

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

RSA No.5220 of 2015 (O&M)

Date of Decision: 8.9.2017

Improvement Trust, Pathankot

..Appellant

Versus

Prem Lata and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Prem Kumar, Advocate for the appellant

RAJIV NARAIN RAINA, J. (Oral)

1. There is no warrant to interfere in this second appeal filed by the Trust against the concurrent findings of fact recorded by both the courts below that the suit property stood legally transferred by the Rehabilitation Department, Punjab from the pool of evacuee property and the corpus land was sold by conveyance deed and sale certificate dated 11th February, 1964 to Piara Singh through whom the respondents claim, rights to suit property. The plaintiff is the widow of Piara Singh. After the death of Piara Singh, the property came by natural succession to his son, widow and daughter Daljit Kaur who became owners in possession of the suit property. There have been further sales by the owners of smaller chunks of lands which which we have have no concern in deciding this appeal. There is a long settled possession of the respondents and constructions have been made over the suit property long ago.

2. The plaintiff brought the suit for declaration claiming ownership in possession of the suit property measuring 8 Marlas- 154 Sq. Feet and the structures existing over it forming part of Khasra No.1442/1, 228/577 Khewat No.735, Khatauni No.1366 in all measuring 3 Kanals situated within

Jamabandi for the year 1999-2000. With the sale deed from the Rehabilitation Department, a site plan of the disputed property was also annexed.

3. The Improvement Trust was the contesting defendant which joined issue with the plaintiff stating per contra that the sale certificate mentioned property “No.1207 in Pathankot”, and therefore, it is not one and the same property falling in the khasra numbers described in the head-note of the plaint. Plaintiff's ownership over the property was disputed.

4. When the Improvement Trust denied ownership, then the burden of proof was on it to show that the two were different and therefore, the subsequent entries in their own record and the mutations sanctioned were the correct position in law. This position has been disputed by the plaintiff when the prayer in suit was to declare the transfer letter and subsequent change in revenue record by the hands of the Improvement Trust, Pathankot as illegal, null and void, collusive, fraudulent and without jurisdiction and are not binding on the plaintiff. It may be remembered that ultimately, the Central Government is owner of the evacuee property and not the Improvement Trust. The Improvement Trust is only an agency of the State for the purpose of town planning for which land is apportioned for schemes. It has no demonion over evacue property, the Manager of which is the Central Government through the Managing Officer and the Tehsildar (Sales) of the district concerned where the land falls.

5. It was for the Improvement Trust to lead cogent, clear and conclusive evidence that the sale certificate spoke of a different property than the suit property. Smt. Kiran, Sales Clerk in the Tehsil Officer, Pathankot appeared as PW6 and filed an affidavit by way of evidence which

“I, Kiran, Sales Clerk, Tehsil Officer, Pathankot, do hereby solemnly affirm and declare on oath as under:-

1. That I have brought the summoned record. The conveyance deed is issued by the office of Tehsildar Sales-cum-(M) Pathankot relating to the land referred in the conveyance deed, originally belonging to the department of Rehabilitation. I have seen the certified copy of the conveyance deed, which is correct as per the original and is Ex.DW1/C which is the true certified copy of the original issued by office of Tehsildar Sales-cum-(M), Pathankot.”

6. This witness was called for cross-examination by the counsel for the Improvement Trust, since the exhibition was objected to on the mode of proof and admissibility in evidence. In cross-examination, she has deposed as follows:-

“I have no personal knowledge in regard to the matter in dispute. I have (sic. have) been working in Tehsil Office Pathankot since 5 yrs. I do not know who was the Tehsildar in the year 1993 and therefore I do not identify the signature of Tehsildar Ex.DW-1/C. In the file brought by me there is no jamabandi in respect of the land regarding which the conveyance (sic. conveyance) deed has been issued. There is no such order regarding the declaration of the land in dispute as evacuee property on the file brought by me. The file of the department of rehabilitation are separate each case. I was not party to the proceeding of the instant conveyance (sic. conveyance) deed. It is incorrect to suggest that I have deposed falsely.”

7. Therefore, no legal weight can be placed on the pleadings in the written statement or on the conveyance deed Ex.DW1/C without dislodging the sale certificate issued by the Rehabilitation Department in favour of late Piara Singh. This missing evidence does not go in favour of the

Improvement Trust while denying ownership rights of the plaintiff and I have, therefore, every reason to affirm the findings of both the courts below holding that the suit of the plaintiff deserved to succeed. Findings of fact have been recorded which are not open to correction in second appeal since even errors of fact cannot be corrected unless they give rise to a substantial question of law. None of which is present in this second appeal. The plaintiff has far better title over the suit property than the Improvement Trust. The acts of the Trust attempting to cast clouds on the ownership of the plaintiff has needlessly caused this litigation and put the plaintiffs to considerable expense are declared illegal and are set aside.

8. This Court would not interfere with the findings of fact recorded by the courts below after appreciating the evidence on record. No question of law, much less a substantial one, arises for consideration in this appeal.

9. For the foregoing reasons, this appeal is held to be without any substance or form and is hereby dismissed with costs in the two courts below in favour of the plaintiffs-respondents and recoverable against the Trust.

(RAJIV NARAIN RAINA)
JUDGE

8.9.2017
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No