

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

**RSA No.6753 of 2016 (O&M)
Date of Decision: 02.02.2017.**

Phool Singh

....Appellant.

VERSUS

Tehsildar, Hisar and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.A. Sheoran, Advocate for the appellant.

SNEH PRASHAR, J.

CM-17606-C-2016

Allowed, as prayed for.

RSA-6753-2016 (O&M)

This was Regular Second Appeal filed by appellant-plaintiff Phool Singh (hereinafter referred to as the “plaintiff”) impugning the judgment and decree dated 02.12.2016 passed by learned Additional District Judge, Hisar whereby the appeal filed by the respondents-defendants Tehsildar, Hisar and another (hereinafter referred to as the “defendants”) challenging the judgment and decree dated 30.01.2016 passed in Civil Suit No.318-C of 11.08.2015 by learned Civil Judge (Junior Division), Hisar, partly decreeing the suit and restraining the defendants from dispossessing the plaintiff forcibly from the suit property without following due process of law; giving liberty to the defendants to initiate fresh proceedings for ejectment under Sections 42, 43 & 45 of the Punjab Tenancy Act, was allowed, the judgment and decree dated 30.01.2016 was set aside and the

Precisely, the facts are that the plaintiff claiming to be in possession of the land measuring 100 Kanals, bearing Khasra No.1100//11/2 (4-0), 12/2(4-0), 13/2(4-0), 14/2(4-0), 15/2(4-0), 16(8-0), 17(8-0), 18(8-0), 19(8-0), 20(8-0), 21(8-0), 22(8-0), 23(8-0), 24(8-0) and 25(8-0), situated in Plot No.13AP, village Bir Peerawali, Hisar (hereinafter referred to as the “suit land”) had filed a suit for declaration with consequential relief of mandatory injunction against the defendants pleading that the land was allotted to one Safi Kashmiri son of Amrit Lal @ Amrit Bhatt (who was a political sufferer) on lease basis for 20 years from Khariff 1955 to Rabi 1976 by the defendants-State Government and as per the law laid down in “*Gyani Tara Singh & ors. Vs. State of Haryana & ors., AIR 1974, 266*” the proprietary rights were conferred on all political sufferers including said Safi Kashmiri. Since Safi Kashmiri was not an agriculturist, from the very inception of lease period, he inducted the plaintiff as tenant on payment of rent at the rate of Rs.3000/- per annum i.e. Rs.30/- per Kanal and that the plaintiff had been continuously cultivating the suit land. The promise/agreement between the plaintiff and Safi Kashmiri was that the plaintiff would never be ejected from the suit land. In fact, the suit land was not cultivable and had no source of irrigation, but by spending huge amount, the plaintiff made the land cultivable.

It was further submitted by the plaintiff that Safi Kashmiri exchanged the suit land with Plot No.131-B vide order dated 12.06.1978. On 10.09.1987, Tehsildar, Hisar (defendant No.1) filed an application before the Court of S.D.O. (Civil) for ejectment of the plaintiff from Plot No.13AP under the Punjab Tenancy Act, 1987 (for short, “the Act of 1987”). The plaintiff also filed a suit for declaration on 24.11.1987 before

the same Court seeking decree to the effect that he had become occupancy tenant over Plot No.13AP as envisaged under Section 8 of the Act of 1987. His suit was decreed vide order dated 02.03.1995 and the ejectment petition of the defendant was dismissed. The defendant preferred an appeal before the Court of Collector, Hisar who set aside the order of S.D.O. (Civil) vide order dated 07.04.1998 permitting the State of Haryana to proceed for ejectment under the Act of 1987, but no decree was drawn. The order dated 07.04.1998 was affirmed in appeal by Commissioner, Hisar and Financial Commissioner, Haryana vide orders dated 03.02.1998 and 15.07.2004 respectively. The plaintiff challenged the said orders by way of Civil Writ Petition before the Punjab and Haryana High Court which was dismissed and it was ordered that the defendants-Haryana State shall have the right to proceed for ejectment of the plaintiff from the suit land.

After dismissal of Civil Writ Petition No.17551 of 2004 on 26.09.2006 by the High Court, the Haryana State filed an application for restoration of the eviction petition before A.C. Ist Grade, Hisar pleading that the order dated 02.03.1995 had been set aside whereas the said order was never challenged by the State of Haryana before the higher authorities. On 08.12.2009 the application for restoration was allowed and an eviction order under Sections 42, 43 and 45 of the Act of 1987 was passed against the plaintiff directing him to vacate Plot No.13AP and deliver possession of the same to State of Haryana. The appeal preferred by the plaintiff was dismissed by Collector vide order dated 08.12.2009. The revision preferred by the plaintiff was dismissed by Commissioner, Hisar and also by Financial Commissioner, Haryana. The State of Haryana filed an execution petition in the Court of S.D.O. (Civil), Hisar in which the plaintiff filed an objection

petition but that too was dismissed. It was thereafter that the instant suit was filed challenging the ejectment notice given to the plaintiff as null and void and illegal.

