

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

RSA-707-1996

Date of decision: 10.11.2017

Balwinder Singh and another

.....Appellants

vs.

Bachan Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. B.R. Mahajan, Senior Advocate, with
Mr. Prateek Mahajan and
Mr. Abhinandan Pandhi, Advocates,
for the appellants.

Mr. B.S. Jaswal, Advocate,
for the sole respondent-plaintiff.

MAHABIR SINGH SINDHU, J.

The conatus with an endeavour to minimize the miseries of a poor-man inflicted by the defendants-appellants while deploying a stratagem and successfully misleading this Court since 20.03.1996 uptill now.

2. Defendants-appellants have filed the present Regular Second Appeal against the impugned judgment and decree dated 11.01.1996 passed by learned Additional District Judge, Amritsar, here-in-referred as “First Appellate Court” while dismissing their appeal against the judgment and decree dated 09.11.1993 passed by learned Additional Senior Sub Judge, Ajnala, here-in-after referred as “trial Court” thereby, decreeing the suit of the plaintiff-respondent for possession and permanent injunction has been affirmed.

2. Brief facts of the case are that plaintiff-respondent filed a suit for possession with consequential relief of permanent injunction restraining the defendants-appellants from raising any construction and removing the trees from the suit land measuring 7 kanal 2 marla situated in village Bhindi Saidan, Tehsil Ajnala, District Amritsar. It is the pleaded case of the plaintiff-respondent that earlier Central Government was the owner of the suit land and the same was purchased by him in a 'restricted auction' from the Government of Punjab for an amount of Rs.8,200/- being the highest bidder on 24.08.1990 and the entire payment was made on 19.11.1990. Consequently, a sale certificate dated 24.12.1991 (Ex.P-1) was issued by Tehsildar (Sales), Ajnala. After issuance of the sale certificate, the mutation of the land in question was sanctioned in favour of the plaintiff-respondent and thus, he became the absolute owner of the suit land. The defendants-appellants without there being any right, title or interest, forcibly and illegally dispossessed the plaintiff-respondent two months prior to the filing of the civil suit and they have bent upon to raise the construction over the suit land, hence necessitated to filing of the civil suit.

Upon notice, the defendants-appellants appeared and filed their written statement by raising preliminary objections *inter alia* submitted that the defendants-appellants are in cultivating possession of the suit land for the last so many years as tenant under Central Government and paying rent and as such, the plaintiff-respondent has no locus standi and thus, the suit is not maintainable.

3. On merits, the ownership of the plaintiff-respondent was denied. However, it was admitted that suit land is owned by the Central Government. The purchase of the suit land by the plaintiff-respondent through restricted auction on 19.11.1990 for an amount of Rs.8,200/- as

well as the consequent sale certificate was also denied. In reply to Para Nos.4 and 6 of the plaint regarding dispossession of plaintiff-respondent at the hands of the defendants-appellants, simply denial was pleaded.

Plaintiff-respondent filed replication and reiterated his stand in the plaint and submitted that he is owner of the suit land since 24.08.1990 when it was transferred in his favour and the defendants-appellants are trespassers who entered into possession forcibly and illegally. It was further submitted that the Central Government was no longer the owner of suit land and mutation No.1996 has already been sanctioned by the revenue authorities in his favour.

4. On the basis of pleadings of both the parties, trial Court framed six issues and which read as under:-

1. Whether the plaintiff has become owner of the disputed land through the sale through a restricted auction as alleged? OPP
2. Is the plaintiff entitled to the relief of possession as prayed for through this suit? OPP
3. Whether the plaintiff is also entitled to the relief of a permanent prohibitory injunction as claimed through this suit against the defendants? OPP
4. Whether the plaintiff has no locus standi? OPD.
5. Is this suit not maintainable as alleged? OPD.
6. Relief.

5. Plaintiff-respondent himself appeared as PW-1 and produced Kulbir Singh, Kanungo (Sales) office of Tehsildar as PW-2 and brought on record the following documentary evidence to prove his case:-

- Ex.P1- Sales certificate dated 24.12.1991
- Ex.P2- Copy of *jamabandi* for the year 1988-89.
- Ex.P3- Copies of khasra girdhawari.

