

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3787 of 2010 (O&M)

Date of Decision: January 16, 2018

Gobind Singh & another

...Appellants

Versus

Nirmal Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Amarjit Markan, Advocate,
for the appellants.

Mr.Arun Kumar, Advocate for
Mr.Ajay Pal Singh, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The present appeal is being accompanied by an application under Order 41 Rule 27 CPC bearing No.10783-C of 2016 seeking permission of this Court to place on record certified copies of the order dated 6.7.2012 passed in Civil Writ Petition No.2553 of 2001 (Annexure A-5) and order dated 11.12.2012 passed in Mutation No.7700 (Annexure A-6), whereby the allotment in favour of the respondent-plaintiff by the Consolidation Department has been struck down, being a subsequent event.

Mr.Amarjit Markan, learned counsel for the appellants submits that the trial Court dismissed suit of the respondent-plaintiffs claiming the relief of injunction vide judgment and decree dated 22.7.2008, whereas the Lower Appellate Court reversed the findings by decreeing the suit vide judgment and decree dated 6.3.2010. The entire genesis of the filing of the suit was on the basis of allotment of land in question in favour of the

respondent-plaintiffs by the Consolidation Department, which has been struck down and, therefore, this matter requires to be revisited by the Lower Appellate Court, for, the claim of possession has not been even touched while reversing the well reasoned findings.

Mr.Arun Kumar, Advocate for Mr.Ajay Pal Singh, Advocate for the respondents submits that there is no illegality and perversity in the judgment and decree rendered by the Lower Appellate Court. However, he does not deny the order dated 6.7.2012 passed by this Court (Annexure A-5) and submits that same may be taken on record by way of additional evidence.

In view of the aforementioned position, the application is allowed and the documents Annexures A-5 and A-6 are taken on record. The same are also exhibited as Ex.HC1 and Ex.HC2.

I have heard the learned counsel for the parties and appraised the paper book.

The respondent-plaintiffs instituted the suit claiming injunction against the appellant-defendants on the premise that they are owners in possession of the land and the defendants were raising their house around the suit land of which they intend to take forcible possession and carve out the road in the suit land. The appellant-defendants filed the written statement and stated that actually plaintiff Gurcharan Singh filed a petition under Section 42 of the Consolidation Act titled as “Gurcharan Singh Versus Jumla Malkan” and got allotted land bearing Khasra No.323//31(5-2), 1198(5-7) reserved for Latrines, Khasra No.1198 (5-7) is Gair mumkin marrian and said order was subject matter of the writ petition.

This Court, vide order dated 6.7.2012, had set-aside the

allotment made by the Consolidation Department in favour of the petitioner in the writ petition. The operative part of the order reads thus:-

“After recording a finding of fact that order dated 30.9.1996 has been obtained by fraud, the Additional Director, Consolidation has committed an error in dismissing the petition on the ground that order dated 30.9.1996 has merged in an order passed by this court dismissing a writ petition. A perusal of order, dated 25.8.2000, leaves no manner of doubt, that order dated 30.9.1996 was, indeed, obtained by fraud. The Additional Director, Consolidation, was, therefore, well within his jurisdiction to entertain, decide and allow such a plea, but chose to dismiss the application on the erroneous belief that the doctrine of merger prevented him from entertaining the petition.

In view of the clear and unambiguous finding of fraud recorded in the impugned order, we have no hesitation in holding that the doctrine of merger could not prevent the Additional Director, Consolidation, from setting aside order dated 30.9.1996.

In view of what has been stated hereinabove, we allow both writ petitions, modify order dated 25.8.2000, passed by the Additional Director, Consolidation, and set aside orders dated 24.9.1996 and 30.9.1996 on the ground that they were obtained by fraud, but with liberty to respondent no.2, to establish his rights by filing an appropriate petition, in accordance with law.

