

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: February 16, 2018

1. R.S.A.No.1163 of 1991 (O&M)

Swaran Singh & others

...Appellants

Versus

The Tehsildar, Sultan Pur Lodhi & others

...Respondents

2. R.S.A.No.1164 of 1991 (O&M)

Swaran Singh & others

...Appellants

Versus

The Tehsildar, Sultan Pur Lodhi & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.H.S.Saini, Advocate,
for the appellants in both the appeals.

Mr.Som Nath Saini, Advocate,
for respondent No.5 in both the appeals.

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second appeals bearing No.1163 and 1164 of 1991 arising out of the decision rendered in Civil Suit No.495 dated 12.12.1985 titled as “Swaran Singh & others Versus Tehsildar, Sultanpur Lodhi & others”. The aforementioned suit was decreed by the trial Court vide judgment and decree dated 25.1.1989. Two Civil Appeals bearing No.57 dated 3.3.1989 titled as “Gopal Singh Versus Tehsildar, Sultanpur Lodhi & others” and 59 dated 7.3.1989 titled as “Tehsildar, Sultanpur Lodhi & others Versus Swaran Singh & others” were filed. Both the appeals have been allowed. It is in this background, the

aforementioned two Regular Second Appeals at the instance of the plaintiffs have been filed.

The plaintiffs instituted the suit claiming the following relief:-

“Suit for declaration that they are absolute owners in possession being bonafide purchasers for consideration and without notice of land measuring 82 kanals 3 marlas bearing khasra nos.54//22min (4-0), 61//2 (8-0), 1min (4-18), 9(10-4), 54//22min (4-0), 61//min (4-0), 55//16 (8-0), 17 (7-7), 54//19min (4-0), 20 (8-0), 21 (8-0), 54///19min (4-0), 25//25 (6-17), and 60//5/2 (0-17), total 82 kanals 3 marlas, situated in village Kamalpur Patti, Tehsil Sultanpur Lodhi, District Kapurthala as per Jamabandi for the year 1981-82 and the order of learned Chief Sales Commissioner, Kapurthala dated 28.3.1985 vide which the sale in favour of Mohan Singh son of Alladatta of village Mothawala, Tehsil Sultanpur Lodhi, District Kapurthala dated 23.12.1964 qua the suit land has been cancelled and allotment of this land in favour of Gopal Singh defendant no.5 has been considered right is highly illegal, arbitrary, unwarranted without jurisdiction, against the provisions of law and is thus unsustainable and not binding on the rights and title of the plaintiffs over the suit land with the consequent relief of permanent injunction restraining the defendants from reauctioning the suit land or alienating it in any other manners and further restraining the defendants from interfering in the peaceful possession of the plaintiffs in the suit land in any manner.”

It was stated that the plaintiffs purchased the land, detailed above, from Tarsem Singh son of Ujagar Singh and Ujagar Singh son of Sham Singh, both residents of Dudwindi, who were recorded as absolute owner in possession in the official revenue record for a sum of ₹40,000/- vide five registered sale deeds dated 6.6.1975 of ₹8,000/- each and had been in peaceful and continuous possession being bonafide purchasers for

valuable consideration. It was averred that before purchasing the suit land, the plaintiffs had made reasonable and proper enquiries from the Village Patwari about the title of the vendors and after consultation, finding that the vendors were absolute owners, the aforementioned property was purchased. However, under the garb of orders dated 28.3.1985 and 23.12.1964 passed by the Chief Sales Commissioner, Kapurthala, the defendants attempted to alienate the suit property by allotting the same in favour of defendant No.5. The same was challenged by filing the civil suit on 12.12.1985. It was stated that the order passed by the Chief Sales Commissioner was illegal, null and void and without jurisdiction being not binding on the rights of the plaintiffs, with consequential relief restraining the defendants from dispossessing the plaintiffs.