Defendants-appellants examined Puran Singh as DW-1, being Special Power of Attorney of defendant-appellant No.1-Balwinder Singh. Neither, any of the defendants-appellants appeared as witness; nor any documentary evidence was produced to prove the contents of the written statement.

6. Learned trial Court while deciding issue No.1 in favour of the plaintiff-respondent, recorded the specific findings to the effect that he has become the owner of suit land on the basis of sale certificate dated 24.12.1991 (Ex.P1). While deciding issue No.2 in favour of the plaintiff-respondent, trial Court came to the conclusion that he being the owner of the suit land is entitled to recover the possession and thus, the defendants-appellants being in illegal occupation of the land in dispute, have no right to continue. Issue No.3 was also decided in favour of the plaintiff-respondent while observing that defendants-appellants have no right to raise any construction over the suit land and consequently, relief for prohibitory injunction was also accepted. Issues No.4 and 5 were decided against the defendants-appellants being not pressed and ultimately, decreed the suit of the plaintiff-respondent for possession alongwith consequential relief of permanent injunction with costs vide judgment and decree dated 09.11.1993.

7. Aggrieved against the judgment and decree passed by trial Court, an appeal was preferred by the defendants-appellants; but the same was found without any merits and consequently, dismissed by First Appellate Court vide impugned judgment and decree dated 11.01.1996. Learned First Appellate Court affirmed the findings of trial Court to the effect that sale certificate dated 24.12.1991 (Ex.P1) regarding suit land measuring 7 kanal, 2 marla comprised in khasra No.79/4 was duly executed

on behalf of the Government in favour of the plaintiff-respondent and does not require any stamp duty in view of the provisions of Section 3(1) of “The Indian Stamp Act, 1899” (for short 'Act of 1899') and it was further observed that the stray entry in khasra girdhawaris did not create any tenancy in favour of the defendants-appellants. Learned First Appellate Court had also recorded the findings that there is no evidence on record to prove that Balwinder Singh and Chanan Singh-defendants/appellants are the sons of Surain Singh.

8. Hence, the present second appeal.

9. Learned counsel for the defendants-appellants has argued that as per the jamabandi for the year 1988-89 (Ex.P2), Surain Singh is shown to be as a tenant under the Central Government on payment of rent equal to 9 times of the land revenue and, thus, even if the plaintiff-respondent has purchased the suit land by way of sale certificate dated 24.12.1991 (Ex.P1), still the defendants-appellants will remain the tenants under the plaintiff-respondent and as such, the suit for possession is not maintainable in view of the provisions of Punjab Tenancy Act, 1887 and thus, the present suit for possession was/is not maintainable.

It has further been argued that as per the pleadings of the plaintiff-respondent, he was forcibly dispossessed about two months prior to the date of filing of the suit, but as a matter of fact, he never came into possession and as such, there is no occasion for dispossessing him from the suit land and thus, the suit for possession was not maintainable being without any cause of action.

On the other hand, it has been argued by learned counsel for the plaintiff-respondent that this Court was mis-led by defendants-appellants at the time of issuing notice of motion on 25.03.1996 while

raising the contention that First Appellate Court decided the appeal without disposing off their application for additional evidence and this Court was influenced only by the misstatement and consequently, the dispossession of the appellants was stayed on the first date of hearing till further orders and the poor man who had purchased the suit land from the Government itself has been deprived of its possession and enjoyment of benefits resulting therefrom.

Learned counsel for the plaintiff-respondent has vehemently argued that whosoever comes to the Court with unclean hands is not entitled for any relief and only on this count, he insists, that the present second appeal is liable to be dismissed with heavy costs. Learned counsel for the plaintiff-respondent has further argued that even in the grounds of appeal preferred before this Court, totally false plea has been raised and pointed reference is made to grounds No.7, 8 and 10 of the present appeal.

It has also been argued that both the learned Courts below have recorded the findings of facts regarding the dispossession of the plaintiff-respondent by the defendants-appellants and as such, the plea of tenancy under the Act of 1887 is not at all available to them.

10. Heard learned counsel for both the parties and perused the record carefully and after considering the same, the following substantial questions of law have been made out for adjudication of the present second appeal by this Court:-

1. Whether in view of the facts and circumstances of the present case the impugned judgments and decrees passed by the learned Courts below while decreeing the suit of the plaintiff-respondent are legally sustainable or not?
2. Whether the defendants-appellants misled this Court

while issuing notice of motion and obtained the stay order dated 25.03.1996 on the basis of false averment pleaded in the grounds of appeal and thus, the present appeal is liable to be dismissed with exemplary costs or not?

