

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**RSA No. 4093 of 2012 (O&M)
Decided on: 09.11.2017****Gurmej Kaur and Ors.****.....Appellants****versus****Piara Singh (deceased) thr. Lrs.****.....Respondent****CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:** Mr. Avnish Mittal, Advocate
for the appellants.Mr. G.S. Nagra, Advocate
for the respondents.*********RAJBIR SEHRAWAT, JUDGE (ORAL)**

This is the second appeal filed by the plaintiffs against the concurrent judgement and decree passed by the Courts below, whereby their suit for declaration as owner in possession of the suit land has been dismissed.

For the convenience, the parties would be referred herein as the plaintiffs and the defendant, as they were described in the original suit.

Briefly stated the claim of the plaintiffs was that they were the owner in possession of the property mentioned in the head note of the suit. It was further pleaded that the revenue authorities have wrongly entered the mutations in favour of the defendant on the basis of order dated 16.10.1996 passed by Tehsildar, Boundary Cell-cum-Managing Officer, Revenue and Rehabilitation Department, Punjab, Chandigarh. It was further claimed that the land involved in the impugned mutations is not the same land, as was allotted to the plaintiffs, as displaced person in view of the land left by him

in Pakistan.

On notice, the defendant contested the suit. It was pleaded that the land in question was allotted, jointly; to the plaintiffs and the defendant vide order dated 16.10.1996 after correcting the earlier incorrect entries. The Revenue Officers have rightly entered the mutations on the basis of the order dated 16.10.1996. Still further, it was claimed that since the plaintiffs have not challenged the order dated 16.10.1996, therefore, the present suit is not maintainable. Still further, the defendant claimed that since the order was passed by the competent authority under the The Displaced persons (Compensation and Rehabilitation) Act 1954, and the same has been acted upon, again, by the competent revenue authorities, therefore, the Civil Court has got no jurisdiction to try this suit.

Parties led their evidence.

After hearing the parties, the trial Court dismissed the suit filed by the plaintiffs only on the ground of Bar of Jurisdiction of the Civil Court.

Aggrieved against the judgement and decree passed by the trial Court, the plaintiffs filed an appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal on the same ground that Civil Court have no jurisdiction to entertain the suit; against the order passed by the rehabilitation authorities and the revenue authorities.

Aggrieved against the judgement and decree passed by the lower Appellate Court, the plaintiffs are in appeal before this Court.

Arguing the case, learned counsel for the appellants has submitted that it is the specific case of the plaintiffs that the suit land in the present case is the land other than the land involved in the order dated 16.10.1996, therefore, a specific issue was also framed as to whether the

plaintiffs are the owner in possession of the suit property or not. It is his submission that the plaintiffs have substantiated their claim regarding ownership and possession over the suit land by leading cogent evidence. However, the counsel submits that, both the Courts below have consistently avoided giving any decision regarding the title of the plaintiffs over the suit property. It is submitted by the counsel that for determination of title it is only the Civil Court which will have the jurisdiction to decide the issue. Still further, it is submitted that the revenue authorities cannot decide the issue of title.

To buttress his claim, learned counsel for the appellants relies upon the judgement of Hon'ble Supreme Court rendered *in AIR 2009 SC (supp) 558* titled as *Rajinder Siongh v. State of J and K. and Ors.* and another judgement of Hon'ble Supreme Court rendered in *2007 AIR SCW 2481* titled as *Suraj Bhan and Ors. v. Financial Commissioner and Ors.*

On the other hand, learned counsel for the respondent has argued that since the order has rightly been passed by the rehabilitation authorities and the revenue authorities, therefore, the jurisdiction of the Civil Court is barred. To support his contention the counsel relies upon the judgement of this Court reported in *2015 (2) PLJ 458* titled as *Union of India and Ors. vs. Deena Nath and Ors.* and another judgement of this Court rendered in *2016 (2) PLR 347* titled as *Kulvinder Singh and Ors. v. Darshan Kaur and Ors.*

After hearing the counsel for the parties and perusing the record with the able assistance of the counsel for the parties, this Court is of the considered opinion that the argument raised by the counsel for the appellants deserves to be sustained. The claim of the plaintiffs in this case

has specifically been that the suit property is the property other than the land involved in the order dated 16.10.1996. Therefore, their claim of title is independent of a proceeding before this rehabilitation authorities and the consequent proceedings before the revenue authorities. The counsel has rightly relied upon the judgements of the Hon'ble Supreme Court.

So far as the judgements cited by the learned counsel for the respondent are concerned, there is no dispute with the proposition of law laid down therein. However, the judgements are distinguishable on the facts of their own case. In the present case, as stated above, the plaintiffs have not raised any dispute regarding the order passed by the rehabilitation authorities. They are raising their claim independent of the proceedings conducted by the rehabilitation authorities. The basis of their title, as stated in the plaint, is definitely not the allotment of the land by rehabilitation authorities. It is different matter; whether they have been successful in proving their title as claimed by them or not. However, the Court cannot refuse to exercise its jurisdiction on the ground that some order between the same parties regarding some other land might have been passed by the rehabilitation authorities.

After appreciations of the evidences, the Court would have been very well within its jurisdiction to reject or accept the claim of the plaintiffs by saying that the plaintiffs have failed to prove or succeeded in proving their claim. That would have been altogether a different matter, which has not been resorted to in the present case. On the contrary, the Courts below have taken a circuitous route to avoid deciding the title of the land, as claimed by the plaintiffs, by saying that the jurisdiction of the Civil Court is excluded.

In view of the above, the judgements and decrees passed by the Courts below are set aside.

The case is remanded to the trial Court for decision of the case afresh, after appreciation of the evidence, already led on file.

It is made clear, that no further evidence shall be permitted by the trial Court; to be led by either of the parties. Both the parties are directed to appear before the trial Court on 15.12.2017. The trial Court shall decide the case within one month from the date of receipt of the certified copy of this order, positively, without fail.

Still further, if any appeal is preferred by either of the parties, the lower Appellate Court shall also decide the same within a period of two months after the date of filing of the same.

In view of the above, the appeal is accepted.

The case is remanded for further action in terms of the above.

9th November, 2017

Manju

**[RAJBIR SEHRAWAT]
JUDGE**

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