The suit aforementioned was contested by defendants No.1 to 4, *inter-alia*, on the grounds that the Civil Court had no jurisdiction. The property was dealt with under the Punjab Package Deal Properties (Disposal) Act, 1976 (for short “the Act”) as the jurisdiction of the Court was barred as per Section 16 of the said Act and the Rules framed thereunder. On merits, it was stated that the suit land was originally allotted to Mohan Singh son of Alladita, resident of Village Kamalpur in an restricted auction conducted by Tehsildar Sales, Kapurthala on 23.12.1984 for a sum of ₹5350/-. Clause 7 of the terms and conditions imposed a restriction upon the auction purchaser not to alienate the suit property till the final realisation of the loan amount taken by him for the purchase of the land or till the expiry of 10 years whichever is later. In default, the land was liable to be resumed with forfeiture of the amount.

Mohan Singh contravened the aforementioned terms and

conditions of the agreement by selling the land to Vidyawati wife of Khem Chand vide mutation No.2000 dated 10.3.1969 for a sum of ₹20,000/-. The matter was referred to the Deputy Secretary, Rehabilitation-cum-Settlement Commissioner, who vide order dated 17.6.1975 in the capacity of Chief Sales Commissioner, Punjab, set-aside the aforementioned sale in favour of Mohan Singh son of Alladita and, therefore, it was allotted to Gopal Singh.

Defendant No.5 Gopal Singh filed a separate written statement and had taken the preliminary objections qua maintainability, jurisdiction of the Court etc. On merits, it was stated that it was a restricted auction as Mohan Singh son of Alladita belonged to Harijan Society and after cancellation of the allotment in favour of Mohan Singh, the suit land was allotted to him on 6.11.1981 and possession was handed over. Two separate replications were filed.

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

- 1) Whether the Civil Court has no jurisdiction? OPD
- 2) Whether the plaintiff has other efficacious remedy? OPD
- 3) Whether the suit is not maintainable? OPD
- 4) Whether plaintiff has no cause of action? OPD
- 5) Whether the suit is bad for non-joinder of necessary parties?
OPD
- 6) Whether the plaintiffs are the bonafide purchasers of the suit land for value and without notice? OPP
- 7) Whether the plaintiff is entitled to declaration and injunction prayed for? OPP

The trial Court, after noticing the original sale deeds Ex.P1 to Ex.P5 and the fact that the land was cultivated by Tarsem Singh prior to the execution of the aforementioned sale deeds and then by the plaintiffs, much less reasonable enquiry had been made owing to the fact that jamabandi

Ex.P6 and khasra girdawari Ex.P7, which were reflected in the name of the vendor, decreed the suit. Two appeals, as noticed above, were filed which have been allowed by the Lower Appellate Court. It is in this background, the present Regular Second Appeals have been filed.

Mr.H.S.Saini, learned counsel appearing on behalf of the appellant-plaintiffs submitted that similar controversy was decided by the coordinate bench of this Court in **Regular Second Appeal Nos.1855 and 1856 of 1987 (The Union of India and others Versus Kirpa Singh (since deceased) through his L.Rs and others)**, decided on 14.5.2014, wherein the sale of the land in restricted auction was cancelled and the plea of bonafide purchasers was upheld. The Special Leave Petition bearing No. 26714 of 2015 has been dismissed. He submitted that the Civil Court had jurisdiction to try the suit as the Rehabilitation Department, before allotting the land to defendant No.5 in 1981, did not give any opportunity of hearing to the appellants in view of the ratio decidendi culled out by the Full Bench of this Court in **State of Haryana and ors. Versus Vinod Kumar and ors., 1986 (1) PLR 222**. The jurisdiction of the Civil Court, as per the provisions of Section 9 of the Civil Procedure Code, has been held to be maintainable. On merits, he submitted that there was no entry in the revenue record imposing restriction on Mohan Singh not to alienate the land till the final realisation of the loan amount or till the expiry of 10 years whichever is later. Ex.D1, the sale certificate issued on 9.4.1965 was most important document. It did not contain any condition. Therefore, by no stretch of imagination, the plaintiffs could be said to be in the knowledge of the restriction placed on the power of Mohan Singh.

