

RSA No. 3803 of 2015 (O&M)

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

**RSA No. 3803 of 2015 (O&M)
Date of Decision: 31.8.2017**

Sanjay Kumar

.....Appellant

Vs.

Estate Officer, HUDA, Kaithal, and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sahil Khunger, Advocate for
Mr. Siddharth Gulati, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgment of reversal dated 31.7.2014 passed by the learned first appellate court, whereby judgment and decree dated 2.4.2012 passed by the learned trial court in a suit for mandatory injunction were set aside, allowing first appeal of the defendants, plaintiff has approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that respondent No.1-plaintiff filed a suit seeking a decree for mandatory injunction, thereby directing the appellants-defendants to allot a separate plot of 50 square yards on the reserved price of 1992 as per policy dated 18.03.1992 on the ground that father of respondent No.1-plaintiff and perform respondents-defendants

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Shri Rajinder Kumar was owner in possession of land measuring 08 Marlas vide mutation No.5490 dated 22.10.1990 vide registered sale deed no.2056/1 dated 25.08.1989 situated within the revenue estate of Patti Kaisth Seth Kaithal. It was averred that the said land was acquired in the year 1992 by appellants-defendants for the development of Sector 19 and 20 HUDA Urban Estate Kaithal which was developed as Sector 19 and 20 HUDA Kaithal and the purposes of same to develop the professional and commercial institution and green belt at Patti Kaisth Seth, Kaithal. As per policy of the appellants-defendants, vide memo No.2-92/2062 dated 18.03.1992:-

- (i) the plots to the oustees would be offered if the land was under the ownership of oustees prior to the publication of the notification under section 4 of the Land acquisition Act and if 75% of the total land owned by the land owners in that sector is acquired;
- (ii) Ousteers whose land was acquired (a) less than 500 Sq. Yards should be offered 50 Sq. Yards (b) Between 500 Sq. Yards and one acre should be offered a plot of 250 Sq.Yards (c) From one acre above, should be allotted a plot of 500 Sq. Yards or where 500 Sq. yards plots were not provided two plots of 250 Sq. Yards each may be given;
- (iii) That the above said policy shall also apply in case where there were number of co-sharers of the land which was acquired, if the acquired land measures more than one acre, then the purpose of granting benefit under the policy the determining factor should be the area owned by each co-sharer respectively, as per his/her share in the joint holding. In case the acquired land of co-sharer was less than one acre only one plot of 250 Sq. Yards would be allotted in the joint name of co-sharers;

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(iv) That if the land of any land owners was released from acquisition, he would not be eligible to avail any benefit under this policy (respective of the area of land released);

(v) That as per the policy, the oustees shall be entitled to develop a plot/plots, the size of which would depend upon area of his acquired land, subject to a maximum of 500 Sq. Yards. The oustees shall be entitled to this benefit under this policy only.

(vi) The claims of the oustees for allotment of plot under the policy shall be invited by the Estate Officer HUDA concerned before the sector was floated for sale.

(vii) The commercial sites/building were sold by the auctions. Such site/building be also allotted to oustees on the reserve price as and when the auction of the same is held. While putting such sites/buildings to public auctions, the oustees who want to purchase the site/building would represent before hand for them. However, if the area acquired for the area of booth/shop cum flat being auctioned by HUDA, they may be given a booth/S.C.O. site keeping in view the size of acquisition under this policy.

E.O. HUDA Versus Sanjay Kumar etc.

It was further averred that respondent no.1-plaintiff duly applied in accordance with the policy dated 18.03.1992 for allotment of a separate plot of 50 Sq. Yards on the reserve price of 1992. But the appellants-defendants allotted a single plot of 220 Sq. meters at the rate of ₹3907/- per sq. meter alongwith other co-sharers vide allotment letter No.2578-3038 dated 12.05.2006 whereas the respondent No.1-plaintiff was entitled for the separate plot of 50 Sq. Yards at the reserved price of 1992 on the ground that the land of the Kavinder Parkash and Ravinder Parkash sons of Manohar Lal

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was acquired in co-ownership in the year 1992 like the land of respondent no.1-plaintiff. They were allotted separate plots as per policy dated 18.03.1992 on the reserved price of 1992 vide judgment and decree of Hon'ble Supreme Court. The respondent no.1-plaintiff even represented to the appellants-defendants vide registered notice with postal receipt, both dated 12.08.2008 but in vain hence the present suit has filed.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial court framed the following issues:-

- 1. Whether the plaintiff is entitled for a decree for mandatory injunction as prayed for ?OPP*
2. Whether the suit is not maintainable in the present form ?OPD
3. Whether the plaintiff has no cause of action to file the present suit ?OPD
4. Whether this court has no jurisdiction to try and entertain the present suit ?OPD
5. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has proved his case. Accordingly, suit of the plaintiff was decreed by the learned trial court, vide its judgment and decree dated 2.4.2012. Defendants filed their first appeal, which came to be allowed by the learned first appellate court, vide its impugned judgment and decree dated 31.7.2014. Hence this regular second appeal at the hands of

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unsuccessful plaintiff.

Heard learned counsel for the plaintiff-appellant.

It is a matter of record that late Sh. Rajinder Pal-father of the plaintiff-appellant, was a co-sharer. Since land of the co-sharers was acquired for public purpose on public expenses after following due procedure laid down under Land Acquisition Act and share of Sh. Rajinder Pal was also acquired, all the co-sharers were allotted one plot bearing No. 283 measuring 220 square meters in Sector 20, HUDA, Kaithal. However, plaintiff-appellant admitted in his cross-examination that he did not deposit the instalments, as per terms and conditions of the allotment. To justify his action for not depositing the instalments in time, plaintiff took a stand that his father was not the co-sharer along with other co-sharers in the acquired land. However, said plea raised by the plaintiff was found factually incorrect, as it was running contrary to the official record.