Point No.1:-

11. The case of the plaintiff-respondent, in the plaint as well as while appearing as PW-1 is that he had become the owner of suit land measuring 7 kanal, 2 marla on the basis of sale certificate dated 24.12.1991 (Ex.P-1) issued by Tehsildar (Sales), Ajnala. It has been pleaded that 'restricted auction' was held on 24.08.1990 and he paid the entire sale consideration of Rs.8,200/- in favour of the Government on 19.11.1990 and consequently, a sale certificate dated 24.12.1991 was issued in his favour.

PW-2 Kulvir Singh (Kanungo) Sales, Ajnala brought the summoned record and proved that the original sale certificate was issued in favour of the plaintiff-respondent and he identified the signature and stamp of Tehsildar (Sales) on original certificate Ex.P-1 and which was duly issued on the basis of 'restricted auction'. This witness has further proved the serial number of sale certificate as 4581/V-5 and in his cross-examination, he specifically stated that sale consideration was for an amount of Rs.8,200/-. This Court has also perused the sale certificate dated 24.12.1991 (Ex.P-1) which is duly issued by the Tehsildar (Sales) Ajnala as prescribed under Rule 6(6)(xiv) of the Punjab Package Deal Properties (Disposal) Rules, 1976 for short "Rules of 1976" framed under the provisions of Section 18 of the Punjab Package Deal Properties (Disposal) Act, 1976, here-in-after referred as "Act of 1976."

12. Before proceeding further in the matter, it is necessary to reproduce some of the relevant provisions of the Act of 1976 as well as the Rules of 1976 framed thereunder:-

“2. Definitions.- In this Act, unless the context otherwise requires,-

(1) X X X X.....

(1-c) X X X X.....

(1-d) “package deal property”, means the surplus evacuee property taken over by the State Government and referred to in the Government of India letter-

(i) No. 3(35)Pol.II/60, Land and Rent, dated 3rd June, 1961, read with letter No. 3(54)/Pol.II/60-L&R, dated 5th March, 1962,

(ii) No. F.18(40)J /61/Prop/Comp & Prop., dated 23rd March, 1963, and

(iii) No. F.18(40)/61-Prop-Comp & Prop, dated 29th March, 1983, reproduced in the Schedule to this Act;

(2) “Scheduled Castes” means such castes as have been specified in Part X of the Constitution, (Scheduled Castes) Order, 1950, in relation to the State of Punjab:

4. Power to transfer package deal property: (1) Subject to any rules that may be made under this Act, the Tehsildar (Sales) or Naib-Tehsildar (Sales) may transfer any, package deal property-

(a) X X X X.....

(b) by sale by auction restricted to socially and educationally, Backward Classes of citizens notified by the State Government from time to time or to the members of the Scheduled Castes;

(c) to (f) X X X X.....

(1-A) X X X X.....

- (2) X X X X.....
- (3) Every Tehsildar (Sales) or Naib Tehsildar (Sales) selling any package deal property - by public auction or otherwise under sub section (1) shall be deemed to be a Revenue Officer within the meaning of sub-section (4) of section 89 of the Registration Act, 1908 (XVI of 1908).

Rules of 1976

2. **Definitions:** In these Rules unless the context otherwise requires:

- (a) to (d) X X X X.....
- (e) '*land*' means surplus evacuee agricultural land included in Package Deal Property, which is not occupied as the site of any building and is used for agricultural purposes or for purposes subservient to agriculture or for pasture ;
- (f) to (i) X X X X.....
- (j) '*restricted auction*' means an auction confined to the members of the Scheduled Castes or to socially and educationally, Backward Classes of citizens, notified by the State Government, from time to time;
- (k) '*rural area*' means an area within the State of Punjab which is not urban area;
- (l) '*rural Property*' means land and property located in a rural area;
- (m) to (n) X X X X

PART –IV

6. **Sale of land or property by auction - (1) -** Where any land or property is not transferred under Part-I, Part-II and Part-III of this Chapter and it is not required for, sale by negotiation, to any Government Department, Semi-Government Department, Co-operative Society, Corporate Body, Public Institution or any local authority

for a public purpose, it shall be disposed of by public auction or restricted auction by the Tehsildar (Sales) or Naib Tehsildar (Sales).

