

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

RSA No.1404 of 1990

Date of Decision:-12.01.2018

Gurbachan Kaur

...Appellant

Versus

Bakshi Ram and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G.S. Nagra, Advocate
for the appellant.

None for the respondents.

AMIT RAWAL J.(Oral)

The appeal is at the instance of appellant-plaintiff who has not been successful in a suit claiming ownership in possession of Khewat No.11, Khatauni No.19, Khasra No.13/16, measuring 8 kanals, khewat No.11, Khatauni No.17, khasra number 14/13, measuring 8 kanals, khewat No.11, Khatauni No.25, Khasra No.22/23, measuring 5 kanals 13 marlas, Khewat No.14, Khatauni No.42, Khasra No.13/17, measuring 8 Marlas as

entered in jamabandi 1976-77 of village Singhpur, Tehsil and District Jalandhar, before both the Courts below.

Before advertng to the arguments on appeal in hand, the brief history of the present case is essential to be set out. The plaintiff instituted a suit against the defendants claiming declaration to be owner of the land referred to above and also sought possession of the same on the premise that it belonged to Rai Golaknath and his forefathers as in the year 1950-51, the aforementioned land was declared surplus and the family members of Rai Golaknath were given the full option to select their reserve land. The rest of the land was utilised by the Government by allotting the same to the landless persons. Father of the plaintiff namely Bhulla was cultivating the land in dispute before 1951 without any disturbance. The allotment of the land to bhulla was challenged by the Government by way of review application No.5 of 1972-73 before the Financial Commissioner, Chandigarh. The said case was decided on 15.12.1976 and the possession of her father was upheld. The case was not remanded in respect of the suit land. During the pendency of the abovesaid review application, Bhulla had expired and her legal representatives have been brought on record. It is after the death of Bhulla, the plaintiff became entitled to the allotment of the suit land as she continue to remain in cultivating possession of the land in dispute through her husband and other tenants. Two fields, one of the land to Behari Lal, who is related to her, one field given to Chanan Singh and other sons of Teja Singh were allotted to her, whereas, four fields were given to Kartara for one year on batai. The defendants were not entitled to

keep the plaintiff out of the possession of suit land despite allotment but they did not acknowledge the same, compelling the plaintiff to institute the aforementioned suit.

The aforementioned suit was contested by defendants No.1,2,4 and 9 by filing the joint written statement in which they admitted that the suit land belonged to Rai Golaknath but the factum of the land being declared as surplus as well as possession of the plaintiff was emphatically denied. It was stated that the defendants were bona fide purchaser of the suit land and as per the registered sale deed they purchased the suit land after verification and exercising due diligence from the owners. The connection of the plaintiff with the suit land was denied.

On the basis of the pleadings of the parties, the trial Court framed the following issues :-

- “1. Whether the plaintiff has no locus standi to file the present suit ? OPD
2. Whether the suit is bad for mis-joinder and non-joinder of the parties ? OPD
3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the suit is properly valued for the jurisdiction purpose ? OPD
5. Whether the suit is barred by limitation ? OPD
6. Whether the suit is barred by principle of resjudicata ? OPD
7. Whether the plaintiff is estopped to file the present suit by her own act and conduct ? OPD
8. Whether the land in suit was declared as surplus and if the plaintiff is owner of the suit land ? OPD

9. Whether the defendants are owners of the suit land? OPD
10. Whether the plaintiff is entitled to the declaration as prayed for in the plaint ?OPP
11. Relief.”

On the basis of the preponderance of the evidence, the trial Court found that the suit was barred by law of limitation and was not maintainable as the plaintiff had failed to prove the payment of amount in pursuance to the allotment but eventually it was found that the defendants were the bona fide purchasers as they had purchased the land through registered owners and the suit was resultantly dismissed. The aforesaid findings of the trial Court were upheld by the lower Appellate Court. Therefore, impugning the same the present appeal has been filed which was admitted on 7th September, 1990.

Mr. G.S. Nagra, Advocate learned counsel for the appellant submitted that no sale deed can be executed legally after the appointed date fixed under the Punjab Land Reforms Act, 1972, therefore, the sale deeds of the defendants were void and illegal. It is further submitted that the Courts below have erroneously given the benefit of Section 41 of the Transfer of Property Act in favour of defendants whereas the plaintiff has clearly established her claim qua the land allotted on 25.7.1963 in favour of her father Shri Bhulla. Even the lower Appellate Court had erred in not referring to the documentary evidence and did not comply with the provisions of CPC in not formulating the question of law and therefore, the judgments and decrees of the Courts below are liable to be set aside.

This Court has noticed that the respondents were already represented by the counsel. Even the counsel has been informed. As per the report of the Registry dated 4.8.2015 intimation regarding listing of the appeal has been communicated to the counsel for the respondent, despite that there is no representation on behalf of respondents, accordingly, I proceed to decide the appeal.

I have heard learned counsel for the appellant, perused the case file and I am of the opinion that there is no merit in the aforementioned submissions of counsel for the appellant as the plaintiff miserably failed to prove that in pursuance to the allotment order dated 25.7.1963 any amount to the Government was paid incurring any right and title upon Bhulla whereas the defendants have in their direct and cogent evidence proved on record that they purchased the property vide sale deeds. Even the Court below on the preponderance of the evidence found that the land was not declared surplus. In that eventualities, the allotment could not have been made in favour of Bhulla. All these facts have been noticed in the trial Court as well as in the lower Appellate Court. The jamabandis for the year 1976-77 (Ex.P3) and 1971-72 (Ex.P4) and Khasra girdawaries Ex.P6 to P9 did not support the case of the appellant-plaintiff. PW5 Surender Singh Patwari deposed from the revenue record that there was no mutation of allotment of land in the name of Bhulla. Once Bhulla has not been issued certificate of allotment in his life time, plaintiff cannot be said to have become successful owner of the land in dispute. For the reasons aforementioned, I am of the view that the findings rendered by the Courts

below are based on the facts and documentary evidence, do not call for interference for me to form different opinion, much less do not involve any substantial question of law for adjudication.

Consequently, the present appeal stands dismissed.

January 12, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No