It was further submitted that the suit land had changed many

hands, for, originally the land was allotted to Mohan Singh, who sold it to Vidyawati, Vidyawati to Tarsem Singh and Tarsem Singh to the appellants on 6.6.1975. DW-5 also did not indicate any restriction as noted by the Lower Appellate Court and, thus, urged this Court for setting-aside the judgment and decree of the Lower Appellate Court as the same suffers from illegality and perversity.

Per contra, Mr.Som Nath Saini, learned counsel appearing on behalf of respondent No.5 submitted that the Full Bench of this Court in **Smt.Niranjan Kaur and others Versus The Financial Commissioner, Revenue & Secretary to Government, Punjab and others, 2010 (4) R.C.R. (Civil) 610** in respect of allotment made under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, where similar restriction of alienation was put, held that the vendees cannot take the plea of bonafide purchasers. He also cited the judgment rendered by the Division Bench of this Court in **Joga Singh Versus The Dy.Secretary (Rehabilitation)-cum-Settlement Commissioner, Rehabilitation Deptt. Jullundur and others, 1980 PLJ 404**, where the land sold under the Punjab Package Deal Property Rules framed thereunder prohibited the sale for 10 years and the order of resumption was upheld. He submitted that the allotment made in 1981 has not been challenged and, therefore, the suit was not competent. The plaintiffs challenged the order of cancellation Ex.D3 dated 17.6.1975 in this Court by preferring Civil Writ Petition, which was disposed of vide order dated 9.10.1979 remitting the matter to the competent authority. The competent authority, vide order dated 15.5.1981, upheld the order of cancellation. The appeal preferred was accepted vide order dated 8.9.1982. However, the Settlement Commissioner upheld the

order of cancellation vide order dated 28.8.1987 Ex.D7. The findings of the Lower Appellate Court are based upon the appreciation of oral and documentary evidence and do not call for any interference as there is no illegality or perversity and, thus, urged this Court for dismissal of the appeals. He further submitted that his clients had been put into possession of the property and, therefore, it would be too unusual to put the clock back.

I have heard the learned counsel for the parties, appraised the paper book, records of the Courts below and the judgments cited at bar with their able assistance and of the view that there is force and merit in the submissions of the learned counsel for the appellant-plaintiffs.

Learned counsel for the appellants, when confronted with the order dated 14.5.2014 rendered in the Regular Second Appeals No.1855 and 1856 of 1987 by the single bench of this Court and upheld by the Hon'ble Supreme Court, did not dispute the same.

Coming to the controversy in hand, it has been proved on record that entire revenue record brought on record, i.e., jamabandi Ex.P6 and khasra girdawari Ex.P7, did not show that there was any condition imposed upon the original allottee Mohan Singh prohibiting him not to alienate the land in the manner and mode as indicated above.

DW-1 Chanan Singh, Kanungo, Sales Sultanpur Lodhi, when appeared, deposed that vide Reput No.416, symbolic possession was given to defendant No.5, whereas plaintiffs had been shown to be in illegal possession. DW-2 Mohinder Singh, Patwari Halqa Kamalpur deposed that he had brought the revenue record, i.e., Roznamcha No.88 dated 22.10.1981 bearing Repat No.416 dated 25.6.1986 Ex.D8 and Ex.D9. All those documents revealed that except the property having been mutated, none of

the revenue authorities raised the objection vis-a-vis the sale and the sanction of the mutation. None of the revenue record mentioned that the original purchaser in a restricted auction was not competent to alienate the suit land before the expiry of 10 years or till the final realisation of the loan amount whichever is later.

