

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.1796 of 2017 (O&M)
Date of Decision: 25.09.2017**

Smt. Shakuntala and another

... Appellants

Versus

State of Haryana and others

... Respondents

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

Present: Dr. Anmol Rattan Sidhu, Senior Advocate,
with Mr. Mahir Sood, Advocate,
for the appellants.

RAJIV NARAIN RAINA, J.

1. Late Shri Chand son of Ram Singh was a big landlord who owned an estate admeasuring 699 Kanals 12 Marlas (87 odd acres) situated within the revenue estate of Village Sanghi, Tehsil & District Rohtak as per Jamabandi for the year 1957-58.

2. During his life time, Shri Chand sold certain parcels of his land from time to time. He sold 76 Kanals 11 Marlas out of Khewat No.410 to Ram Swaroop and Ramji Lal in equal shares (son and father) vide sale deed dated July 03, 1959. He made sales to Badlu s/o Has Ram of land measuring 12 Kanals 4 Marlas mutated at No.3377 from Khewat No.412. He transferred 30 Kanals 16 Marlas to one Chander from Khewat No.413. From Khewat No.414 he sold land to one Rati Ram comprising 47 Kanals vide mutation No.3379. He further sold 13 Kanals 17 Marla in favour of Daria and Mussadi sons of Mare in equal shares from land falling in Khewat

No.417. He also sold 83 Kanals 1 Marla from Khewat No.419 in favour of Todar and Nighana sons of Tirkha. These lands were comprised in rectangle Nos.10 &12. In this manner, out of his total land holding he effected sales of total land admeasuring 263 Kanals 9 Marla. He was left with 436 Kanals 3 Marlas of land in his hand before he died intestate on May 05, 1961.

3. The estate of late Shri Chand devolved on his widow Manbhari (plaintiff No.1) who passed away on January 12, 2016; the other successors were Phoolpati Devi and Shakuntala plaintiffs No.2 & 3, both daughters of late Shri Chand. The last of the legal heirs was Manphool Singh son of late Shri Chand and brother of plaintiffs 2 & 3 arrayed as defendant No.8 in the suit filed in the Court of the Civil Judge (Junior Division), Rohtak for declaration claiming title by rules of Hindu succession. Defendant No.1 in the suit was the State of Haryana through the Collector, Rohtak.

4. The predecessor-in-interest of defendants No.2 to 7 was one Godha Ram to whom the State of Haryana had allotted land admeasuring 27 Kanals out of rectangle No.10 as described in the head note to the plaint. This land was allotted as a result of surplus proceedings against late Shri Chand an declaration of vesting in the State as surplus. Two mutations were sanctioned on February 14, 1991 and October 17, 1992 respectively in favour of Godha Ram who died on January 03, 1994. The estate of Godha Ram by way of allotment devolved and was transferred in the name of his heirs being defendant Nos.2 to 7 vide mutation No.4879.

5. The allotment of land to late Godha Ram from the estate of late Shri Chand by way of allotment on declaration of land as surplus was challenged in the suit instituted on January 13, 2004 (Civil Suit No.203 of

2004 decided on March 01, 2013) including the mutations of 1991 and 1992 on the plea that the plaintiffs being the widow and daughters of late Shri Chand did not receive notice of the surplus proceedings nor were they informed of the result. They complained of non-compliance of the mandatory provisions of the Punjab Security of Land Tenures Act, 1953 ("1953 Act") and the Haryana Ceiling on Land Holdings Act, 1972 ("1972 Act"). They claimed a declaration that allotment to late Godha Ram was illegal, null and void and suit land should revert to the plaintiffs and defendant No.8 brother of plaintiffs No.2 and 3 as joint owners in possession of lands described in the head note to the plaint.

6. The plaintiffs' case set up against Manphool Singh defendant No.8 and others was that even though they were owners of the suit property but were wrongly excluded from the estate as a result of collusion practised by their brother with the revenue authorities inducing them to sanction mutation entry No.3681 in his exclusive favour which was recorded on revenue papers on December 07, 1961 on the basis of a testamentary Will (Ex.P-1) propounded by defendant No.8 executed by the testator late Shri Chand on November 24, 1959 bequeathing his property to his son Manphool Singh to the exclusion of other heirs.