- (2) X X X X
- (3) The surplus rural agricultural land which does not fall in the categories specified in the preceding sub-rule shall be disposed of by restricted auction to the following classes of persons and in the following ratio, namely :-
- (i) Persons belonging to the Scheduled Castes not exceeding 40 % of the Banjar and Ghair Mumkin land ;
- (ii) X X X X
- (iii) Persons belonging to the Scheduled Castes and Backward Classes the whole of the available cultivable land.
- (4) *Persons who can participate in restricted auction*
 - Where any land is to be sold by restricted auction, only a landless agriculturist who is a member of the Scheduled Castes or Backward Classes and resides in the village in which the land offered for sale is situated shall be permitted to participate in the auction. X X X X
- (5) X X X X
- (6) *Procedure for sale of land or property, by auction*
 - Where any land or property is to be sold by public auction or by restricted auction:
- (i) It shall be sold by the Tehsildar (Sales) or Naib Tehsildar (Sales).
- (ii) to (xi) X X X X
- (xii)(a) Intimation of the approval of the bid or its rejection shall be given to the highest bidder (hereinafter referred to as auction purchaser).
- (xii)(b to c) X X X X

(xiii) x x x x

(xiv) When the purchase price has been realized in full from the auction purchaser, the Tehsildar (Sales) or Naib Tehsildar (Sales) shall issue to him a certificate of sale in the form specified in Appendix 'B' appended to these rules.

6-A Objections - (a) Where a person desires that the sale by auction of any rural property may not be confirmed under these rules because of any material irregularity or fraud, in the manner and conduct of the sale, he may make an application to that effect to the Sales Commissioner. x x
(b) to (c) x x x x

The perusal of statutory provisions reproduced hereinabove clearly envisage that the surplus evacuee property situated in the State of Punjab which stood vested in the Central Government was declared as 'Package Deal Property' and the same can be disposed of by the Tehsildar (Sales) by way of different modes including the 'restricted auction' being the competent authority under the Act of 1976 as well as the Rules framed thereunder. Still further, the Rules 6A reproduced hereinabove provides the remedy of objections to the aggrieved person against such auction.

In the present case, the sale certificate clearly reveals that the same is issued on the basis of 'restricted auction' held on 24.08.1990 for a sale consideration of Rs.8,200/- which was deposited by the plaintiff-respondent in favour of the Government on 19.11.1990 and thereafter, the sale certificate dated 24.12.1991 regarding the suit land measuring 7 kanal, 2 marla comprised in khasra No.79/4 was issued in favour of the plaintiff-respondent in consonance with the provisions of Rules 6(6)(xiv).

Although, the defendants-appellants before both the Courts below disputed the legality and validity of sale certificate dated 24.12.1991 on the ground that same is neither subscribed on the stamp paper as provided under the Act of 1899; nor registered according to the provisions of Indian Registration Act, 1908 (for short 'Act of 1908'). Even in the grounds of present appeal also, this point has been reiterated. However, during the course of hearing, learned Senior counsel for the defendants-appellants did not press the validity of sale certificate (Ex.P1); rather he conceded that in view of the fact that the same has been issued by the Government regarding the suit land, which at the relevant time was in the ownership of Government itself and thus, there is neither any requirement of stamp duty; nor registration under the Act of 1899 and 1908 respectively. Consequently, he accepted the findings of both the Courts below that sale certificate dated 24.12.1991 (Ex.P1) is a valid and duly executed document in favour of the plaintiff-respondent. Resultantly, it can be safely concluded that on the basis of sale certificate dated 24.12.1991 (Ex.P-1), the plaintiff-respondent had become the lawful owner of the suit land w.e.f. 24.12.1991 and thenceforth, the Central Government had ceased to be the owner thereof.

The argument raised by learned Senior counsel on behalf of the defendants-appellants that they are in possession of the suit land since long, is only in the air and there is no material on record to substantiate the same. Although, the defendants-appellants averred in their written statement by raising preliminary objection No.2 that they are in possession of the suit land for the last so many years as tenant under the Central Government and paying rent, but there is no evidence at all to support this bald assertion. It

is necessary to mention here that none of the defendants-appellants appeared as witness to prove even the contents of their written statement, rather one Puran Singh son of Gaimda Singh was produced as DW-1 in the capacity of a Special Power of Attorney of defendant-appellant No.1/Balwinder Singh.