Ex.D1, the sale certificate, showed that the payment of loan was complete before its issuance, which was issued on 9.4.1965. It is probably in that background the revenue record, including the jamabandi did not reflect the alleged restriction. The condition was for clearance of loan payment or 10 years whichever later. It has not been brought on record whether the observations rendered by the trial Court with regard to the taking of the loan had been there or not. Cancellation order was sketchy and mechanical.

Since the appellants were not given an opportunity of hearing at the time of allotment made to defendant No.5 in 1981, the civil suit in view of the ratio decidendi culled out by the Full Bench of this Court in **Vinod Kumar's case (supra)**, was maintainable. For the sake of brevity, findings rendered in Para 7 of the said judgment read thus:-

“7. The most authoritative pronouncement by the Supreme Court in this regard was made in [Kamala Mills Ltd. v. State of Bombay](#), AIR 1965 SC 1942 by a 7-Judge Bench as under:--

" xx xx xx xx Whenever it is urged before a Civil Court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the Court naturally feels inclined to consider whether the remedy afforded by an alternative provision prescribed by a special statute is sufficient or adequate. In cases where the exclusion of the Civil Courts jurisdiction is expressly provided for, the consideration

as to the scheme of the statute in question and the adequacy or the sufficiency of the remedies provided for by it may, be relevant but cannot be decisive. But where exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and in conceivable circumstances, might even become decisive. If it appears that a statute creates a special right or a liability and provides for the determination of the right and liability to be dealt with by tribunals specially constituted in that behalf and it further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, it becomes pertinent to enquire whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not."

The matter was again considered at a great length by 5 Judge Bench of the Supreme Court in [Ram Swarup v. Shikar Chand](#), AIR 1966 SC 893. In this case the provisions of Ss. 3(4) and 16 of the U.P. (Temporary) Control of Rent and [Eviction Act](#), 1947 were under consideration. Although the provisions of the said section expressly barred the jurisdiction of the Civil Courts still it was held that if the order was passed in violation of the statutory provisions or the principles of natural justice the order would be open to challenge in Civil Court. Paragraphs 12 and 13 which contain the ratio and the precise rules laid down, read as under:--

" One of the points which is often treated as relevant in dealing with the question about the exclusion of Civil Courts jurisdiction is whether the special statute which, it is urged, excludes such jurisdiction, has used clear and unambiguous words indicating that intention. Another test which is applied is: does the said statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions: Applying these two

tests it does appear that the words used in S. 3(4) and S. 16 are clear. Section 16 in terms provides that the order made under this act to which the said section applies shall not be called in question in any Court. This is an express provision excluding the Civil Courts jurisdiction, S. 3(4) does not expressly exclude the jurisdiction of the Civil Courts but in the context, the inference that the Civil Courts jurisdiction is intended to be excluded, appears to inescapable. Therefore, we are satisfied that Mr. Goyal is right in contending that the jurisdiction of the Civil Court is excluded in relation to matters covered by the orders included within the provisions of S. 3(4) and S. 16.

This conclusion, however, does not necessarily mean that the plea against the validity of the order passed by the District Magistrate, or the Commissioner, or the State Government can never be raised in a Civil Court. In our opinion, the bar created by the relevant provisions of the Act excluding the jurisdiction of the Civil Courts cannot operate in cases where the plea raised before the Civil Court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is nullity. Take for instance, the case of an order purported to have been passed by a District Magistrate who is not a District Magistrate in law. If it is shown by a party impeaching the validity of the order in a Civil Court that the order was passed by a person who was not a District Magistrate, the order in law would be a nullity and such a plea cannot be ruled out on the ground of the exclusion of the jurisdiction of the Civil Court. Similarly, if an order granting permission to a landlord is passed by a District Magistrate of one District when the property in question is situated in another district outside his jurisdiction, a party would be entitled to urge before a Civil Court that the permission purported to have been granted by the District Magistrate is wholly invalid and a nullity in law. Let us take another case to

