

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1655 of 1998(O& M)

Date of decision :23 .02.2018

Hanuman

..... Appellant

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.P.K.Ganga, Advocate for the appellant.

Mr.Rajbir Singh, AAG, Haryana.

Mr.Surinder Garg, Advocate for respondent No.3.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit for declaration claiming himself to be owner in possession of the suit land measuring 9 kanals 8 marlas comprised in Rect. No. 143 Killa No.5 as per fard jamabandi for the year 1985-86 situated at village Sakta Khera, Tehsil Dabwali, Ditt.Sirsa and also for setting aside order dated 29.01.1990 passed by the prescribed allotment authority whereby the suit land had been allotted to defendant No.3-Bootia Singh without notice to him, had been dismissed by both the Courts below.

The brief facts of the case are that the suit land acquired by the Government of Haryana a long time ago through defendant No.1 for the purpose of constructing a Lizara Drain but later on the Government cancelled the scheme and the suit land came back to the original owner. It

was also averred that the suit land under acquisition was banjar but was not declared surplus under the Punjab Security of Land Tenures Act 1953. At the time of declaration of the suit land under the Ceiling of Land Holdings Act 1972, the plaintiff was not given any opportunity of hearing being the small land owner who had acquired the title in the land on account of a civil court decree dated 6.9.80 in a peremptory suit filed by the plaintiff against the big land owner. The prescribed authority vide order dated 29.01.90 issued a letter to defendant No.1 without affording the opportunity and without seeing the revenue record. It was also pleaded that the land should have been allotted firstly to A, B, C categories and after that to any other category. The defendant No.3 had his own land and the suit land could not have been allotted to him. The defendant No.3, with the connivance of defendants No. 1 and 2, succeeded to get his name entered into the revenue record vide rappat No. 193 dated 21.2.1990 and the possession was also delivered to the defendant but it was only a paper transaction whereas the actual possession at the spot was with the plaintiff. The warrant of possession which was also issued in favour of defendant No.3, was said to be wrong and against the provisions of law.

The aforementioned suit was contested by the defendants No. 1 and 2 by filing a joint written statement taking preliminary objections of jurisdiction, plaintiff having a right of revision or appeal, the suit being time barred, not maintainable, having no cause of action, want of notice under Section 80 CPC etc. It was further averred that the suit land vested in the State since 24.1.1971 under section 12(3) of the Ceiling Act 1972 and same was allotted to defendant No.3 vide allotment authority vide order dated 29.1.1990. The status of big land owner was to be seen on 30.07.1958 and

the benefit of exemption was given to him and rest of land was declared surplus. The defendant No.3 being an ejected tenant had been given the suit land in allotment as admissible under the provisions of Utilization Scheme 1976.

Defendant No.3 also filed a separate written statement on the similar pleas as taken by defendants No. 1 and 2.

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

1. Whether the plaintiff is owner in possession of the suit land and order dated 29-1-1990 passed by the defendant qua the suit land, is null and void, without jurisdiction and liable to be set-aside? OPP.
2. Whether the suit land is Banjar at the time of impugned order dt. 29-1-1990, if so its effect? OPP.
3. Whether the civil court has no jurisdiction? OPD.
4. Whether the plaintiff has right of revision/appeal as provided u/s 18 of the Haryana Ceiling of Land Holdings Act? OPD.
5. Whether the suit is time barred? OPD.
6. Whether the suit is under-valued for the purpose of court-fee and jurisdiction? OPD.
7. Whether the plaintiff has no cause of action?
8. Whether the suit is liable to be dismissed for want of notice u/s 80 CPC? OPD.
9. Whether the suit is liable to be dismissed due to the non-joinder and mis-joinder of necessary parties? OPD.
10. Whether the suit is not maintainable in the present form? OPD.
11. Whether the plaintiff has no locus-standi to file the present suit? OPD.
12. Relief.

The trial Court dismissed the suit on merits and as well as on the ground that it did not have the jurisdiction under Section 26 of the Haryana Ceiling on Land Holdings Act. The appeal preferred against the said judgment and decree was also dismissed. Hence, the appellant-plaintiff is before this Court in the Regular Second Appeal.

Mr. P.K.Ganga, learned counsel appearing for the appellant submits that the allotment order dated 29.1.90 passed by the allotment authority in favour of defendant No.3 was not binding upon the rights of the appellant-plaintiff being in violation of the principles of natural justice as no notice was issued to him before passing the said order. In fact, plaintiff was recorded as owner in possession of the land in dispute in the revenue record at that time. The name of the plaintiff missing in the order dated 29.1.1990 thus making it null and void ab initio, but the Courts below have ignored this fact while passing the impugned judgments and decrees. Moreover, the said order was passed at the back of the appellant-plaintiff. Even the Patwari namely Tej Ram examined by the defendants as DW2 admitted in cross examination that no notice was issued to the appellant by the allotment authority before allotting the land on 29.1.1990. He also admitted that appellant was recorded as owner in possession in the revenue record and the land was acquired by the State Government in the year 1963 for the construction of Lizara Drain and the provincial Government was recorded as owner thereof, therefore, once the land was acquired by the State, it ceased to be surplus, therefore, excluded from the surplus pool, hence, Section 12(3) of the Haryana Ceiling on Land Holdings Act is/was not applicable to the case of the appellant-plaintiff. Even no such order declaring the land as surplus by the State was produced on record. The appellant had purchased

the land for a payment of Rs. 6402/- by pre-emption. Since the plaintiff was recorded as owner in possession of the land in dispute, the order dated 29.1.1990 was without jurisdiction, therefore, the appellant-plaintiff was not bound to exhaust the remedy as held by this Court in **State of Haryana and others v. Vinod Kumar and others 1986 PLJ 161**. He submits that the plaintiff-appellant had become owner of the land in the year 1978, was liable to be summoned and heard before passing the order dated 29.01.1990.

There is no dispute with regard to the ratio decidendi culled out by this Court in case of State of Haryana and others v. Vinod Kumar and others (supra) but the fact of the matter is that the suit was not maintainable when the appellant-plaintiff had not acquired his right of title in the aforementioned property when the land was declared surplus but became owner by virtue of a peremptory decree dated 6.9.1980. Therefore, the finding that the suit was not maintainable is justified and rightly dismissed suit. On merits, the same view was taken for it had already come on record that the land was declared surplus in the year 1964 is also an admitted fact that the appellant has nowhere pleaded to challenge the order vide which the area was declared surplus and in the absence thereof, the allotment order of the Prescribed Authority cannot be challenged. Once the original order was not challenged, the question of giving notice to the land owners before utilisation of the surplus area did not arise.

In view of the aforesaid discussion I am of the view that the judgments and decrees of the Courts below do not require interference. Consequently no substantial question of law arises. The appellant is at liberty to avail the remedy in accordance with law, in case the law so permits.

Dismissed.

(AMIT RAWAL)
JUDGE

23.02.2018
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No