

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

RSA No.12 of 2001 (O&M)

Date of Decision.31.08.2018

Ludhiana Improvement Trust, Ludhiana

.....Appellant

Vs

Joginder Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Khunger, Advocate
for the appellant.

Mr. S.S. Swaich, Advocate
for the respondent.

-.-

AMIT RAWAL J. (ORAL)

The regular second appeal has been preferred by the defendant against the judgment and decree passed by the lower Appellate Court whereby the suit instituted by Joginder Singh through attorney Amarjit Singh son of Jodh Singh for permanent injunction restraining the defendant from alienating any land by way of auction or allotment without first allotting a plot to the plaintiff in the Scheme known as “6 Acre Gian Singh Rarewala Scheme”, Ludhiana being the Local Displaced Persons (hereinafter called “LDP”) has been allowed, in essence, judgment and decree of the trial Court dismissing the suit of the plaintiff has been, reversed.

It was averred that the plaintiff was owner of land comprised in Khasra No.118, 3705/119, Khata No.1092/1816 measuring 2450 sq. yards (0-16-4 pukhta) as per jamabandi for the year 1965-66 which was acquired by the Improvement Trust for development of Dana Mandi, Gill Road Commercial Scheme Ludhiana.

The Land Acquisition Officer pronounced the award and taken the physical possession and in such circumstances, the status of the plaintiff was LDP as per the provisions of Ludhiana Improvement Trust Land Disposal Rules, 1964. Rule 5(2) of aforementioned Rules provided that first allotment to be made in favour of persons, whose land was acquired. In these circumstances, the suit was filed.

The suit was contested by the defendant as stated to be not maintainable for want of notice under Section 98 of the Punjab Town Improvement Act, 1922. The factum of having taken the physical possession was admitted but it was denied that plaintiff had any right for allotment of plot being LDP.

The trial Court on the basis of pleadings and evidence dismissed the suit on the ground that after 20-25 years of acquisition, the attorney could not disclose the details which the principal knew. However, the lower Appellate Court in appeal preferred by the plaintiff reversed the finding and decreed the suit.

Mr. Sandeep Khunger, learned counsel appearing on behalf of the appellant-defendant submitted that the suit of the respondent-plaintiff was not maintainable as it was hit by doctrine akin to delay and latches, for, the acquisition was done about 20 years ago. The suit was filed in the year 1995 by attorney i.e. Amarjit Singh whereas Joginder Singh had already died on 18.07.1985, therefore, the attorney could not have any power to appear and file the suit. The suit was liable to be dismissed. This piece of evidence has totally been brushed aside and therefore, there is illegality and perversity.

Mr. S.S. Swaich, learned counsel appearing on behalf of

the respondent-plaintiff supported the judgment rendered by the lower Appellate Court on the premise that the lower Appellate Court being the last court of fact and law after examination of evidence on record and the Rules of 1964 correctly conferred status of LDP and prayed for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Sandeep Khunger.

The death certificate of Joginder Singh sought to be placed on record by way of additional evidence is taken on record as it is a public document and carries presumption of truth under Section 74 of the Indian Evidence Act. As per the death certificate, Joginder Singh died on 18.07.1985 whereas the suit was filed on 16.10.1995. As per the provisions of Order 3 Rule 1 CPC, no doubt the principal can delegate power in favour of the agent to depose but where the knowledge is personal, the agent cannot divulge and in the absence of principal, the defendant is deprived of right of cross-examination. Be that as it may, in the present case, the suit was filed by attorney, who had no power to file the same, as Joginder Singh had already died. This fact had not been noticed by the lower Appellate Court, even otherwise the acquisition of land of Joginder Singh was done 20-25 years ago whereas the suit was filed in the year 1995, therefore, there is illegality and perversity.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble

Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of

the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

As an upshot of my finding, the judgment and decree passed by the lower Appellate Court suffers from illegality and perversity and the same is hereby set aside. Resultantly, the judgment and decree passed by the trial Court is restored.

The second appeal is allowed.

(AMIT RAWAL)
JUDGE

August 31, 2018
Pankaj*

Whether Speaking/Reasoned	Yes
Whether Reportable	No