

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

RSA No.2825 of 1999 (O&M)

Date of Decision.19.03.2018

Jaspal Singh and others

.....Appellants

Vs

State of Haryana and others

.....Respondents

2. COCP No.624 of 2010

Jaspal Singh and others

.....Appellants

Vs

J.S. Ahlawat and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate
for the appellants in RSA No.2825 of 1999.

None for the petitioners in COCP No.624 of 2010.

Mr. Rajbir Singh, AAG, Haryana.

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AMIT RAWAL J.(ORAL)

This judgment of mine shall dispose of two cases i.e. one regular second appeal bearing No.2825 of 1999 and the other contempt petition bearing No.624 of 2010. The appellants-plaintiffs are in regular second appeal against the concurrent finding of fact whereby the suit for declaration with consequential relief of permanent injunction had been dismissed vide judgment and decree dated 15.12.1992 and the appeal preferred against the same was also dismissed by the lower Appellate Court vide judgment and decree dated 27.02.1999. The contempt petition has been filed by the appellants against the alleged contemnors for violating the order dated 01.02.1993 passed by the Additional District Judge, Karnal

(Annexure P-1), order dated 11.08.1999 (Annexure P-2) and order dated 16.5.2000 (Annexure P-3) passed by this Court for taking suitable action.

The facts are being taken from the regular second appeal.

The appellants-plaintiffs instituted that suit claiming declaration to the effect that they were owners in possession of the agricultural land measuring 56 kanals 16 marlas situated in village Chakda, Tehsil and District Karnal comprising of Khewat No.37, Khatoni No.106, Rect. No.38, Killas Nos.3(8-0), 8(6-0), Khewat No.38, Khatoni No.107, 109, Rect. No.27, Killa Nos.17(8-0), Rect. No.26, Killa No.1(7-12), Khewat No.39, Khatoni No.111, Rect. No.25, Killa No.1(7-4), 2(7-11), Khewat No.40, Khatoni No.112, Rect. No.26, Killa No.2/1(5-4), Rect. No.27, Killa No.1(7-12). It was pleaded that previously the land was owned by plaintiff No.4, Janpal Singh son of Kapoor Singh and Bhagwan Singh, Harbhajan Singh son of Banta Singh, Shamsheer Singh, Gurdev Singh, Harcharan Singh, Gurdial Singh sons of Bhagwan Singh, residents of village Behlopur, Tehsil and District Karnal purchased the aforementioned land with consideration somewhere in the year 1966 and mutation bearing No.318 dated 9.8.1972 was sanctioned in that regard. Bhagwan Singh and others were not related to the plaintiff No.1 in any manner. Plaintiff No.1, thereafter filed a suit for possession by pre-emption which was decreed vide judgment and decree dated 6.12.1970 and also reflected in the mutation bearing No.319 dated 9.8.1972. The plaintiff No.2 obtained a part of the land i.e. Rect. No.26, killa No.2/1 and Rect. No.27, Killa No.1 vide civil court decree dated 30.5.1972 as reflected in mutation No.341 dated 14.12.1974. Similarly, plaintiff No.3 also obtained suit land bearing Rect. No.25, Killa No.1 and 2 from plaintiff No.4 vide civil court decree dated

05.03.1970 and mutation No.303 dated 30.04.1973 was sanctioned. The plaintiffs were small land owners as per the provisions of Punjab Security of Land Tenures Act, 1953 as well as Haryana Ceiling on Land Holdings Act, 1972 and since plaintiff No.1 to 3 had become owner of the suit land through pre-emption were not covered under the provisions of the aforementioned Acts i.e. law relating to the declaration of surplus area. Defendant No.2 passed the order dated 14.3.1961 vide which land measuring 106 standard acres 11 ³/₄ units of plaintiff No.4 was declared as surplus. Plaintiff No.4 preferred review application before the Collector (Agrarian) Karnal which was recommended to the Commissioner, Ambala and the Commissioner vide order dated 22.5.1965 directed the Collector (Agrarian) Karnal to ensure that the land owner i.e. plaintiff No.4 was left with 50 standard acres or 100 ordinary acres, whichever was less. The Collector did not comply with the directions of the Commissioner, Ambala. Neither any opportunity of hearing was given to plaintiff No.4 nor any Form 'F' as required under law, was issued. Since the defendants treated the land as surplus and were threatening to utilize the same illegally and unlawfully against the provisions of law despite the fact that the plaintiff had sown Rabi 1986, the suit aforementioned was instituted claiming declaration and seeking relief of permanent injunction by dispensing with notice under Section 80 CPC. The order of the Collector dated 14.03.1961 and subsequent order dated 15.7.1965 in pursuance of the order of the Commissioner were challenged being illegal, ineffective, inoperative, void and against the rights of the plaintiff.