DW-1 has deposed that Balwinder Singh is his son and suit land was made cultivable by their ancestors, but he has not produced any documentary evidence on record to prove this fact. This witness has further deposed that he had been paying the rent of the suit land, but again there is no evidence on record to prove the same. In cross-examination, this witness has admitted that land in dispute is measuring 7 kanal, 2 marla bearing khasra No. is 79/4. However, DW-1 has taken a valiant stand in his cross-examination that neither the Tehsildar had conducted any auction; nor plaintiff-respondent purchased the suit land by way of any such auction for a sale consideration of Rs.8,200/-. Therefore, this Court has no hesitation to hold that this witness has deposed totally incorrect facts before the trial Court just to dislodge the lawful claim of the plaintiff-respondent being contrary to the documentary evidence available on record.

Learned Senior counsel for the defendants-appellants has given much stress to the revenue entries of jamabandi for the year 1988-89 (Ex.P-2) to substantiate that according to this document Surain Singh son of Gurdit Singh has been shown in cultivating possession of the suit land in dispute. Ld. Senior counsel tried to prove that Surain Singh is the father of defendant/appellant-No.2, and according to him, Surain Singh and Sohan Singh is the one and the same person. However, again this argument is without any foundation and there is no evidence at all to prove this fact that

Surain Singh and Sohan Singh is one and the same person; rather the First Appellate Court has recorded a categoric finding of fact in its judgment to the effect that it is not proved that defendants-appellants are the sons of Surain Singh and the relevant part of paragraph 9 reads as under:-

“..... X X X X.....

It is not proved on the record that Balwinder Singh and Chanan Singh are the sons of Surain Singh son of Gurdit Singh.”

There is no material available on record to interference with the above findings of fact recorded by First Appellate Court; rather as rightly pointed out by the opposite side, there is one affidavit dated 07.12.1995 on record filed by plaintiff-respondent before the First Appellate Court which clearly shows that Surain Singh and Sohan Singh are two different persons and the paragraphs No.1,2 and 3 of the said affidavit being relevant read in the following terms:-

- “1. That none of the appellants has any relationship with the deceased Surain Singh son of Gurdit Singh resident of village Bhindi Saidan, Tehsil Ajnala.
2. That Surain Singh was never called by the name of Sohan Singh.
3. That there are 5 or 6 persons alive or dead of the name of Surain Singh son of Gurdit Singh.”

It is necessary to mention here that in the plaint, the description of both the defendants-appellants is as under:-

1. Balwinder Singh son of Shri Puran Singh.
2. Chanan Singh son of Sohan Singh, residents of village Bhindi Saidan, Tehsil Ajnala, District Amritsar”.

In the written statement filed by both the defendants-appellants, this fact is not disputed. As per memo of parties mentioned in

the first appeal as well as in the present appeal preferred by the defendants-appellants, the name and parentage was the same as reproduced hereinabove. Even in the grounds of appeal before the First Appellate Court also, there was no such plea that Surain Singh and Sohan Singh is one and the same person and this plea has been raised first time in their application for additional evidence filed under Order 41, Rule 27 of the C.P.C. by describing Surain Singh @ Sohan Singh son of Gurdit Singh.

Thus, the defendants-appellants cannot take any benefit of an entry in favour of Surain Singh son of Gurdit Singh as per the jamabandi for the year 1988-89 (Ex.P-2). Moreover, this is only a single stray entry.

So far as khasra girdawaris Ex.P-3 is concerned, the same is again in the name of said Surain Singh son of Gurdit Singh for the year 1989-90 and thus does not help in any manner to the defendants-appellants. The stray entry for the year 1990-91 is shown as cultivation of Blawinder Singh son of Puran Singh as gair marusi, but that is scored out by slanting line and again in the year 1991-92, Mutation no. 1996 is entered in the name of plaintiff-respondent (Bachan Singh son of Nanak Singh) and which is scored out and in the same year, the entry is shown of Chanan Singh son of Sohan Singh as gair marusi. Therefore, this stray entry in favour of Chanan Singh son of Sohan Singh in the year 1992 is on account of dispossession of plaintiff-respondent at the hands of the defendants-appellants after entering of the Mutation No. 1996 on the basis of sale certificate dated 24.12.1991. Even otherwise, khasra girdawaris are only for the purpose for showing the nature of crops for charging land revenue and nothing more.

