

Regular Second Appeal No.2125 of 2000 (O&M) (1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: April 24, 2018

1. R.S.A.No.2125 of 2000 (O&M)

The Kapurthala Improvement Trust, Kapurthala

...Appellant

Versus

Satpal

...Respondent

2. R.S.A.No.202 of 2000 (O&M)

Baljinder Kaur

...Appellant

Versus

Improvement Trust, Railway Road, Kapurthala & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Rishab Jain, Advocate for
Mr.Jaspreet Singh, Advocate,
for the appellant (in RSA No.2125 of 2000)

Mr.H.R.Nohria, Advocate,
for the appellant (in RSA No.202 of 2000)

Mr.Devender Singh Thakur, Advocate for
Mr.Vivek K. Thakur, Advocate,
for the respondents.

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second Appeals bearing No.2125 and 202 of 2000 as the common question of law and facts are involved.

RSA No.2125 of 2000 is arising out of decision rendered in Civil Suit No.191 of 22.3.1991 titled as “Satpal Versus The Kapurthala Improvement Trust” (hereinafter called as “Suit No.1”) and RSA No.202 of 2000 is preferred against the decision rendered in Civil Suit No.904 of

20.12.1990 titled as “Shrimati Baljinder Kaur Versus Improvement Trust & others” (hereinafter referred to as “Suit No.2”). Both the suits pertained to a Scheme to the allotment of plot No.190 in Scheme No.1 of the Improvement Trust, Kapurthala (for short “Trust”).

Satpal son of Ram Lal instituted Suit No.1 seeking declaration to the effect that he is rightful allottee of Plot No.190 in Scheme No.1 of the Trust by challenging the order dated 27.1.1988, whereby the allotment aforementioned was cancelled, being null & void, inoperative and not binding, with consequential relief of permanent injunction restraining the defendants from allotting the aforementioned plot to any other person on the premise that Plot No.190 in pursuance to an application submitted in the said Scheme was allotted. The plaintiff had earlier filed a civil suit challenging the order of cancellation, which was dismissed by the Civil Court on 28.11.1990 on the ground that prior notice under Section 98 of the Punjab Town Improvement Act (for short “the Act”) was not served and, therefore, a fresh suit was filed.

The aforementioned suit was contested by the Trust on the ground that the Civil Court did not have jurisdiction, suit was not maintainable, also bad for misjoinder of causes of action as earlier suit filed by the plaintiff was dismissed, so the present suit was barred by principle of akin to *res judicata*. The allotment of plot was cancelled owing to the fact that the plaintiff failed to deposit all the instalments as per the agreement executed between the parties. It was stated that the wife and other members of the family of the plaintiff had also applied for the allotment of plot and when this fact came to the notice of the defendants, a show cause notice was served upon the plaintiff and the members of the family, but no suitable

reply was given by justifying the cause of the cancellation.

Baljinder Kaur instituted Suit No.2 for permanent injunction restraining defendants No.1 and 2, i.e., Improvement Trust and Executive Officer and their employees not to reallocate/transfer Plot No.147 in Scheme No.1 to any one and forcible dispossession with further prayer not to restore Plot No.190 situated in the same locality to defendant Nos.3 and 4 and in the alternative, sought mandatory injunction directing defendant Nos.1 and 2 to allot Plot No.147 in the name of defendant No.3. It was stated that defendant Nos.1 and 2 had allotted Plot No.147 in the Scheme to defendant No.3 Anita Kumari, wife of Satpal vide letter dated 3.2.1986 for a consideration of Rs.9620/- measuring 150 sq.yards. Anita Kumari, on taking the possession, further agreed to sell the same to Baljinder Kaur plaintiff at Rs.9970/- and the remaining instalments were undertaken to be paid by the plaintiff. In this regard, agreement to sell dated 28.7.1986 was entered into and the possession of Plot No.147 was also delivered to the plaintiff. Defendant No.3 also executed a General Power of Attorney in respect of the aforementioned plot in favour of the plaintiff. Plot No.190 was allotted by defendant Nos.1 and 2 in favour of Satpal-defendant No.4. As per the Scheme, husband and wife could get only one plot. However, the Trust intended to sell both the plots and, therefore, cause of action arose to file the aforementioned suit with further prayer that since husband and wife were entitled to only one plot, therefore, Plot No.190 of defendant No.4 be cancelled.

