

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-2206-1988 (O&M)

Date of Decision : 29.08.2018

Giasu Ram (deceased) through LRs

..... Appellants

Versus

Haryana State and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. P.S. Rana, Advocate
for the appellants.

Dr. Sushil Gautam, D.A.G., Haryana.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the courts below dismissing a suit filed by the predecessor of the appellants.

The predecessor of the appellants had filed a suit for declaration and injunction. His claim was that the land in dispute was allotted to him in terms of a policy of 1962-63 and at the time of allotment he had been given the option to purchase the land after 5 years @ Rs.40 per acre of Banjar Kadim land and Rs.25 per acre of Kalar Bhur land. However, in the year 1981 the Haryana Government changed the policy and ordered that those persons who were in possession of the land since 1975 may purchased it at a higher rate. Notice was also issued to the predecessor of the appellants to apply for the transfer of the land. He moved an application

to the Tehsildar bringing to his notice that he was entitled to purchase the land @ Rs.40/25 per acre and the demands of higher price was illegal. That application having been rejected he filed the instant suit praying that he be declared that he was entitled to purchase the land at the rates mentioned in the plaint and an injunction restraining the respondents from dispossessing him except in due course of law. Since the State of Haryana did not file any written statement the defense was struck off. The predecessor of the appellants was given seven opportunities to lead evidence but he only gave his bald testimony. On the 7th date for leading evidence, the predecessor of the appellants moved an application for additional evidence again praying that the respondents should be directed to produce the original lease deed but those applications were also declined. It was thereafter that the predecessor of the appellants gave his statement. In his statement he admitted that he had no documents with him to show that the land was ever allotted to him and on what terms. In view of his omission in leading any positive evidence, the suit was dismissed by both the courts below. Hence, the present appeal.

Counsel for the appellants has argued that in the present case once the defense of the respondents was struck off the courts should have straightway decreed the suit under Order 8 Rule 5(2) CPC. Before dealing with this contention it would be appropriate to reproduce the said provisions:-

“5(2). Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any

such fact to be proved.”

A perusal thereof shows that it only permits the courts to decree the suit but does not make it mandatory. In the circumstances, no fault can be found with the action of the courts in requiring the predecessor of the appellants to lead some positive evidence.

Counsel for the appellants has further argued that in this case the trial court did not frame any issues and it was in the absence of issues that the predecessor of the appellants did not know what he had to prove and what he did not had to prove.

In my opinion, this argument is also misconceived. The whole case of the appellants was based on the allotment order because it was only in the allotment order that the option had been given to him to purchase the land after five years. The mere fact that no issue was framed would not cause any such confusion to the predecessor of the appellants so as to make it reasonable to hold that there was no need for him to produce any evidence. Moreover, as regards the lease deed, the learned Deputy Advocate General has pointed out and rightly so that in a relationship of landlord and tenant it has always the tenant/lessee who retains the original lease deed and the landlord would only have a copy in his possession and therefore there was no justification for the appellants to not have produced the original lease deed.

In the totality of circumstances, I am not persuaded that the judgments of the courts below suffer from such illegality so as to justify interference of this Court in second appeal.

Appeal is dismissed. No costs.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 29, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned

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Yes/No

Whether reportable

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Yes/No