13. Consequently, the arguments of the learned counsel for the defendants-appellants that they are the tenants under the Central

Government since long is without any basis and deserves to be rejected. Even otherwise, as concluded above, that with effect from 24.12.1991, the plaintiff-respondent had become the lawful owner of suit land and consequently, the defendants-appellants have no right, title or interest to remain in possession of the same. Still further, throughout, in this case, the defendants/appellants have been denying the title of the plaintiff-respondent and thus, the civil suit for possession with consequential relief was the only remedy and rightly maintainable.

Point No.2:-

14. Perusal of the order dated 25.03.1996 passed by this Court clearly reveals that a specific contention was raised on behalf of the defendants-appellants that First Appellate Court decided their appeal without taking any final decision on the application for additional evidence filed by them and the said order passed by this Court, reads as under:-

“ Contends that the appellants had filed an application for additional evidence before the first appellate Court to prove that they were the sons of Surain Singh who was the tenant over the land in dispute which is stated to have been purchased by the plaintiff-respondent and that the appeal was decided without disposing of that application.

Notice of motion for 08.05.1996.

Dispossession of the appellants shall remain stayed until further orders.”

15. The order dated 25.03.1996 reproduced here-in-above clearly reveals that contention was unequivocal and categorical. Even in the grounds of the present appeal also, the same very plea has been specifically raised that their application for additional evidence was not decided by First

Appellate Court and grounds No. 7, 8, and 10 being relevant in this regard read as under:-

“7. That the defendant-appellant filed appeal before the Addl. District Judge and the same was admitted for hearing. During the pendency of the appeal the defendant-appellant filed an application dated 10.04.1995 under Order 41 Rule 27 C.P.C. for bringing on record the certified copy of mutation No.2235 relating to Surain Singh alias Sohan Singh son of Gurdit Singh resident of village Bhindi Saidan sanctioned in favour of defendant-appellant No.2 and also copy of the roznamcha waqkiati No.483 dated 24.08.90 of village Bhindi Saidan to prove that auction was with only with regard to khasra No.79/4 in which is split up the area of khasra No.79/4 (7K 2M) whereas the plaintiff has fraudulently got sale certificate of the entire area of khasra No.79/4. The lower Appellate Court called for reply to this application which was filed by the plaintiff-respondent on 20.05.1995 and the same was ordered to be taken up with the main appeal.

8. That the learned Additional District Judge did not pass any order on the application for additional evidence filed by the defendant-appellant and dismissed the appeal through the impugned judgment and decree holding that it is not proved that appellants are sons of Sh. Surain Singh son of Gurdit Singh and the tenancy is not proved from the stray entries and the Tehsildar is empowered to cancel lease under the Punjab Package Deal Properties (Disposal) Act 1976 and the plaintiff-respondent has become owner by sale and is entitled to possession.

10. That the learned Additional Distt. Judge has acted with material irregularity and illegality in deciding the appeal without passing any order on the application

under Order 41 Rule 27 C.P.C. filed by the defendant-appellant for permission to produce certified copy of the mutation regarding inheritance of Surain Singh and roznamcha waqkiati the documents sought to be produced have material bearing on the decision in the case and the application should have been decided before deciding the appeal. The learned Additional District Judge did not pass any order on the application and the impugned judgment and decrees are thus wholly unsustainable in law. It is settled principle of law that where an application for additional evidence is given in an appeal, the appellate court should decide that application before deciding the appeal. It has been held by this Hon'ble Court in Jagir Kaur versus Nirmal Singh, 1993(2) PLR 374, that:-

“Consideration of this application somehow escaped the notice of the Court and perhaps for this reason there is no mention in the impugned judgment as to whether the same has been accepted or rejected. Whether the documents sought to be adduced have a material bearing on the matter in dispute or such an application satisfy the test stipulated under Order 41 Rule 27 of the C.P.C. is a matter which ought to have been examined by the Court. Had it been granted or declined and its consequences are now within the realms of imagination, any comment upon the admissibility of these documents would also amount to prejudging the same. Thus, on account of this lacuna, there is no course left open except to remit the papers back to the District Judge for a fresh decision. Accordingly, I accept the appeals on this short ground, set aside the judgements and decrees of the lower appellate courts and remand the same for fresh adjudication.”