The Trust contested Suit No.2 and objected to the relief sought in the aforementioned suit by raising various preliminary objections regarding principle of *res judicata*, misjoinder and agreement being void

and incorrect. It was disclosed that after the cancellation of allotment of defendant No.3-Anita Kumari, possession of Plot No.147 was also resumed by defendant No.1. Construction of boundary wall, alleged to be raised by the plaintiff, was also denied.

Defendant No.3-Anita Kumari filed a separate written statement alleging therein that symbolic possession of Plot No.147 was given to her. The factum of execution of agreement between her and the plaintiff was not denied, but the construction of the boundary wall was denied. The factum of allotment of Plot Nos.147 and 190 in favour of Anita Kumari and her husband Satpal (defendant Nos.3 & 4) was not denied.

Both the suits were tried by one Court. On the preponderance of the evidence, the trial Court decreed Suit No.1 by setting-aside the cancellation letter dated 27.1.1988, whereas Suit No.2 filed by Baljinder Kaur was dismissed.

In Suit No.1, the Trust filed civil appeal, which has been dismissed by the Lower Appellate Court by rejecting the objection of *res judicata* as the previous suit was dismissed for want of notice under Section 98 of the Act and noticing the fact that Plot No.190 was allotted to Satpal in Scheme No.1, but the plot could not be cancelled as per Rule 10 (3) of the Punjab Town Improvement (Utilisation of Land & Allotment of Plots), Rules (for brevity "Rules"). There was no intimation on behalf of the husband and wife as one plot was required to be surrendered as plaintiff had agreed to pay all the instalments. The appeal preferred by Baljinder Kaur before the Lower Appellate Court was also dismissed and, therefore, Regular Second Appeal No.202 of 2000.

Mr.Rishab Jain, Advocate for Mr.Jaspreet Singh, learned

counsel for the appearing for the appellant-Improvement Trust in RSA No.2125 of 2000 submitted that the judgments and decrees rendered by the Courts below in Suit No.1 are not sustainable in the eyes of law and suffer from illegality and perversity, for, both the husband and wife had not been fair and honest to the authority in submission of the application in the Scheme carved out by the Trust, wherein Plot No.147 was allotted to Anita Kumari (wife of Satpal) and Plot No.190 to Satpal plaintiff. Anita Kumari in utter haste entered into an agreement for sale of aforementioned plot to Baljinder Kaur, which she could not do. Entering into agreement for selling the property was not permissible in law.

It was next argued that the Court below erred in holding that the Civil Court had jurisdiction to entertain the suit. However, there was an arbitration clause in the agreement and the remedy, if any, was to approach the arbitrator. The suit was not maintainable as the previous suit had already been dismissed and the second suit was barred by principle of *res judicata*.

Mr.Jain also submitted that both the plots in such circumstances had rightly been cancelled. Even the decree rendered against the Trust is also liable to be set-aside as both husband and wife had misrepresented to the Trust in not disclosing the allotment of both the plots. No person can be permitted to take undue benefit of the Scheme, therefore, cancellation was justified.

Mr.H.R.Nohria, learned counsel appearing on behalf of the appellant in RSA No.202 of 2000 submitted that there was no fault of Baljinder Kaur as defendant No.3 Anita Kumari showed the allotment letter in her favour, but had no knowledge that her husband Satpal was also allotted plot No.190. The plea that the plaintiff did not have locus standi

was neither here nor there, for, after the execution of the agreement between the appellant and Anita Kumari-defendant No.3, appellant was put in possession of Plot No.147. It was she, who had paid the first instalment by means of Bank Draft, which was accepted by the Improvement Trust and the possession is of more than 13 years. The Trust could not have cancelled the allotment of Plot No.147 in favour of respondent No.3, which was wholly illegal and erroneous. Rather, other plot in favour of Satpal, i.e., 190 was liable to be cancelled, for, a third party right was created on Plot No.147. No harm and prejudice has been caused to the husband Satpal in the suit, though it has now surfaced that Plot No.190 had been cancelled, but the Courts below have set-aside the cancellation and the same is liable to be upheld by dismissing the suit preferred by Satpal.