illustrate the position. If [S. 3](#) had provided that before a District Magistrate grants permission to the landlord to sue his tenant, he shall issue notice to the tenant and give him an opportunity to represent his case before the application of the landlord is dealt with on the merits and in the face of such a statutory provision, the District Magistrate grants permission ex parte without issuing notice to the tenant in such case, the failure of the District Magistrate to comply with the mandatory provision prescribed in that behalf would render the order passed by him completely invalid and a plea that an order has been passed by the District Magistrate without complying with the mandatory provision of the Act, would be open for examination before a Civil Court. Likewise, in the absence of such a statutory provision, if it is held that the proceedings before the appropriate authorities contemplated by [S. 3](#) are in the nature of quasi judicial proceedings and they must be tried in accordance with the principles of natural justice and it is shown that in a given case an order has been passed without notice to the party affected by such order, it would be open to said party to contend that an order passed in violation of the principles of natural justice is a nullity and its existence should be ignored by the Civil Court. Such a plea cannot, in our opinion be excluded by reason for the provision contained in [S. 3\(4\)](#) and [S. 16](#) of the Act".

It was further observed in paragraph 18 that the earlier decision of the Supreme Court in Kamala Mills case (AIR 1965 SC 1942) (supra) fully supports the view taken by them. In the face of this authoritative pronouncement there is no room for any doubt that if an order is passed by a tribunal of limited jurisdiction without issuing a notice to the concerned party, the order would be a nullity and open to challenge in the Civil Court even if the statute expressly bars the jurisdiction of the Civil Court to entertain a suit to challenge the validity or legality of the order passed by such a tribunal. This question was once against considered by a Constitution Bench of the

Supreme Court in [Dhulabhai v. State of Madhya Pradesh](#), AIR 1969 SC 78 and the seven principles contained in the judgment of the learned Chief Justice were enunciated. The scope of the observations made and the rule laid down in Kamala Mill's case (supra) came under specific consideration of the Bench and it was observed that the Special Bench (in Kamala Mills case) refrained from either accepting the dictum of Mask Co's case 67 Ind App 222; (AIR 1940 PC 105) or rejecting it, to the effect that even if jurisdiction is excluded by a provision making the decision of the authorities final the Civil Court have jurisdiction to examine into case where the provisions of the particular Act are not complied with. The jurisdiction of the Civil Court to try the suits against the order passed by the Tribunal of Special Jurisdiction in violation of the provision of the statute or principles of natural justice was thus upheld even though the jurisdiction of Civil Court to question the legality or validity of the orders of the Tribunal was expressly barred by the statute.”

The Lower Appellate Court, in my view, has misdirected in putting the blame on the plaintiffs that no such application was ever made by the plaintiffs to any of the authorities for the purpose of ascertaining the position of the suit land. It is on inspection of the revenue record which carries a presumption of truth required to be seen by the buyer by applying the principle of “**Buyer Beware**”. The Lower Appellate Court had not adverted to the sale certificate Ex.D1 dated 9.4.1965, as referred by the trial Court, which showed that the payment of loan was complete. Therefore, there was no impediment for Mohan Singh to sell the land entailing into alleged cancellation. The authorities had, in my view, not cared to notice the contents of Ex.D1, but only focused upon the terms and conditions of the restricted auction, which imposed a condition of alienation till the clearance of the loan or 10 years whichever was later.