The defendants contested the suit raising preliminary objections with regard to maintainability of the suit, suppression of material facts by the plaintiff, jurisdiction of the Civil Court to entertain the suit and cause of action etc. Replying on merits, they pleaded that in the year 1955 the State of Haryana had given the suit land to Safi Kashmiri who was a political sufferer and after completion of his lease period, the possession of the suit land was taken back by the State of Haryana vide Rapat Roznamcha No.330 dated 13.06.1978 and Safi Kashmiri was allotted another plot in lieu of the suit land. It was further submitted that the plaintiff, who was inducted as tenant by Safi Kashmiri, was illegally claiming himself to be a lessee over the suit land under State of Haryana. The plaintiff being an unauthorized occupant, an application for his ejectment under Public Premises Act was filed before S.D.O. (Civil) which was dismissed on 30.03.1984 and the appeal against the order was also dismissed on 10.06.1985. When an application dated 10.08.1987 was filed by the State of Haryana before A.C. Ist Grade, Hisar for ejectment of the plaintiff from the suit land, the plaintiff in order to defeat the purpose of filing the said petition filed a suit before A.C. Ist Grade seeking accrual of occupancy tenancy rights to him over the suit land which was decreed vide order dated 02.03.1995 and by virtue of part of the same order the eviction petition was dismissed. The State of Haryana preferred an appeal which was accepted by the Collector vide order dated 07.04.1998; the revision preferred by the plaintiff was dismissed on 03.02.1999 with the observation that proceedings

under Sections 42, 43 and 45 of the Act of 1987 had become infructuous. The State of Haryana filed an appeal against that order before Financial Commissioner, Haryana which was allowed on 15.07.2004 directing revenue authorities to initiate eviction proceedings against the plaintiff. The plaintiff then filed Civil Writ Petition No.17551 of 2004 before Punjab and Haryana High Court which was dismissed vide order dated 27.01.2005. It was thereafter that A.C. Ist Grade passed the order dated 08.12.2009 directing the plaintiff to vacate the suit land and the said order was upheld upto Financial Commissioner, Haryana. Submitting that the suit of the plaintiff was misconceived, vague and the plaintiff had no cause of action to invoke the jurisdiction of the Civil Court, a prayer for dismissal of the suit was made.

On the rival contentions of the parties, following issues were framed:-

1. Whether the plaintiff is entitled for declaration on the grounds, as prayed for? OPP
2. If issue no.1 is proved, whether the plaintiff is entitled for consequential relief of mandatory injunction, as prayed for? OPP.
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD
5. Whether the suit is bad on account of mis-joinder and non-joinder of necessary parties? OPD
6. Whether the plaintiff has not come to the court with clean hands and has suppressed the material facts from the court? OPD
7. Whether the civil court has no jurisdiction to try this suit? OPD.
8. Whether the suit is hopeless and time barred? OPD.

9. Whether the suit is liable to be dismissed for want of court fees? OPD.

10. Whether the suit is hit by principle of resjudicata? OPD.

11. Relief.

Both the parties adduced evidence in support of their rival contentions.

Considering the submissions made on behalf of the parties and the evidence on record, learned trial Court partly decreed the suit vide judgment and decree dated 30.01.2016 and the defendants were restrained from dispossessing the plaintiff forcibly from the suit property without following due process of law. It was also ordered that however, the defendants are at liberty to initiate fresh proceedings for ejectment under Sections 42, 43 & 45 of the Act.

The defendants preferred an appeal which was allowed by learned Additional District Judge Hisar vide judgment and decree dated 02.12.2016 and the judgment and decree dated 30.01.2016 passed by learned trial Court was set aside and the suit of the plaintiff was dismissed.

Feeling aggrieved with the judgment and decree dated 02.12.2016 passed by learned first appellate Court, the appellant-plaintiff filed the instant Regular Second Appeal.

The submissions made by Mr. R.A. Sheoran, learned counsel representing the appellant have been considered and record perused.

