

RSA No. 6133 of 2015 (O&M)

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

RSA No. 6133 of 2015 (O&M)

Date of Decision: 24.8.2017

Bachan Singh (deceased) through LRs

.....Appellants

Vs.

Secretary Punjab Marketing Board and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Kuldeep Sanwal, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

With a view to satisfy their unending lust for money, legal representatives of plaintiff have filed present regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for declaration filed by plaintiff-late Sh. Bachan Singh was dismissed by the learned trial court vide its impugned judgment and decree dated 27.10.2012 and his first appeal was also dismissed by the learned first appellate court vide its impugned judgment and decree dated 4.8.2014.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that plaintiff was owner in

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possession of the land measuring 85 kanals 9 marlas, as detailed in para No.1 of the plaint. Out of this land, 60 kanals of land of the plaintiff was acquired, vide award dated 19.5.1993 and a sum of ₹11,24,724.51 paise was paid to him. Defendants were not to pay awarded amount against the remaining 25 kanals 9 marals of land, as detailed in the head note of the plaint. So, defendants had got no right to interfere in his possession over the suit land till entire payment was made to him. Earlier, he filed a suit for mandatory injunction but the said suit was dismissed as withdrawn, as defendants had admitted his possession over the suit land. Mutation of the suit property sanctioned in favour of the defendants on the basis of award was illegal, null and void and plaintiff was in possession of the suit property. He requested the defendants many times to admit his claim over the suit property and not to interfere in his possession but to no effect.

Defendants were put to notice. They appeared and filed their contesting written statement, strongly objecting to the averments taken in the plaint. It was specifically pleaded that plaintiff received payment on 19.5.1993 for land measuring 63 kanals 11 marlas and amount received was ₹11,24,724. 51 paise. It was further pleaded that plaintiff received an amount of ₹1,78, 025.89 paise on 28.6.1993 for the land measuring 10 kanals 15 marlas. Thus, total amount on account of compensation received by the plaintiff was ₹13,02, 750.40/- paise for his acquired land measuring 74 kanals 6 malra. Plaintiff filed his replication.

On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled for declaration and with consequential relief of mandatory injunction as

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prayed for?OPP

2. Whether the plaintiff is entitled for relief of permanent injunction in the alternative as prayed for?OPP

3. Whether plaintiff is entitled for relief of possession in the alternative?OPP

4. Whether present suit is liable to be dismissed u/o 2 Rule 2 CPC?OPD

5. Whether the present suit is not maintainable?OPD

6. 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 the case of the defendants was based on documentary evidence and the plaintiff miserably failed to prove his case. Accordingly, his suit was dismissed vide impugned judgment and decree dated 27.10.2012. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned District Judge, vide impugned judgment and decree dated 4.8.2014. Hence this regular second appeal at the hands of legal representatives of plaintiff-Bachan Singh.

Heard learned counsel for the appellant.

It is a matter of record that land measuring 74 kanals 6 marlas owned by plaintiff-Bachan Singh was acquired by the Land Acquisition Collector for public purpose at public expenses. This fact has gone undisputed on record. Total land acquired, including land owned by the plaintiff, was 245 kanals 18 marlas. Land was acquired for construction of New Grain Market, Quadian. Wholly unwarranted dispute raised by the plaintiff was that his land measuring 60 kanals was acquired and he was paid

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due compensation whereas possession of land measuring 74 kanal 6 marala was taken by the State authorities, without paying any amount of compensation to the plaintiff for the remaining land measuring 14 kanal 6 marlas.

However, said plea taken by the plaintiff was found factually incorrect and misleading as well. He was found to have received the compensation of ₹13,02,750.40 paise for the land measuring 74 kanals 6 marlas. Since the plaintiff miserably failed to prove his pleaded case, his suit was rightly dismissed by the learned trial court. Similarly, first appeal of the plaintiff was also dismissed by the learned first appellate court. Having said that, this Court feels no hesitation to conclude that since plaintiff has admittedly received an amount of ₹13,02,750.40 paise, for his acquired land measuring 74 kanals 6 marlas, he had no case right from day one either on facts or in law, thus, the impugned judgments and decrees passed by both the learned courts below deserve to be upheld.

When the learned counsel for the appellants was confronted to point out any relevant evidence either documentary or oral, to falsify the stand taken by the defendants that plaintiff had received the abovesaid payment for his acquired land measuring 74 kanal 6 marla, he had no answer and rightly so, it being a matter of record. Under these undisputed facts and circumstances, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as

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well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in para 13 of its impugned judgment, which deserve to be noticed here, read as under:-

“After considering the rival contentions of the parties and after going through the record, I find no merit in this appeal and as such same is liable to be dismissed. There is ample documentary evidence on the file to prove that 74 kanals 6 marals of land of the appellant was acquired by the respondents and thereafter they not only took possession of the acquired and but also made payment of whole compensation to the appellant qua acquired land measuring 74 kanals 6 marlas. In this regard, reference can be made to documents Ex.D2 and Ex.D3, which are notifications under Section 4 and 6 of the Land Acquisition Act. In these notifications entire land of the appellant is recorded. Ex.D4 is the Rapat Roznamcha vide which possession of the acquired land was delivered to the respondents. Ex.D5 is the notice issued under Section 9 of the Act. From these documents, it stands evident that land measuring 74 kanals 6 marlas of the appellant was acquired. Then, from the document Ex.D6 it is evident that appellant received the entire payment qua his acquired land measuring 74 kanals 6 marlas. As per this document, he received Rs. 11,24,724.51 paise on 19.5.1993 qua land measuring 63 kanals 11 marlas and he received Rs. 1,78m025.89 paise on 28.6.1993 qua land measuring 10 kanals 15 marlas. Thus, he received total compensation of Rs. 13,02,750.40 paise for the acquired land measuring 74 kanals 6 marlas. Appellant has signed on revenue stamp against each of the payment. Contention of the learned counsel for the appellant that Government pays amount through cheque and drafts and no such cheque or draft has been produced on the file by the respondents, so it cannot be said that any payment was made to the appellant. This submission of the learned counsel is without any merit because

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from his own admission, appellant has received payment qua 60 kanals of land. Therefore, appellant could have produced evidence to show that he was paid amount regarding 60 kanals of land through cheque or draft but no such evidence has been produced. Not only that the appellant has filed objections against the award and the same are Ex.D1 on the file and a perusal of the same shows that objections were qua rate of acquired land and with regard to compensation of the rate qua super structure in acquired land. No objection was raised that he was not given awarded amount qua suit property. Appellant has also miserably failed to prove his possession over the suit property also. No document whatsoever has been produced on the file to show that he is in possession of the suit property after acquisition of his land by the appellant. Moreover, he has also failed to prove his ownership over khasra No. 52R/17/2, 7/2, 8/1, 466, 468, 470 out of suit property. Rather from the record, it is evident by other persons and those owners have already received the amount of award from the respondents. So, appellant has miserably failed to prove his ownership as well as possession over the suit property. He has also failed to prove that no payment of the acquired land was made to him.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the abovesaid findings recorded by the learned Additional District Judge. He also could not 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.**

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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.

24.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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