In pursuance of the notice of the aforementioned suit, defendant No.1 to 3 filed the written statement by taking the objections of non-

maintainability of the suit, jurisdiction of the trial Court, locus standi, estoppels and non-joinder of the parties. On merits, it was denied that the plaintiff had purchased the disputed land in the year 1960 and as well as the pre-emption decree. However, passing of the orders by the Collector and the Commissioner were admitted.

Replication was filed by the plaintiffs wherein averments of written statement were controverted by reiterating the averments in the written statement. The trial Court vide order dated 21.12.1987 dismissed the application moved under Order 39 Rule 1 and 2 CPC for granting ad interim stay.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiffs are owners in possession of agri. Land measuring 56 kanals 15 marlas detailed in para No.1 of the plaint and situated in village Chakda? OPP*
- 2. Whether the order of Collector (Agrarian) dated 14.3.1961 is null and void and not binding on the plaintiffs, if so to what effect? OPP*
- 3. Whether the suit is barred by limitation? OPP*
- 4. Whether the plaintiffs have got no cause of action? OPD*
- 5. Relief.”*

Realizing that the issue with regard to jurisdiction was left to be framed, the trial Court after hearing the arguments, framed the following additional issue:-

- “4-A. Whether the civil court has got no jurisdiction to try the present suit.” OPD*

In order to support their case, the plaintiffs examined PW1 Bal Kishan Clerk Record Room, D.C. Office, Karnal, PW2 Rama Nand Patwari and PW3 Jas Pal Singh and tendered into evidence Ex.P1 to P18 and Ex.PX before closing the evidence. On the other hand, defendants examined Nishan Singh Kanungo as DW1 and closed the evidence.

Issue No.2 framed by the trial Court was re-framed by the lower Appellate Court in the following manner:-

“2. Whether the order of Collector, Agrarian order dated 14.3.1961 and 15.7.1965 are null and void and not binding upon the parties, if so to what effect? OPP

The trial Court on the preponderance of the evidence, noticing the provisions of aforementioned Acts as well as the law laid down by the Courts in respect of matter challenging the aforementioned provisions, dismissed the suit. The appeal preferred before the lower Appellate Court also met with the same fate.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Amit Jain representing the appellants-plaintiffs submitted that the land which was pre-empted could not be included into landholding of the land owner for the purpose of declaring it to be surplus. The land till date had remained unutilized. Since the Kanungo, DW1 had admitted in the cross-examination that no notice was given to the plaintiffs for the purpose of declaring the area surplus, therefore, the Civil Court had jurisdiction. It is also settled law that *banjar* land cannot be brought into consideration for the purpose of determination of surplus area. Plaintiff No.4 was a big land owner. The trial Court had observed that the Collector vide order dated 15.7.1965 was bound to mention that land owner was left with 50 standard acres or 100

also failed to notice the order of the Commissioner dated 22.5.1965 whereby the specific direction was given to the Collector to determine the area of the land owner but the Collector failed to notice the same, therefore, the suit was liable to be decreed. DW1, Nishan Singh, Kanungo admitted in the cross-examination that the possession had not been delivered to the allottees so far nor Janpal Singh was given any notice. Both the Courts below failed to notice that Janpal Singh had sold away the suit land to Bhagwan Singh etc. and the same was pre-empted to Jaspal Singh, plaintiff No.1 and Bhagwan Singh etc. being strangers to the land owners, therefore, could not fall within the expression surplus. As per the documents Form D & F, the land owner was wrongly assessed as a big land owner as *banjar qadim* land was also taken into consideration which was against the settled law. Had the Collector given an opportunity, all these facts would have been explained and therefore, the impugned order was liable to be set aside. The order dated 22.2.1965 (Ex.P7) passed by the Collector (Agrarian), Karnal clearly specified that Janpal Singh owned 50-11-1/2 standard cares of *banjar* land on 15.4.1953, therefore, the said land could not be taken into consideration while assessing the surplus area of the owner.