Rule 10(3) of the aforementioned Rules leaves no manner of doubt that no person shall be eligible for allotment, if he/she or his/her spouse owns a plot in the places mentioned therein. However, when defendants No.3 and 4 applied for allotment, neither of them owned a plot in any of the places mentioned in the aforementioned sub-rule. There was no bar for them to apply for a allotment together. The allotment was made as per draw of lots. It was by luck that both of them were allotted plots, therefore, the element of misrepresentation and fraud was ruled out. Even building plan of Plot No.147 was also passed. In such circumstances, cancellation was wholly erroneous and perverse and, thus, urged this Court for setting-aside the judgments and decrees of the Courts below as there is gross illegality and perversity.

I have heard the learned counsel for the parties, appraised the paper book, seen the records of the Courts below and of the view that there

is no force and merit in the submissions of Mr.Nohria as the allottee, i.e., vendor of appellant-plaintiff could not retain Plot No.147 in view of the allotment of Plot No.190 in favour of Satpal plaintiff in Suit No.1 and defendant No.4 in the suit filed by Baljinder Kaur, i.e., Suit No.2.

Both husband and wife did not own any plot in the aforementioned territory, therefore, there is force and merit in the plea of Improvement Trust in alleging that there was a misrepresentation and fraud at the instance of both the spouses or Anita Kumari, but ofcourse there was an element of dishonesty. By luck, both husband and wife were allotted plots. Instead of entering into an agreement to sell with a third party, Anita Kumari should have surrendered the plot to the Trust, therefore, Baljinder Kaur would not have any right to protect the allotment as the remedy was to claim damages, therefore, the affidavit submitted by Satpal to the Trust was not in deviation of the aforementioned Rules, enabling a cause of action to the Trust to cancel the allotment. Since Anita Kumari did not opt to surrender plot voluntarily, necessity arose for the Trust to cancel the allotment of Plot No.147. Once the allotment of Plot No.147 had been cancelled, the other plot could not have been cancelled.

As regards the non-payment of the instalments, the plaintiff therein had agreed to pay the same with interest.

It would be apt to reproduce Sub-rule (3) of Rule 10 of the Rules, which reads thus:-

“Notwithstanding anything contained in sub-rules (1) and (2) no person shall be eligible for allotment of a residential plot or multi-storeyed house who or whose spouse jointly or severally owns a residential plot or house other than an ancestral house in the Union territory of Chandigarh or in any Urban Estate declared as such under the provisions of the Punjab Urban

Estates (Development and Regulation) Act, 1964 or in any area covered under a scheme framed under the Act or at Panchkula in the State of Haryana or who being owners as such has disposed of the residential plot or house before or after commencement of these rules.”

From the perusal of the aforementioned Rule, it is manifest that any person who does not own any plot in any of the territory specified in the Rule can apply to the Improvement Trust. In other words, only one spouse is entitled to allotment of plot.

In my view, the findings rendered by the Courts below in Suit No.1 setting-aside the cancellation of Plot No.190 in favour of Satpal, are perfectly legal and justified and there is no illegality, much less any perversity as the previous suit filed by Anita Kumari was dismissed for want of notice under Section 98 of the Act, whereas Satpal had not filed any suit earlier.

Baljinder Kaur, plaintiff in Suit No.2, is at liberty to claim damages from Anita Kumari for refund of the money or otherwise, but cannot seek protection of the cancellation of Plot No.147 for the reasons aforementioned.

As an upshot of my findings aforementioned, the judgments and decrees in both the Regular Second Appeals do not fall within the realm of perversity or illegality. No ground for interference is made out. The same are upheld. Resultantly, the appeals are dismissed.

April 24, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No