

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

RSA No.422 of 1997

Date of Decision.03.04.2018

State of Haryana through Collector, Sirsa, District SirsaAppellant

Vs

Ram Rattan and othersRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajbir Singh, AAG, Haryana
for the appellant.

Mr. Ashok Kumar Verma, Advocate
for the respondents.

-:-

AMIT RAWAL J.(ORAL)

The State of Haryana is in regular second appeal against the judgment and decree dated 1.10.1996 rendered by the lower Appellate Court whereby the appeal preferred against judgment and decree dated 3.1.1991 passed by the trial Court dismissing the suit filed by the plaintiffs, has been allowed.

The facts as emanated from the pleadings are that the respondents-plaintiffs instituted the suit claiming declaration that plaintiff No.2, Santosh Kumar, by virtue of civil court decree dated 28.4.1972 suffered by defendant No.2, Vinod Kumar in his favour became the owner of the suit land measuring 305 kanals 18 marlas comprised in Sq. No.81, Killa No.25(6-14), Sq. No.104 Killa No.4(8-0), 6(8-16), Khewat No.344 (2-3), 506(0-2), Sq. No.35 Killa No.8(9-7), 9(8-0), 10(7-9), 12(8-0), 13(8-0), Sq. No.104 Killa No.2/1(5-4), 8(8-2), 9(8-0), 12 (8-0), 13(8-0), Sq. No.104

(8-0), 21(8-0), 22(8-0), 23 (8-0), Sq. No.45 Killa No.1(8-0), 2(8-0), 3(8-0) 4 Min (6-18), Sq. No.104 Killa No.7/1(3-13), 7/2(3-0), 14(8-0), 17/1 (2-0), Sq. No.3 Killa No.25(6-13), Sq. No.4 Killa No.21(5-2), 22(3-11), Sq. No.8 Killa No.1(8-0), 2(8-0), 9(8-0), 10(8-0), 11(8-0), 12(4-0), Sq. No.9 Killa No.5(7-12), 6(7-12) situated in village Balasar, Tehsil and District Sirsa. The State of Haryana initiated proceedings of declaration of surplus land wherein plaintiff No.1 Ram Rattan, father of plaintiff No.2, Santosh Kumar, submitted declaration form under the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter called the Act) claiming two separate units i.e. one primary unit and another additional unit, viz; the land which stood in the name of plaintiff No.1 as well as in the name of his family members including the land of Santosh Kumar acquired by him by virtue of civil court decree. Vide order dated 28.9.1979, Ex.P1, the Department after leaving the permissible area of his family declared the land measuring 29 kanals 18 marlas, as surplus. However, in separate proceedings, the Department excluded the area of measuring 305 kanals 18 marlas by taking into consideration of holding of Vinod Kumar for which filed a separate suit which was dismissed but the appeal preferred before the lower Appellate Court was allowed vide judgment and decree dated 27.08.1987, Ex.P1/A. Since the Department was insisting to take possession of the land, the suit aforementioned was filed. It was alleged that the order dated 8.6.1981 passed by the Prescribed Authority proved that the Authority admitted the suit land to be the property of plaintiffs but the impugned order dated 26.07.1982 of the Prescribed Authority declaring 138 kanals 10 marlas of land out of 305 kanals 18 marlas as surplus in the hands of Vinod Kumar, defendant No.2 was illegal, null & void and not binding.

The State of Haryana filed separate written statement wherein it was averred that the civil court decree dated 28.4.1972 was liable to be ignored by virtue of provisions of Section 9(3) of the Act. The order of the Prescribed Authority was perfectly legal and justified and the surplus land deemed to have vested in the State of Haryana under Section 12(1) of the Act. The State of Haryana being owner of the land was competent to utilize the same under the Utilization Scheme, 1976. Therefore, the plaintiffs had no concern with the aforementioned land and urged the Court to dismiss the suit.

Defendant No.2 filed the separate written statement admitting the claim of the plaintiffs.

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

- “1. Whether the plaintiff No.2 is owner in possession of the suit land being his permissible area? OPP*
- 2. Whether the defendant No.1 has authority to treat the land as surplus or as permissible area in the hands of defendant No.2? OPD*
- 3. Whether the plaintiffs are entitled to the injunction prayed for? OPD*
- 4. Whether the plaintiffs have no locus standi to file the present suit? OPD*
- 5. Whether the civil court has no jurisdiction to try the present suit? OPD*
- 6. Whether the suit is bad for want of mandatory notice under Section 80 CPC? OPD*

7. Relief.”

Both the parties led their respective evidence. The trial Court vide judgment and decree dated 3.1.1991 dismissed the suit, however, the appeal as indicated above taken before the lower Appellate Court has been allowed.