Joga Singh's case (supra), pertained to the allotment under 1976 Act, which was cancelled on account of the violation of the terms and conditions imposing an impediment of 10 years of alienation. The vendee was relegated to redress the grievance before the Court of competent jurisdiction (Para 3). Thus, for all intents and purposes, the argument of Mr.Som Nath Saini that the plaintiffs did not have any locus standi is wholly misplaced. For the sake of brevity, Para 3 of the findings rendered read thus:-

“3. Later on Krishan Lal sold the aforesaid land in favour of Joga Singh a non-Harijan vide registered sale deed dated February 6, 1973. After the aforesaid sale when it came to the notice of the Rehabilitation Department, a reference was made under Rule 11 of the Settlement Commissioner for cancellation of sale under clause 7 of the conveyance deed as Krishan Lal had effected the sale within 10 years in violation of the aforesaid condition. Notice of this reference was given by the Settlement Commissioner to Krishan Lal as well as to Joga Singh vendee. After hearing both of them, the settlement Commissioner vide order dated May 25, 1976, (Annexure P-1) accepted the reference and set aside the sale in favour of Krishan Lal and forfeited the amount paid by him. As regards Joga Singh vendee, he was relegated to his remedy to seek redress before a Court of competent jurisdiction against Krishan Lal vendor. The ground for cancellation of the sale in favour of Krishan Lal was that it was a restricted auction in his favour as a Harijan under the Rules with special benefits and that is why condition No.7 was incorporated in the conveyance deed so that the Harijans who are shown special treatment at the time of purchase continue to remain in possession as owners, the violation of which was liable to be cancellation of the sale. After the order of the Settlement Commissioner, setting aside the sale in favour of Krishan Lal, Joga Singh

vendee alone has come to this Court in the present writ petition.”

In the instant case, none of the ingredients have been fulfilled enabling me to form a opinion in concurring with the findings of the Lower Appellate Court that the appellant-plaintiffs were not bonafide purchasers of the suit land. Even the defendant had not been put into possession in view of the statement of DW-1 as only symbolic possession was given.

There is much more to add here. An identical matter, i.e., RSA No.1855 of 1987 had been decided on 14.5.2014 in favour of the bonafide purchasers by this Court by holding as under:-

*“Both the courts below have recorded concurrent finding of fact that although, there was condition that Parkash would not be capable to sell the land for a period of ten years and he had contravened the condition, the order of cancellation of sale is not binding on the plaintiffs because there was no mention of restriction for sale of land by Parkash for a period of 10 years, in the mutation in his favour. After the land being purchased by Parkash, it had been transferred to Surdul Singh and further Gurbax Kaur and mutations were sanctioned in their favour respectively, but the Government had not raised any objection at the relevant time. Both the courts below have rightly held that since Gurbax Kaur was recorded as owner of the land in dispute in the record of rights, therefore, the plaintiffs, being bona fide purchasers, had purchased the land for consideration and without notice of the rights of the government to cancel the allotment in favour of defendant-Parkash. It has also been rightly held that a notice was required to be given to the plaintiffs and they were required to be heard before the order of cancellation was passed, but the same was not done so, therefore, the plaintiffs are not bound by the orders of cancellation. In order to reach this conclusion, reliance was placed upon **Kali Ram and others vs. Union of***

India and others 1976 P.L.R. 475 and Mohinder Singh vs. The State of Punjab and others 1980 P.L.R 132.

Learned counsel for the appellants has failed to show that findings recorded by both the courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, concurrent findings recorded by both the courts below do not warrant interference in these second appeals. No question of law, muchless substantial question of law, as alleged, arises for adjudication in these second appeal.

No other point has been urged.

Both the above mentioned regular second appeals are dismissed.

No order as to costs.”

The aforementioned findings have been upheld by the Hon'ble Supreme Court in SLP (C) No.26714 of 2015 by holding as under:-

“None appears.

In spite of order dated 25.07.2016 of the learned Chamber Judge, the defects as pointed out by the Registry has not been cured.

The Special Leave Petition is, therefore, dismissed for non-prosecution.”

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals, but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that

the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back. For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil

Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeals, aforementioned.

For the reasons stated above, there is illegality and perversity in the findings rendered by the Lower Appellate Court in its judgment and decree under challenge. The same are hereby set-aside and that of the trial Court are restored. Appeals stand allowed.

February 16, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No