The same view has been reiterated by this Hon'ble Court in Shadi Lal Versus M.C. Rewari, 1994(1) PLR 633,

wherein it was held by this Hon'ble Court that:-

“It is not disputed that an application filed by an appellant under Order 41 Rule 27 C.P.C. Notice whereof was also given to the other side and the reply was also filed, was left undecided. The judgment under appeal, thus, deserves to be set-aside on this short ground. The case is, thus, remitted to Additional Distt. Judge, Rewari, who decided the matter, to proceed with the case in accordance with law and re-determined the matter after deciding the application filed by the appellant under Order 41 Rule 27 C.P.C.”

In view of the ratio of the above two recent decisions of this Hon'ble Court, the impugned judgement and decrees passed by the Additional District Judge are liable to be reversed and the matter deserves to be remitted for fresh decision after deciding application for additional evidence filed by the defendant-appellant.”

The defendants-appellants annexed the copy of application for additional evidence as well as its reply filed by the plaintiff-respondent to support their plea raised in the grounds of appeal which had already been decided by the First Appellate Court on 11.01.1996. Still further, the CM No.1144-C/1996 for stay of the execution of the impugned judgment and decree duly supported by an affidavit dated 05.02.1996 sworn in by Balwinder Singh son of Puran Singh defendant-appellant No.1 was also filed and taken up for hearing on 25.03.1996 before this Court and the relevant paras No.2 and 3 of the application for stay as well the para No.2 of the supporting affidavit dated 05.02.1996 read as under:-

“CM No.1144-C/1996

In: R.S.A. No.707/1996

2. That for the grounds stated in the memorandum of appeal, the appellants have prima

facie a good case in their favour and the appeal is likely to be accepted.

3. That the appellants are in possession of the land in dispute as tenant for the last number of years.

Affidavit dated 05.02.1996

2. That for the grounds stated in the memorandum of appeal, the appellant has prima facie a good case and the appeal is likely to succeed.”

Thus, it is apparently clear that the averments made in the grounds of appeal as well as in the stay application were duly supported by way of an affidavit of defendant-appellant No.1.

16. A perusal of the record reveals that the application for additional evidence filed by defendants-appellants had been rejected by First Appellate Court alongwith the appeal by way of a separate detailed order on 11.01.1996 vide which they wanted to brought on record the mutation No.2235 regarding the inheritance of Surain Singh as well as Roznamcha Waqiat No.483 dated 24.08.1990. Even till date, neither the defendants-appellants; nor their counsel realized that they have obtained the stay order from this Court by raising a false contention and enjoying the possession of the suit land without any lawful rights since the issuance of sale certificate dated 24.12.1991 (Ex.P-1) in favour of the plaintiff-respondent and the poor man is suffering and waiting in the queue for disposal of the present appeal.

At the time of hearing, learned Senior Counsel for the defendants-appellants instead of expressing any remorse regarding the contention dated 25.03.1996 as well as the pleadings in the grounds No.7, 8 and 10 reproduced hereinabove, made languorous submission that they

were “not aware” about the rejection of the application for additional evidence at the time of filing the present appeal.

The submission of learned Senior counsel is outrightly liable to be rejected being not conceivable in view of the averments made in the grounds of the appeal itself, wherein the defendants-appellants have raised the plea that their application for additional evidence has not been decided. Therefore, the stand of the defendants-appellants was conscious and deliberate and there is not even a slightest doubt that they pleaded this fact on account of their ill motive and bad faith just to secure the favourable order from this Court. In the ground No.7, it has been specifically mentioned that the 'lower appellate court' called for reply to this application which was filed by the plaintiff-respondent on 20.05.1995 and the same was “ordered to be taken up with the main appeal”. Therefore, it was obligatory upon the defendants-appellants to verify the fate of the application for additional evidence particularly in view of the fact that same was rejected in the presence of their counsel at the time of decision of the main appeal by the First Appellate Court on 11.01.1996, although by a separate order. Even otherwise, a period of more than 20 years has passed away after obtaining of the stay order on 25.03.1996 and filing of the appeal, but no remedial measures have been taken by the defendants-appellants to rectify the pleadings.