Mr. Rajbir Singh, AAG, Haryana appearing on behalf of the appellant-State of Haryana in support of grounds of appeal raised the following submissions:-

- (i) The judgment and decree of the lower Appellate Court is against the fact and law as it erred in holding that appellant-defendant No.1 had no authority to treat the suit land at the hands of Vinod Kumar as surplus.
- (ii) The jurisdiction of the Civil Court was barred under Section 26 of the 1972 Act.
- (iii) The judgment and decree of the trial Court dismissing the suit of the plaintiffs was perfectly legal and justified as no transfer after the appointed date i.e. 24.1.1971 could be made whereas the decree was passed on 28.4.1972.
- (iv) Copy of judgment and decree Ex.P1/A had no binding effect in the instant suit as the plaintiffs were not the parties of the aforementioned suit.

All these factors weighed in the mind of the trial Court while declining the relief sought in the suit, thus, urges this Court for setting aside the judgment and decree passed by the lower Appellate Court.

Per contra, Mr. Ashok Kumar Verma, learned counsel appearing on behalf of the respondents-plaintiffs submitted that against the

preferred a regular second appeal bearing No.3778 of 1987 which was dismissed in default by this Court vide order dated 18.01.2011. A review application bearing No.13674-C of 2015 for restoration of the same was filed but the same was also dismissed vide order dated 03.02.2016 as it was barred by delay of 1672 days. The finding of the lower Appellate Court is perfectly legal and justified and does not call for interference. In view of the finality of the proceedings in the suit preferred by Vinod Kumar, the impugned order challenged before the trial Court was liable to be set aside and rightly so has been done by the lower Appellate Court, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book, records of the courts below and of the view that there is no force and merit in the submissions of Mr. Rajbir Singh, for, it is not being disputed before me that the copy of the order dated 18.01.2011 whereby the second appeal preferred by the State against the judgment and decree dated 27.08.1987, Ex.P1/A, has attained finality, though dismissed in default and the restoration application has also been dismissed. The orders read as under:-

“Regular Second Appeal No.3778 of 1987

Dated the 18th Jan,

2011

CORAM: THE HON’BLE MR JUSTICE RAKESH KUMAR JAIN

Present: None for the appellants.

Mr. K.S. Dhillon, Advocate, for the respondent.

RAKESH KUMAR JAIN. (Oral).

ORDER

Dismissed for non prosecution.

18.01.2011 *sd/- Rakesh Kumar Jain*
Judge”

“C.M. No.13674-C of 2015 in
RSA No.3778 of 1987

State of Haryana and another Vs. Vinod Kumar

Present: Mr. Sanjiv Gupta, Advocate for
the applicants-appellants.

This application is filed by Shankar son of Zora Ram R/o Village Balasar, Tehsil and District Sirsa under Order 41 Rule 19 read with Section 151 CPC (for short “CPC”) for re-admission of the appeal by recalling order dated 18.1.2011.

Admittedly, the applicant is not a party to the suit as the suit was filed by Vinod Kumar, adopted son of Gobind Dev against State of Haryana and SDO (Civil), which was dismissed by both the courts below. Second appeal filed by said Vinod Kumar (plaintiff) was admitted on 25.3.1988 and when it was called up for regular hearing 18.01.2011, no one had appeared on behalf of the appellant, hence it was dismissed for non-prosecution.

This application has been filed by stranger to the suit without there being any right in the appeal much less the suit and hence his application, even if filed under Order 22 Rule 10 CPC cannot be entertained as it has been filed in a dismissed suit, which cannot be revived at his instance. Moreover, the office has also found that the application filed by the applicant was barred by limitation of 1672 days.

In view of the aforesaid, I do not find any merit in the present application and the same is dismissed.

February 03, 2016 *Sd/-*
(Rakesh Kumar Jain)
Judge.”

Once Vinod Kumar has been able to succeed with regard to

exclusion of the area measuring 305 kanals 18 marlas for the purpose of declaration of land as surplus, the previous order of the Prescribed Authority, Ex.D1, leaving areas of 29 kanal 18 marlas as surplus was correct approach as the area of 305 kanals 18 marlas could not have been excluded. Any order without jurisdiction can always be assailed before the Court and that too if had been passed at the back of the affected party. The trial Court had jurisdiction to try the suit by treating the suit land as property of Vinod Kumar, defendant No.2 and equally the property of Santosh Kumar, plaintiff No.2. When the claim with regard to property of Vinod Kumar had been upheld upto this Court, there was no occasion for the Authorities to treat the suit land as surplus at the hands of Vinod Kumar and allot the same to third person or disturb the possession of the plaintiffs. The lower Appellate Court had also examined the declaration form submitted by Ram Rattan on his behalf and members of the family declaring 308 kanals 18 marlas as surplus land in Form No.VI. This fact is reflected in the judgment and decree dated 27.08.1987, Ex.P1/A. In the aforementioned judgment and decree, the lower Appellate Court restrained the State from allotting any part of the land to anybody till the disposal of the fresh selection of Vinod Kumar. I am of the view that the lower Appellate Court being last court of fact and law rightly exercised the jurisdiction holding that the trial Court had not correctly appreciated the controversy involved in the suit by finding merit in the appeal preferred by the appellants-plaintiffs.

As an upshot of my finding, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court as the same is based upon correct appreciation of fact and law, much less, no substantial question of law arises for consideration in the second

appeal. No ground for interference is made out. The second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

April 03, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No