7. The case pleaded was that the plaintiffs did not receive notice of sanctioning of mutation of the suit land to their exclusion and, therefore, the entry was illegal, void and not binding on their rights. They denied the existence of the Will and its authenticity as an instrument of transfer of property. They asserted that after passing of the 1953 Act the proceedings for declaration of surplus land were initiated against the estate of deceased

Shri Chand and thereby land admeasuring 385 Kanals 4 M Marlas out of the total 699 Kanals 12 Marlas land was declared surplus and thereafter finally by the Court of the Financial Commissioner, Haryana, Chandigarh vide order dated May 08, 1969 in the litigation that ensued.

8. After the declaration of the surplus area, the vendees filed an exemption petition before the revenue authorities and much of the area was exempted from surplus pool except the land comprised in rectangles No.10, 12, 182, 197 and 200 admeasuring 82 Kanals 13 Marlas as surplus. It was asserted that the surplus area measuring 82 Kanals 13 Marlas was never utilized in the life time of Shri Chand and after his death plaintiffs and defendant No.8 became owner in possession in equal shares of land left behind by Shri Chand. They had been reduced to the status of small landlord and their land could not be declared as surplus.

9. Upon notice, defendants appeared. Defendant No.8 and 9 were proceeded against ex parte vide order dated February 03, 2004. Defendant Nos.10 to 14 were also proceeded against ex parte vide order dated March 24, 2004. The remaining defendants including the State contested the suit by filing separate written statements but on identical lines. Obviously, defendant No.8 was equally interested in the declaration which would enlarge his land holding.

10. The State filed a separate written statement while contesting the suit taking up preliminary objections such as bar of limitation, want of maintainability and jurisdiction of the Court. Plea of res judicata and suppression of material facts was also entered in defence. The State alleged that the plaintiffs and defendant No.8 had entered into a civil conspiracy to

retain wrongful possession over the surplus area comprising a huge chunk of land declared surplus on May 17, 1960 under the 1953 Act. It was not disputed that defendants Nos.8 to 14 had fought up to the Supreme Court against the order of the Financial Commissioner, Haryana and had lost. The land surplus proceedings had attained finality against the defendant No.8. The land had vested by virtue of Section 12 (3) of the 1972 Act in the State of Haryana w.e.f. January 24, 1971. In the previous litigation late Godha Ram the predecessor-in-interest of defendant No.2 was party in that suit against declaration of surplus by calling in question the orders of the Financial Commissioner which application was also dismissed and the appeal rejected.

11. Defendants No.8 to 14 also filed a writ petition on the same grounds before this Court which was dismissed and SLP was rejected in 1981 by the Supreme Court. Ultimately, the order of the prescribed authority in a proceeding initiated by defendants No.8 to 14 under Section 8 of the 1972 Act granting exemption from surplus area vide order dated April 25, 1995 was set aside by the Collector, Rohtak on June 02, 1998 and challenge thereto failed up to the level of the Financial Commissioner with no further proceedings taken to a higher Court. The orders attained finality.

12. The State argued that the real issue-in-dispute involved in the present suit related to surplus area, whereof jurisdiction of the Court is barred by Section 25 of the 1953 Act as well as Section 26 of the 1972 Act. State asserted that the plaintiffs were living with defendant No.8 for the last 40 years in their native ancestral village and the suit was filed in collusion with defendant No.8 for undue benefit regarding declaration of surplus area

which deprived the family of considerable land holding while the matter was *res judicata* in the hands of defendant No.8 which could not be legally revisited and reopened, the property having vested in the State for disposal. The present suit sought re-opening of surplus proceedings after they attained finality up to the level of the Financial Commissioner, the High Court and the Supreme Court in the carried forward litigation by Manphool Singh etc..