In fact, Sh. Rajinder Pal-father of the appellant, himself admitted in his application (Ex.P-4) that he was a co-sharer in the land which was acquired. Thus, the own document of the plaintiff-appellant falsified the stand taken by him. Having said that, this Court feels no hesitation to conclude that since the learned trial court failed to appreciate true import of the documentary as well as oral evidence available on record, while passing its judgment dated 2.4.2012, the learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld.

Appellant being the plaintiff, onus was on him to prove his pleaded case, by leading cogent and convincing evidence. However, in the case in hand, plaintiff took contradictory stands and finally failed to prove

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his pleaded case. To the contrary, defendants brought on record voluminous documentary as well as oral evidence, which was not properly appreciated by the learned trial court. Under these circumstances of the case, it can be safely concluded that the learned first appellate court committed no error of law, while passing its impugned judgment and the same deserves to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in para 12 of its impugned judgment, which deserve to be noticed here, read as under:-

“A perusal of the file clearly reflects that the respondent-plaintiff has not come to the court with clean hands as a perusal of allotment letter Ex.P2 reveals that Rajinder Pal son of Chandan Lal alongwith other co-sharers was allotted a plot bearing No.283 land measuring 220 Square meters in Sector No.20 HUDA Kaithal and installment was made out in the back of allotment letter even in his cross-examination respondent-plaintiff admitted that they did not deposit the installment. PW1 also alleged in his cross-examination that there was no co-sharer alongwith his father which is against the actual fact as per mark A . He also deposed that his father has applied in the year 1992 for the allotment of the plot. He further admitted that HUDA had issued allotment letter of plot No.283 in sector 20 subject to the certain conditions of plot of 10 Marlas was given to his father and the allotment was joint one with other co-sharer conditions and his father has died in the year 2001. It is admitted and proved fact but despite it the respondent-plaintiff alongwith performa defendants had never challenged this allotment letter Ex.P2 being illegal and void and not according to law. Rather they have filed present suit in the year 2009 for

allotment in their favour. As the respondent-defendant admitted that the allotment letter was issued in favour of his father alongwith other co-sharers it means that the fact of allotment of plot was in very much knowledge of the respondent-plaintiff and performa respondents but they did not challenge the illegality of this allotment letter. This court is of the considered opinion that the respondent-plaintiff alongwith performa respondents can claim that they should be treated the legal heirs of Rajinder Pal in the allotment letter produced on record. The respondent No.1-plaintiff, other co-sharers alongwith his father were not recorded as co- sharers and no such Jamabandi has been produced on record. Even copy of award has not been produced by the respondent-plaintiff. Copy of legal notice is Ex.P3 and the application moved by Rajinder Pal is Ex.P4 has only proved. As Rajinder Pal in application Ex.P4 himself admitted this fact that he was co-sharer on the land in dispute then in such circumstances the claim of the respondent-plaintiff is belied. Now, the onus was upon the respondent-plaintiff to prove the fact that how much land was acquired by HUDA of Rajinder Pal alongwith other co-sharers. As the respondent-plaintiff is claiming separate plot of 50 Square yards according to policy dated 18.03.1992 according to which if there is less than 500 Square Yards land then only a plot of 50 Square Yards will be offered. In the present case, it is admitted fact that only 08 Marlas land was acquired of Rajinder Pal who was father of respondent-plaintiff and other performa respondents. It means that Rajinder Pal was entitled to only one plot of 50 Square Yards and in Ex.P2 it is 220 Square Meters plot was allotted to the Rajinder Pal alongwith other co-sharers it means that it has not come on the file that the land was not correctly allotted. As the plot of 50 square yards were generally not available due to that reason appellants-defendants has allotted the joint plot according to the policy 1992 . More so it is the legal heirs of Rajinder Pal i.e. respondent-plaintiff and performa respondent

are required to challenge this allotment letter with reasons but in the present case they have failed to explain this fact of non-challenging the legality of allotment letter. Since the respondents-plaintiffs are seeking separate allotment of a plot of 50 Square yards which is not provided in the policy dated 18.03.1992 as at the time of acquirement of land Rajinder Pal was co-owner of 08 Marlas being a co- sharer so it means that the legal heirs of Rajinder Pal are not entitled to separate plot of 50 Square yards . Even otherwise there is no evidence on the file that the legal heirs of Rajinder Pal have deposited 10 percent of earnest money with HUDA alongwith application. So for that purpose of claim of respondent-plaintiff for seeking the allotment of separate plot of 50 square yards is absolutely not made out. It is also not proved on the file how many co-sharers and how much land of the co-sharers was acquired. So it is the respondent-plaintiff who has the onus to prove his case clearly on the file alongwith cogent evidence. Even the respondent-plaintiff has not fulfilled the conditions according to case law Haryana Urban Development Authority and others Versus Sandeep and others reported in 2012(2) Law Herald (Punjab and Haryana) 1550 and Ramo Bai and others Versus state of Haryana and others 2007(2) P.L.J. 356. So this court has come to conclusion that the impugned judgment and decree passed by the learned lower court is based on surmises and conjectures and without appreciating the evidence. There is no proof that the respondent-plaintiff have deposited the ten percent of earnest money with HUDA department so at this juncture, a direction regarding deposit of ten percent earnest money at the hand of respondent-plaintiff with HUDA department cannot be given.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the abovesaid findings recorded by the learned first appellate court. He also could not

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refer to any question of law much less substantial question of law, which is sine qua non for entertaining a 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 **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179**.

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 the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

31.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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