

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

1. RSA No.2812 of 1997 (O&M)
Date of decision : 30.11.2018
Ajaib Singh ...Appellant

Versus

Manjit Kaur and another ...Respondents

2. RSA No.2813 of 1997 (O&M)
Date of decision : 30.11.2018
Joginder Kaur and others ...Appellants

Versus

Manjit Kaur and another ...Respondents

3. CWP No.14013 of 1998 (O&M)
Date of decision : 30.11.2018
Ajaib Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate for the appellants
(In RSA Nos.2812 and 2813 of 1997)
for the petitioner (In CWP No.14013 of 1998)

Mr. R.D. Bawa, Advocate for respondents
(In RSA Nos.2812 and 2813 of 1997)
for respondent Nos.3 and 4 (In CWP No.14013 of 1998)

Mr. N.K. Banka, DAG, Punjab for respondent Nos.1 and 2
(In CWP No.14013 of 1998)

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment
is being released.

By this order, CWP No.14013 of 1998 and RSA Nos.2812 and

2813 of 1997 shall stand disposed of.

In the present case, this Court is called upon to adjudicate upon competing claims of an occupant of the land and the purchaser for valuable consideration from an impostor of the allottee. Before the issue is adjudicated upon, it would be appropriate to notice certain relevant facts.

Ishar Singh, who had shifted from the western part of the Punjab area now forming a part of Pakistan, was allotted 32.2 ¼ standard acres of land in village Haddiwal in lieu of the land left by him as a displaced person. It is claimed that Ishar Singh did not accept the allotment and no final allotment (Sanad) was issued and thereafter Ishar Singh was allotted the land in two other villages namely Lathowal and Bagakalan. Allotment of land in Village Haddiwal including the land in dispute is alleged to have been cancelled by the Government vide order dated 07.05.1955, although the aforesaid order is not on record.

However, the cancellation of the allotment in favour of Ishar Singh was not given effect to/incorporated in the revenue record and certain persons in collusion with the officials of the Department executed sale deed by making someone to impersonate as Ishar Singh in favour of Mohinder Singh. On the execution of the sale deed, mutation No.531 was entered in favour of Mohinder Singh. He thereafter, sold the property vide two sale deeds, one in favour of Manjit Kaur who is respondent in the Regular Second Appeals as well as in the writ petition, other executed in favour of Gurnam Singh with respect to the land measuring 93 kanals and 12 marlas who is not before this Court and his claim is not being adjudicated upon.

Ishar Singh when came to know of the sale deed having been

executed by impersonating him, he filed an application before the Deputy Commissioner, Ludhiana bringing to his notice the bogus sale deed executed. The Deputy Commissioner, immediately ordered that the mutation entered be cancelled. Manjit Kaur realizing the aforesaid fact that she has been duped, moved an application dated 11.06.1976, offering to purchase the land which had been purchased by her vide sale deed dated 07.04.1969. Manjit Kaur also moved an application before the Revenue Authorities seeking eviction of the plaintiffs-appellants in the Regular Second Appeal and writ petitioners in the writ petition. She also challenged the cancellation of the mutation. The competent authority ordered the ejectment which was reversed by the learned Collector-cum-Deputy Commissioner in appeal and it was held that there is no relationship of the landlord and tenant between Manjit Kaur and the plaintiffs-appellants i.e. Joginder Kaur etc.

There is another proceedings which are required to be noticed. Initially, an application filed by Manjit Kaur offering to purchase the land was rejected by the competent authority vide order dated 11.09.1981. However, in appeal, Deputy Commissioner-cum-Chief Settlement Commissioner, remanded the case back to the authority to consider her case for allotment vide order dated 24.07.1985 and thereafter Tehsildar-cum-Managing Officer taking note of the fact that Manjit Kaur was not party to the fraud and had in fact been duped, ordered the restoration of the allotment with respect to the land measuring 80 kanals and 3 marlas. This order passed by the Tehsildar-cum-Managing Officer was never challenged by anyone. Subsequently, a suo motu reference was made by the officials of the Punjab State calling upon the Financial Commissioner under Section 33

of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter to be referred as “the Act of 1954”) for cancellation of the orders dated 24.07.1985 and 02.06.1986. Learned Financial Commissioner after hearing of concerned has upheld the order dated 02.06.1986 while recording a finding that Manjit Kaur is a bona fide purchaser for a valuable consideration.

On the other hand, two suits came to be filed, one by Randhir Singh and second by Ajaib Singh claiming a decree for perpetual injunction on the ground that they are in possession as tenant at will.

Learned trial Court granted the injunction to the plaintiffs-appellants noticing that they were in possession but wrongly dispossessed, hence, directed the restoration of possession to the plaintiffs, although without recording a finding that the plaintiffs-appellants were tenants at will. Whereas the First Appellate Court has reversed the judgment while returning a finding that the Civil Court has no jurisdiction to examine the validity of the orders passed by the authorities under the Act of 1954. It may be noted here that before Civil Court, Manjit Kaur has brought on record a copy of rapat roznamcha i.e. Daily Diary Report through which the possession of the land has been delivered to her under the orders of the competent authority.

As regards two appeals filed by the plaintiffs, although claimed their status to be tenant at will, however, neither the revenue authorities nor Civil Court have held that the plaintiffs-appellants were in possession as tenants at will. Still further, the plaintiffs-appellants have already been dispossessed by the Rehabilitation Authorities, as found by the learned trial

Court affirmed in appeal by the learned First Appellate Court. The plaintiffs-appellants once have failed to prove that they were tenants on the land, do not have any right, title or interest in the immovable property. Hence, the direction of the trial Court that the plaintiffs are entitled to restoration of possession, was clearly erroneous and rightly set aside by the First Appellate Court. The First Appellate Court has also correctly held that the plaintiffs-appellants through the present suits had also challenged the orders passed by the authorities under the Act of 1954 and, therefore, as per the provisions of Section 36 of the Act, jurisdiction of the Civil Court is barred. Section 36 of the Act of 1954 is extracted as under:-

“36. Bar of jurisdiction.- Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. ”

In the writ petition, the order passed by the learned Financial Commissioner while deciding the reference under Section 33 of the Act of 1954 has correctly held that an application for allotment of Manjit Kaur (respondent No.3 in the writ petition and respondent in Regular Second Appeal) has been correctly allowed.

Although, there is some force in the submission of the learned Senior Counsel for the petitioner as well as the appellants that Manjit Kaur

and Gurnam Singh cannot be held to be bona fide purchasers and, therefore, not entitled to benefit under Section 41 of the Transfer of Property Act because the sale deed was result of impersonation, however, the State Government is well within its right to allot the land to the persons who have been duped by some persons. The State Government would be at liberty to charge the price of the land from Manjit Kaur or Gurnam Singh, purchasers from Mohinder Singh who in turn purchased from allegedly Ishar Singh, although result of impersonation at reserve price on the date of application submitted for allotment. However, the appellants as in Regular Second Appeal and the petitioner in writ petition having no right, title or interest in the property cannot succeed.

Accordingly, both the appeals as well as writ petition shall stand dismissed with a liberty to the State Government to initiate proceedings for determining the reserve price to be charged from Manjit Kaur and Gurnam Singh or their successor-in-interest on the date of application.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

30.11.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**