13. The following issues were framed by the learned trial Court for trial:-

- “1. Whether the Will dated 24.11.1959 and mutation No.3681 dated 07.12.1961 in favour of defendant no.8 regarding estate of Shri Chand is illegal, null and void, not binding upon the rights of the plaintiffs. *OPP*
2. Whether the plaintiffs never given any opportunity of being heard regarding surplus area of 82 Kanal 13 marlas? *OPP*
3. Whether the mutation regarding the land 82 Kanal 13 marlas is illegal, null and void? *OPP*
4. Whether the plaintiffs and defendant no.8 are owners in possession of 436 kanal 3 marlas in equal share as mentioned in para no.2 of the plaint and 27 kanal as mentioned in para 11 of the plaint? *OPP*
5. Whether the mutation no.4740 dated 14.02.91 dated 4700 dated 17.10.1992 in favour of Godha Ram predecessor-in-interest of defendant no. 2 to 7 are illegal, null and void and not binding upon the rights of the plaintiffs? *OPP*
6. Whether the Will dated 24.11.1959 has been challenged within time? *OPD*
7. Whether this court has no jurisdiction to entertain the question of surplus area? *OPD*
8. Whether the suit is collusive and fraudulent? *OPD*
9. Whether the suit of the plaintiff is bad for want of mis-joinder and non-joinder of necessary parties? *OPD*
10. Whether the suit is barred on the plea of *resjudicate*? *OPD.*”

14. A great deal of documentary and oral evidence was adduced by the parties which has been noticed in paras.6 and 7 of the judgment of the learned trial Court to which detailed reference is not necessary for determination of this appeal limited as it is within the confines of a second appeal against the appellate decree with both the Courts dismissing the suit.

15. The onus of proof regarding the Will dated November 24, 1959 and the mutation entry dated December 07, 1961 was rightly placed on the plaintiffs. But the plaintiffs failed to prove that the Will was not genuine and the statements of PW-1 Shakuntala, PW-2 Ram Diya and PW-3 Ranbir held good. The Court thought otherwise and dubbed as self-serving statements made by the witnesses to favour the plaintiffs as inconsequential.

16. PW-3 Ranbir was the son of one of the attesting witnesses of the Will and he deposed that his father had not signed the Will. Mere denial by the son of the signatures of his father appended in 1959 is not trustworthy of placing credence after a passage of over 40 years. The Will was a very old document with presumption of truth attached to it especially when mutation was sanctioned long ago in 1961 and both the Will and the revenue entry in the record of rights have never faced challenge till the filing of the suit as late as in the year 2004. The plaintiffs were unable to explain why the Will dated November 25, 1959 had not been challenged earlier. The trial Court concluded that the suit was collusive and after passage of 52 years the Will cannot be declared invalid. The issue was decided against the plaintiffs. If the Will held good the testamentary succession held good. If the testamentary succession held firm ground, the surplus proceedings in the hands of late Shri Chand through Manphool Singh defendant No.8 held

good, the father late Shri Chand passing away on May 05, 1961.

17. Issues No.2 & 3 as to whether plaintiffs had a right of hearing in surplus proceedings involving an area of 82 Kanals 13 Marlas and whether its mutations sanctioned rendered proceedings void were taken up together by the trial Court. The onus to prove these issues was on the plaintiffs but they failed to examine any witness on the point. The land had been declared surplus under a statutory enactment and Manphool Singh and defendants No.9 to 14 had litigated up to the Supreme Court for exemption from surplus pool but were turned down. What was final in the hands of ex parte Manphool Singh defendant No.8 remained final for the plaintiffs besides mutation No.3681-A was admitted by both the parties that land belonging to Shri Chand son of Singh Ram stood mutated in favour of Manphool Singh on the basis of Will Ex.P-1. This document also depicts that land belonging to Manbhari widow of Shri Chand also stood mutated in favour of her son Manphool Singh defendant No 8. This meant that late Manbhari plaintiff No.1 was aware of the Will from the very beginning and at least from 1961 when the land was mutated under the Will and this fact the learned Additional District Judge, Rohtak in her judgment dated November 04, 2016 was thought sufficient to dismiss the suit of the plaintiffs. I find myself wholly in concurrence.

18. The learned Additional District Judge was correct in reasoning that burden of proving Will was on defendant No.8 the sole beneficiary, but he happily got himself proceeded against ex parte at the commencement of the suit which shows his mala fide intention in order to get the proceedings of declaration of land surplus undone. Strange as it may seem, the plaintiff

Nos.2 & 3 chastised their brother Manphool Singh to be in collusion with revenue authorities and their attesting witnesses and scribe of the Will and at the same time non-appearance of defendant No.8 is itself an act of collusion with the plaintiffs in the suit.

