

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

RSA No. 3676 of 2013 (O & M)

Date of Decision:-06.04.2017

Kuldeep Singh

...Appellant

Versus

The Scheduled Caste Co-operative Land Owners Society Ltd. and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. I.S. Brar, Advocate
for the appellant.

HARI PAL VERMA J.

The appellant-defendant No.4 has filed the present regular second appeal against the judgment and decree dated 29.4.2013 passed by learned Additional District Judge (Adhoc), Fast Track Court, Bathinda, whereby his appeal against the judgment and decree dated 14.2.2012 passed by learned Civil Judge (Sr. Divn.), Bathinda in Civil Suit No.205 dated 14.8.2007, was dismissed.

The respondent-plaintiff i.e. the Schedule Caste Co-operative Land Owners Society Ltd., Ablu (hereinafter called 'the plaintiff') has filed the suit for declaration and possession through its President Budh Singh. The plaintiff is a Co-operative Society, registered under the name and style of Schedule Caste Co-operative Land Owners Society Ltd., Ablu (hereinafter called 'the Society'). It has agricultural land measuring 4

Kanals 5 Marlas comprised in Khewat No.376, Khatauni No.663 in its ownership, situated within the revenue limit of Village Ablu-1 besides some other land. The Punjab Government had given this land to the said society under the Nazool Land Transfer Rules, 1956. The appellant-defendant and other defendants, as mentioned in the suit, are not the members of the scheduled caste and therefore, are not eligible to become member of the said society as they belongs to Jat Sikh caste. As per the bye-laws of the Society, only a scheduled caste person can become member of the society. The appellant-defendant along with other defendants in connivance with the officials of the revenue have conspired to encroach upon the land of the society, whereas defendant No.1 to 3 represented themselves as legal heirs of one Buta Singh son of Thakur Singh, they entered into an agreement with defendants No.4 and 5 including the present appellant (namely, Kuldeep Singh) to alienate the suit land in favour of defendant No.4 (present appellant) and defendant No.5 for a consideration of Rs.90,000/- despite being aware of the fact that Buta Singh had no right, title or concern over the suit land. On the basis of this alleged agreement, the defendants got an entry in the revenue record by making misrepresentation and cheating, showing therein that defendant No.4 (present appellant) and defendant No.5 to be in cultivating possession of the suit land vide Rapat No.187 dated 11.12.2004 entered into Roznamcha of Village Patwari Ablu-1. Thus, plaintiff had filed the suit that the present appellant (defendant No.4) and defendant No.5 have trespassed the suit property illegally and forcibly. Though the present appellant (defendant

No.4) as well as defendant No.5 have filed the suit for permanent injunction on 27.4.2005 against Saun Ram son of Kaka Ram, resident of Village Ablu, who was cashier of the society and one Jaskaran Singh son of Mukhtiar Singh, however, the said suit was withdrawn by the present appellant (defendant No.4) on 07.6.2006.

While filing the written statement, the present appellant (defendant No.4) had taken the objections that the suit is not maintainable, plaintiff has no cause of action, true and material facts have been concealed. In fact Buta Singh was the owner in possession of the suit land measuring 4 Kanal 5 Marlas and was a co-sharer and member of the plaintiff-society. After his death, his legal representatives i.e. defendants No.1 to 2 inherited the same and they have sold the land for Rs.90,000/- to defendants No.4 and 5. Therefore, they are in lawful possession of the suit land.

From the pleadings of the parties, the trial Court vide order dated 13.5.2008, formulated the following issues :-

- “1. Whether the plaintiff is entitled to declaration as prayed for ? OPP
2. Whether the plaintiff is entitled to the relief of possession as prayed for ? OPP
3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the plaintiff has got no cause of action and locus standi to file the present suit ? OPD
5. Relief.”

The trial Court dismissed the suit while holding that the land in dispute belongs to the plaintiff-society, which was given by the Punjab

Government to the society under the Nazool Land Transfer Rules, 1956. The said property can only be sold with the prior permission of the Deputy Commissioner and the land can only be allotted to the member of the scheduled caste. As per the bye-laws of the Society, only these persons who belongs to the scheduled castes category are entitled to become member of the society. The appellant-defendant No.4 while appearing as DW1, has admitted in his cross-examination that there was a Schedule Caste Co-operative Land Owners Society Ltd. and all the members to the society were from the scheduled castes. The appellant and his brother were not the members of the society. However, defendants No.1 and 3 had executed agreement to sell with them. Since the appellant-defendant No.4 and defendant No.5 are not the member of the scheduled caste, they could not purchase the land. In this manner, the suit was dismissed.

Feeling aggrieved against this judgment, the appellant-defendant No.4 and defendant No.5 filed an appeal before the learned Additional District Judge (Adhoc), Fast Track Court, Bathinda, but the same was dismissed vide judgment and decree dated 29.4.2013.

It is in these circumstances, the appellant-defendant No.4 has filed the present regular second appeal.

Learned counsel for the appellant has argued that both the Courts below have gone wrong. The revenue record produced by the appellant-defendant No.4 has not been taken into consideration, wherein Rapat No.187 dated 11.12.2004 was entered in favour of the appellant/defendant No.4. When the appellant-defendant came into

possession, at that time, the Society had not raised any objection.

I have heard learned counsel for the appellants.

There is no dispute that the plaintiff-Society owned agricultural land measuring 4 Kanal 5 Marlas comprised in Khewat No.376 and Khatauni No.663, situated within the revenue limit of Village Ablu-1. The land was allotted by the Punjab Government under the Nazool Land Transfer Rules, 1956. The appellant-defendant No.4 is not the member of the Society as they are not belonging to the Scheduled caste community, therefore they have no locus to get the land, more particularly, when no such permission was granted by the then Deputy Commissioner concerned. The bye-laws specifically provides that the persons, who are not members of the scheduled castes, cannot become the members of the society, Admittedly, the appellant-defendant does not belong to the scheduled caste, therefore, the agreement to sell does not create a title in favour of the parties. This Court does not find any illegality in the judgments and decrees passed by the Courts below being based on concurrent findings of facts.

No other point is argued.

Since no substantial question of law is involved in the case, present appeal is dismissed.

April 06, 2017

Vijay Asija

(HARI PAL VERMA)

JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No