The submission of Ld. Senior counsel that defendants-appellants were not aware about the rejection of application for additional evidence, is afterthought just to save their skin from the consequences to be faced for misleading this Court and raising false plea in the grounds of appeal as well as in the stay application supported by an affidavit dated 05.02.1996. Accordingly, it can be safely concluded that contention raised

on behalf of the defendants-appellants before this Court on 25.03.1996 was the result of the falsehood based on the basis of their pleadings mentioned in grounds No.7, 8 and 10 of the present appeal and the same was deliberate and conscious, which cannot be termed on account of the fact that they were “not aware”.

17. This Court fails to understand as to how and in what capacity the defendants-appellants are occupying the land in dispute owned by the plaintiff-respondent which was purchased by him from the Government through 'restricted auction' being a member of Scheduled Caste way back on 24.12.1991 and till date he has not been allowed to enjoy the possession of the same at the hands of the defendants-appellants.

18. No other point was raised by either of the parties.

19. In view of the discussion made herein above, there is no merit in the present appeal and the same deserves to be dismissed with exemplary costs of Rs.1,00,000/- (Rupees one lakh) on account of making the false and vexatious claim to be borne by both the defendants-appellants in equal shares. The costs shall be paid to the plaintiff-respondent for being deprived off from the enjoyment of the suit land without any justification by the defendants-appellants more than a quarter of century.

20. Falsehood in making statement and raising plea by the unscrupulous litigants has become the common phenomena in the judicial Courts and this tendency ultimately results into polluting the “stream of justice” which should be protected by all means irrespective of any consequences. Otherwise, there will be a breach of faith in the judicial system and that will be too risky for survival of the common man. Dishonest litigant(s) can mend their ways only, if they are handled with a stern hand, otherwise they will take everything for granted. Unfortunately,

such types of litigants generally go scot free and much needs to be desired in this regard. People with dishonest credentials just walk in the judicial forums upto the highest level and make absolute false and baseless averment in their pleading and affidavit with their vested interest and the present case is also in the same line. Although, this Court was not inclined to proceed for prosecution of the defendants-appellants; but that will reflect the weakness of the Court and that is not only morally as well as ethically incorrect, but negation of the duties and breach of faith reposed in the judicial system by society at large. Therefore, not as an over enthusiasm or out of zeal; rather the judicial compulsion impels this Court to take the matter to the logical end.

21. Thus, without commenting any further, lest it may prejudice the defendants-appellants, this Court is prima facie of the opinion that there are sufficient and reasonable grounds to invoke the provisions of Section 340 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for prosecution of the defendants-appellants for making false statements in the stay application, grounds of appeal duly supported by way of an affidavit dated 05.02.1996 sworn in by Balwinder Singh/defendant-appellant No.1 as well as raising a contention before this Court on 25.03.1996 knowing well that same was not true; rather false and fabricated and used corruptly on the basis of application for additional evidence annexed with the present appeal which had already been rejected by learned Additional District Judge, Amritsar vide order dated 11.01.1996.

22. Before taking any further action in the matter, let a show cause notice be issued to both the defendants-appellants for 23.01.2018 as to why they should not be prosecuted for committing the offences under Sections 193, 196, 200 & 209 of Indian Penal Code, for short 'IPC' by the Court of competent jurisdiction.

23. Registry is directed to supply the complete set of R.S.A. No.707/1996, including the vernacular of affidavit dated 05.02.1996 (duly authenticated) alongwith order dated 11.01.1996 passed by First Appellate Court while rejecting the application for additional evidence to both the defendants-appellants free of cost.

24. Copy of this judgment be sent to Chief Secretary, Punjab as well as Chief Secretary, Haryana with a request that before conducting any “restricted auction”, which apparently is meant for the poor section of society, the Sales Officer/Competent Authority be asked to ensure that land in question is free from all encumbrances and after finalization of the auction proceedings, the auction purchaser is put into possession on the spot and revenue entries are duly updated as per law, to avoid any unwarranted litigation.

(MAHABIR SINGH SINDHU)
JUDGE

10.11.2017

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No