19. Stranger still it is, that PW-3 Ranbir who disclaimed the signatures of his father late Birkhe Ram as an attesting witness of the Will had expired in 1958 how then could he depose against the Will. Then there was no question of any collusion of defendant No.8 with the attesting witnesses, the mutation having taken place in 1961. Therefore, PW-3 Ranbir statement is a false statement made in Court and his conduct deserves to be condemned. The plaintiffs themselves led evidence that both the attesting witnesses of the Will had expired and yet they chose to take a ground that the Will is a result of impersonation. Accordingly, the findings on issue No.2 and 3 are affirmed.

20. Issue No.4 has to fail for lack of evidence and facts asserted remain unproved that defendant No.8 and the plaintiffs are owners in possession of 436 Kanal 3 Marlas in equal shares as asserted in para.2 of the plaint and 27 Kanal as mentioned in para.11 thereof. The land had vested in the State upon declaration of surplus area and the litigation had concluded in the Supreme Court. The issue has rightly been held to be against the plaintiffs and in favour of the defendants other than defendant No.8.

21. Issue No.5 as to whether mutations in favour of Godha Ram predecessor-in-interest of defendants No.2 to 7 are illegal, null and void and not binding on the rights of the plaintiffs has been decided against the plaintiffs for good reasons. The land was legally allotted by Government of

Haryana to Godha Ram and after his death his predecessors-in-interest had every right to succeed to the land of which mutation has been duly sanctioned as per law.

22. On an overview of the case in the light of the evidence on record, I have no doubt left in mind that this is a false case and a clever devise set up by the plaintiffs in collusion with defendant No 8 to attempt to play another innings on the same pitch after the game is over, which dream has wasted too much of real time of the constraints on Courts. This is luxury litigation at it best.

23. In this appeal notice has not been issued so far as the learned counsel for the appellants had sought time from the Coordinate Bench on July 04, 2017 to satisfy the Court regarding the maintainability of the suit on the following grounds crystallized in the interim order, which reads partially as follows:-

“(1) Whether the suit pertaining to the Will dated 24.11.1959 which was implemented by way of a mutation in 1961 could be challenged in the year 2004.

(2) Whether this Court has got jurisdiction to entertain a dispute pertaining to a land which has been declared surplus.”

24. Still further, the learned counsel was asked to satisfy the Court regarding the existence of a substantial question of law requiring examination or interference in the findings of fact and law of the Courts below. The case was adjourned for preliminary hearing on August 02, 2017 when further time was prayed for by the counsel to study the two issues identified by the Court.

25. I had heard the learned counsel for the appellant at length on

September 06, 2017 and reserved orders which are being pronounced today.

26. In summary it is held that the suit challenging the Will scribed in the year 1959 by late Shri Chand and the willed property mutated in 1961 in favour of defendant No.8 Manphool Singh was not open to challenge in th year 2004 and the action brought was patently barred by law. Therefore, a question of law or a substantial one does not arise in this appeal.

27. On the second question identified by this Court it is held that land once declared surplus as per prevailing law and vesting in the State and the agitated rights of the stakeholders declared till the Supreme Court in concluded orders, then the High Court in the presence of documentary and oral evidence adduced in this case would not entertain the dispute any further to retrace steps taken in accordance with law.

28. It may be noticed that the trial Court had recorded in para.16 under issues 6 to 10, which were not pressed, an incorrect observation therein that the Civil Court has got no jurisdiction to entertain the question of surplus area and making this observation part of the judgment and deciding the same in favour of the plaintiffs has rightly been set aside by the learned Additional District Judge, Rohtak but this fact does not affect the result of the suit, and I leave it at that.

29. As a result of the above discussion and having regard to the reasoning adopted by the lower court of appeal on the points put in issue in the judgment delivered while deciding the dispute against the plaintiffs, is found to be perfectly justified and as a result of the preceding discussion the appeal is found totally devoid of merit and is accordingly dismissed without notice of summons issued to the opposite side.

30. Pending applications, if any, stand disposed of without any orders as they are not required to be passed with the disposal of the main appeal. The suit is dismissed with costs in favour of the State and against the appellants. Costs of litigation assessed may be recovered by the State from the opposite parties as arrears of land revenue.

(RAJIV NARAIN RAINA)
JUDGE

25.09.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*