In support of his contentions, he relied upon the judgment rendered by Division Bench of this Court in **Jindu Ram Vs. State of Punjab (now Haryana State) and others 1971 PLJ 684** whereby the order of the Collector declaring surplus area including *banjar qadim* was held without jurisdiction. It was a decision in respect of land which was in joint Punjab, subsequently that area had fallen within the jurisdiction of the Haryana. On similar lines, judgment of Single Bench rendered in **Lall Singh and others Vs. Shri Saroop Krishen, F.C. and others 1972 PLJ**

445. A reference was also laid to judgment rendered by Hon'ble Supreme Court in *Ajmer Singh and others Vs. State of Haryana and others 1990 PLJ 116* on similar lines that *banjar qadim* land could not be treated as land for the purpose of computing the permissible area and the relevant date was 15.04.1953, meaning thereby, *banjar* land on 15.04.1953 subsequently brought under cultivation could not be considered for determination of surplus area. In *State of Haryana and others Vs. Vinod Kumar and others 1986 PLJ 161* a Full Bench of this Court held that Civil Court would have jurisdiction under Section 9 of the Code of Civil Procedure challenging the order of the Collector declaring the land surplus in case the land owner had not been given opportunity of hearing, thus, urges this Court for setting aside the judgments and decrees rendered by the Courts below by decreeing the suit.

Per contra, Mr. Rajbir Singh, AAG, Haryana learned counsel appearing for the State of Haryana submitted that the land had already been utilized by allottees. Since the appellants-plaintiffs did not have the possession during the pendency of the suit instituted on 30.01.1986 and dismissed on 15.12.1992, appeal preferred against the same on 30.01.1993, which was dismissed on 27.02.1999 and therefore, there was no stay before this Court.

He further submitted that w.e.f. 23.12.1972, the provisions of Section 12(2) of the Haryana Ceiling on Land Holding Act, 1972 came into force and as per the provisions of Section 12(3), the area declared surplus under the Punjab Security of Land Tenure Act, 1953 stood vested in the State of Haryana w.e.f. the appointed day i.e. 24.01.1971. The only saving clause was laid down in Section 8 of the 1972 Act but it was held that effect

should be given to Section 8 upto only 23.12.1972. In other words, the transfers protected by Section 8 of the Act were excluded from the operation of Section 12(3) upto 23.12.1972 i.e. (i) acquisition of land by State or Central Government; (ii) acquisition by a tenant under Pepsu Law or Punjab Law and (iii) acquisition by an heir by inheritance. Other transfers of land in excess of permissible area under the Punjab Law or Pepsu Law were to be protected, if they were made before 30.07.1958.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Arun Jain, for, the orders under challenge were passed on 14.3.1961 and 25.7.1965 whereas the suit had been filed in the year 1986. The law of limitation as per the provisions of the Act is to commence from the date of the order passed, therefore, the suit was hopelessly barred by limitation.

Even on merits, the order of the Collector (Agrarian), Karnal passed on 15.07.1965 had not caused any prejudice to the appellants/plaintiffs because 50 standard acres had already been left as per the permissible area of the big land owner i.e. plaintiff No.4-Janpal Singh. The grievance, if any, should have been to the defendants and not to the plaintiffs. In fact the order did not reveal that *banjar qadim* land was included for the purpose of determination of surplus area. Even if the plaintiffs' case for the sake of arguments proved, the fact of the matter is that they failed to avail the remedy of declaration of the aforementioned area within a period of three years and knocked the door of the Court in the month of January, 1986. In fact the order dated 15.07.1965 of the Collector was in compliance of the order of the Commissioner passed on 22.5.1965 i.e. 50 standard acres or 100 ordinary acres of big land owner as permissible

area was asserted. The remedy to challenge the aforementioned order had been provided under the Act, therefore, the plaintiffs could not have knocked the door of the Court too belatedly under Section 9 of the Civil Procedure Code and it was Janpal Singh, who could have challenged the order before the competent authority by assailing the orders that the plaintiffs be allowed to have acquired right on the basis of decree of pre-emption. There is no dispute to the ratio decidendi culled out by Hon'ble Supreme Court and this Court with regard to maintainability of the suit under Section 9 of the Code of Civil Procedure in case the order under challenge was without jurisdiction but the fact of the matter is that it has not been proved on record as to how the order was without jurisdiction. The conceded position on record is that Janpal Singh was party to the proceedings in respect of the order dated 14.03.1961, 20.02.1965, 22.05.1965 and 25.07.1965 when the review petition was dismissed. Therefore, he could have assailed the finding in view of the provisions of the Act but did not make any effort and the orders remained operative. Even if the order was without jurisdiction, no explanation has come forth in not challenging the same within the prescribed period. There is no dispute to the ratio decidendi referred to supra but facts and circumstances of each case has to be looked into. Had the case of the appellants-plaintiffs been within the period of limitation, perhaps there would have been scope for this Court for applicability of the judgments, thus, the arguments of Mr. Jain are hereby rejected.

In view of the aforementioned, the findings of the Courts below in dismissing the suit on merits as well as on limitation do not call for interference as the same are based upon correct appreciation of fact and law,

much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

In view of the dismissal of the main appeal, the contempt petition is also dismissed.

(AMIT RAWAL)
JUDGE

March 19, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No