notice, defendant-State of Punjab appeared and filed its contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the suit is within limitation? OPP
2. Whether the suit is bad on account of misjoinder and non-joinder of the necessary parties? OPD
3. Whether the jurisdiction of civil court to entertain the suit is barred under Section 21 of the Punjab Land Reforms Act, 1972 read with Section 47 of the Pepsu Tenancy and Agricultural Land Act, 1955 and this Court has no jurisdiction to try the suit? OPD (as recast on 12.01.1983).
4. Whether notice u/s 80 CPC has been served on the defendant, is not its effect? OPP

5. Whether the plaintiff is entitled to injunction prayed for?

OPP

6. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties produced their documentary as well as oral evidence. After going through the evidence brought on record and hearing learned counsel for the parties, learned trial Court came to the conclusion that the plaintiff has duly proved his case by leading cogent and convincing evidence. Accordingly, suit of the plaintiff for permanent injunction was decreed by the learned trial Court, vide its impugned judgment and decree dated 03.08.1984. Feeling aggrieved, defendant filed its first appeal, which also came to be dismissed by the learned Additional District Judge vide his impugned judgment and decree dated 01.03.1995. Hence this regular second appeal at the hands of defendant-State of Punjab.

The appeal was admitted ex-parte vide order dated 06.10.1995 passed by this Court. During pendency of the appeal, plaintiff-respondent passed away and his legal representatives were brought on record vide order dated 13.10.1999 passed by this Court in CM No.4755-C of 1999. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

A bare perusal of the impugned judgments and decrees passed by the learned Courts below would show that plaintiff had duly proved his case. It has been specifically recorded by the learned Additional District Judge in para 20 of the impugned judgment that the order dated 09.11.1964 was an order without notice to the plaintiff or his predecessors-in-interest. When learned

counsel for the appellant-State of Punjab was confronted with this fact situation obtaining on record of the case, she had no answer and rightly so, it being a matter of record. Once the initial order dated 09.11.1964 came to be passed without notice, thereby glaringly violating the basic principles of natural justice, the suit was very much maintainable in the present form and the same was rightly decreed by both the learned Courts below. Having said that, this Court feels no hesitation to conclude that the learned trial Court as well as learned Additional District Judge were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

In fact, defendant-appellant failed to prove its pleaded case. There was hardly any relevant evidence brought on record by the defendant. On the other hand, plaintiff has duly proved his case by leading cogent and convincing evidence. Plaintiff brought on record voluminous documentary evidence, which speaks volumes against functioning of the State. As noticed hereinabove, once the initial order dated 09.11.1964 was without notice, such an order would be an order without jurisdiction and also void ab initio. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below have committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, learned first appellate Court examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned Additional District Judge in paras 14 to 21 of the impugned judgment, which deserve to be noticed here, read as under: -

“Surplus area proceedings against Harinderjit Singh were started

on 23.05.1959 (Ex.P3). Harinderjit Singh had sold half of his holding of 197 bighas and 17 biswas to one Om Nidi on 31.01.1958 as can be gathered from Ex.P15 and Ex.P16. Mutation in favour of Om Nidhi was sanctioned on 17.05.1958 (Ex.P16).

Om Nidi had become purchaser of half share of the holding of Harinderjit Singh on 31.01.1958 i.e. much before the start of proceeding of surplus area (23.05.1959). The respondent-plaintiff though had purchased land from Ruby Gurdial on 05.10.1969 (Ex.P9) who in turn had purchased land from Om Nidi (Ex.P13) but was continuing in possession of the suit land much earlier to this i.e. since 1963 (Ex.P12).

It would be clear from the statement of Girdhari Lal Kanungo recorded on 01.03.1984 that no notice was given to Om Nidi or to the respondent who was actually in possession of the land at the spot. The respondent-plaintiff traces his title from Om Nidi who had become owner of half share of the land of Harinderjit Singh on 31.01.1958 much before the proceedings of surplus area had been initiated by the appellant State. A notice to Om Nidi was thus necessary. Such notice was also required to be given to the person in actual possession of the land.

Order Ex.P7 of 04.06.1981 brushing aside this aspect by merely mentioning that no notice was necessary, cannot be said to be sustainable in law. There is no evidence on the file to even remotely connect Om Nidi with big land owner Harinderjit Singh as a prescribed relative to ignore sale in favour of transaction

would not be sufficient. No notice was sent even to Ruby Gurdial predecessor of the respondent vide sale deed dated 12.08.1969 (Ex.P9).

First time the respondent comes to know of such proceedings as on 19.11.1974 when a notice under Section 9 of the Punjab Land Reforms Act, 1972 is issued to him. Actual possession continued with the respondent. The entry of symbolic possession in favour of the appellant in the revenue record does not change the matter to the prejudice of the respondent as this entry apparently was made to cover up the conduct of the surplus area proceeding held at the back of title holder Om Nidi and genuine possessor i.e. the respondent. Dismissal of objection on 31.12.1974 by Collector (Ex.P6) and of appeal on 02.01.1979 by the Commissioner vide Ex.P10 cannot annihilate the legal rights of the respondent.

The learned trial Court discussing all these aspects in full prismatic view of the evidence led by the parties, has rightly decided issue No.5 in favour of the respondent-plaintiff. The said finding does not need any interference and is thus affirmed.

The present suit was filed on 12.11.1981. The order dated 09.11.1964 having been passed without any notice of such proceeding to the respondent or his predecessor cannot form water-shed for counting limitation. The land stood sold to Om Nidi vide sale deed dated 31.01.1958 (Ex.P16), the respondent continued to be in possession of the land even earlier thereto and had become the owner, is depicted in Ex.P12 and Ex.P15. The

respondent right from the day i.e. 19.11.1974 when he received notice under Section 9 of the Punjab Land Reforms Act has been litigating with the appellant in the Revenue Courts and the final defeat in the Revenue Court came vide order Ex.P7 of 04.06.1981. All these orders have been challenged. The respondent continues to be in possession of the land. The suit was filed on 12.11.1981 and the same hence, cannot be said to be barred by limitation. Finding on issue No.1 being right and legal, is also affirmed.

The pleadings cannot take place of proof. Even the pleadings are not clear as to which party has been misjoined and which others have not been joined even being necessary. Finding of issue No.2 having rightly been advanced in favour of the respondent-plaintiff is also affirmed.”

During the course of hearing, learned counsel for the appellant-State of Punjab could not point out any patent illegality or perversity in either of the impugned judgments and decrees. She also failed to refer to any question of law, much less substantial question of law, which is sine qua non for entertaining any 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, reliance can be placed on 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 since no illegality has been found in either of the impugned judgments and decrees passed by both the learned Courts below, the same deserve to be upheld. The regular second appeal having been found wholly misconceived, bereft of merit and without any substance, 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.

24.07.2017
vishnu

[RAMESHWAR SINGH MALIK]

JUDGE

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