At the very outset, learned counsel for the appellant argued that vide order dated 02.03.1995, S.D.O. (Civil), Hisar had dismissed the application for ejectment filed by the respondents. The said order dismissing their application was not challenged by the defendants before the higher

of that application filed by respondent-State of Haryana was not maintainable. The order dated 08.12.2009 by virtue of which the application for ejectment was restored and ultimately an order of ejectment of the plaintiff was passed were illegal and against the provisions of law. To support his argument that the eviction of the plaintiff had not been sought on any of the grounds enumerated in Section 9 of the Punjab Security of Land Tenures Act, 1953 and by filing proceedings under Section 14-A of the said Act and therefore, the ejectment of the plaintiff could not be ordered, learned counsel relied upon **Shyam Lal vs. Deepa Dass Chela Ram Chela Garib Dass (2016)3 R.C.R. (Civil) 812.**

The backdrop of the case shows that having exhausted all remedies available to the plaintiff under the law, when he could not succeed, he very cleverly distorting the facts with an intention to reopen the matter in dispute on which the parties were litigating since 1995, which ultimately resulted in passing of an order of ejectment against him from the suit land, had filed the present suit in 2015. As is apparent from the pleadings of the plaintiff in the instant suit, he claimed declaration of being an occupancy tenant over the suit land under the respondents. His said claim was directly and substantially in issue in the suit filed by him before S.D.O (Civil), Hisar which was a Court of competent jurisdiction. Although S.D.O. (Civil), Hisar decreed the suit filed by the plaintiff vide order dated 02.03.1995 but as indicated above, the said order was set aside by the Collector, Hisar and the revision preferred by the plaintiff to the Commissioner was dismissed. The observation made by the Commissioner in his order that the proceedings under Sections 42, 43 and 45 of the Act of 1987 had become infructuous, were assailed by the State of Haryana before the Financial Commissioner by

filing an appeal which was allowed on 15.07.2004 directing the revenue authorities to initiate eviction of the plaintiff from the suit land. The Civil Writ Petition No.17551 filed by the plaintiff against the order of the Financial Commissioner was dismissed by this Court. When the matter regarding claim of occupancy tenancy of the plaintiff between the parties had been set at rest in the earlier suit, the instant suit filed by the plaintiff was directly hit by Section 11 of the Civil procedure Code i.e. by principle of Resjudicata and was not maintainable. It is surprising to note that very erroneously and illegally learned trial Court proceeded to decree the suit of the plaintiff but ultimately the suit of the plaintiff was rightly held to be barred by principle of resjudicata by learned first appellate Court.

The contention of learned counsel for the appellant/ plaintiff that the restoration of the application for ejectment of the plaintiff filed by the defendants before S.D.O. (Civil), Hisar was illegal and that the order of ejectment passed against the plaintiff is null and void, is also devoid of merit. No doubt, the application for ejectment of the plaintiff filed by the State of Haryana was dismissed by S.D.O. (Civil), Hisar vide order dated 02.03.1995 but the order of dismissal was passed in view of the fact that the suit filed by the plaintiff claiming occupancy rights qua the suit land had been decreed by the said Court (S.D.O. Civil, Hisar) vide an order even dated 02.03.1995. The order dated 02.03.1995 passed by S.D.O. (Civil), Hisar was set aside by the Collector, Hisar vide order dated 07.04.1998.

As noted by learned first appellate Court in Para No.16 of the judgment, the Collector while accepting the appeal of State of Haryana specifically observed that the order of Assistant Collector Ist Grade dated 02.03.1995 dismissing the case of the State for proceeding under Sections

42,43 and 45 of the Act of 1987 is also set aside. The revision filed by the plaintiff before the Commissioner was dismissed on 07.02.1999 and the observation made by the Commissioner in his order that the proceedings under Sections 42, 43 and 45 of the Act of 1987 had become infructuous, was set aside by the Financial Commissioner in revision preferred by the State of Haryana. It has already been indicated above that against the said order the Civil Writ Petition was dismissed by this Court. Accordingly, the restoration of the application for ejectment of the plaintiff filed by the State of Haryana was a valid and legal order. From that it follows that the order of ejectment passed against the plaintiff and direction to him to vacate the suit land was legal and in consonance with the order passed by this Court in Civil Writ Petition filed by the plaintiff. The respondent-State of Haryana has all along been proceeding in due process of law for eviction of the plaintiff from Government land and on that ground also the instant suit filed by the plaintiff was not maintainable.

Thus, there being no illegality or perversity in the judgment dated 02.12.2016 passed by learned first appellate Court calling for intervention by this Court, the instant appeal is dismissed.

(SNEH PRASHAR)
JUDGE

02.02.2017.
jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**