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Regular Second Appeal was ordered to be heard along with Civil Writ Petition No.2645 of 2001. As we have decided Civil Writ Petition Nos. 2645 and 2553 of 2001 by order of even date, we direct the registry to set down the appeal for hearing as per roster.”

The trial Court had dismissed the suit, but the Lower Appellate

Court, while reversing the findings of the trial Court, gave the following

verdict:-

“13. After giving my thoughtful consideration to the rival contentions and going through the record of the case, I am of the considered view that the impugned decree and judgment are not sustainable for the reasons recorded hereinafter. The dispute relates to the land comprised in Khasra no.323//31 (5-2). The copy of Jamabandi pertaining to the said land for the year 1995-96 Ex.P1 shows that earlier the land was owned by Jumla Mushtarka Malkan. In column No.8, the nature of the land was shown as Gair Mukin Tatian. However, there is a note in the Jamabandi showing that vide mutation no.5715, the ownership of land has been transferred in the name of Gurcharan Singh on the basis of the order passed by the Additional Commissioner (Appeals), Patiala. The Khasra girdawari entries pertaining to the land in question for the years 1997 to 2001 Ex.P2 show the possession of the appellant-plaintiff over the land in dispute. In the Jamabandi for the year 2000-2001 Ex.P3, the appellant plaintiff is recorded to be owner in possession of the land in question. His possession is reflected in the Khasra girdawari from 2001 to 2005, thus the revenue entries reflect the possession of the appellant-plaintiff over the land in dispute as owner thereof.

14. Even as per the case of the defendants, the land was allotted to the appellant-plaintiff by the Consolidation Authorities. The said allotment has been challenged by a few residents of the village before the Hon'ble High Court vide writ petition No.2645 of 2001. However, the pendency of said writ petition cannot debar the appellant-plaintiff from claiming injunction regarding the land in question against the defendants-respondents. The defendants-respondents have got no concern with the land in dispute. The pendency of the said writ petition and even the order regarding maintenance of status-quo regarding the land in question, does not give any right to the defendants-respondents to occupy the land in dispute. Since the appellant-plaintiff is allottee of the land in

question, therefore, he can certainly seek the decree of injunction against the defendants-respondents. The appellant-plaintiff is owner of the land in question till the allotment made in his name holds good.

15. So far as Ex.D1, copy of Roznamcha Wakiyati of Patwari is concerned, even if it be assumed that the revenue Authorities have wrongly made reference to rapat No.382 in the mutation sanctioned in favour of the appellant-plaintiff, the same does not effect the title of the appellant-plaintiff over the land in question. The land in question is lying vacant and possession of vacant land presumed to be with the owner thereof. Under these circumstances, I am of the view that the findings recorded by the ld.trial court that the appellant plaintiff cannot seek injunction regarding possession of the land in question are not sustainable. The defendants have proved the site-plan Ex.D2. The said site-plan was made by DW-2 Sukhwinder Singh. He has stated that a metalled road has been constructed on three sides of the land in question shown with letters A, B, C, D in the said site-plan and the remaining land is in the shape of lawn. During his cross-examination, he has admitted that the said road was recently constructed at the time of his visit on 09.1.2002. The plaintiff has filed the instant suit in May, 2001. Therefore, it can be inferred that the road has been constructed during the pendency of the suit. There is nothing to show that the said road has been constructed by any government department. The defendant Govind Singh while appearing as DW-3 has stated that Municipal Council, Longowal has constructed a metalled road over the said land. However, there is no evidence to prove that the said road has been constructed by any government department. Moreover, no government department could have constructed any road during the subsistence of order of status-quo passed by the Hon'ble High Court. Had any road been constructed by the government department, the defendants- respondents could have easily proved this fact. From the site plan itself, it

appears that the defendants have constructed the said road during the pendency of the suit and they instead to occupy the said land in question.

16. So far as the existence of road is concerned, this court had appointed a Local Commissioner for getting this fact determined. As per the report of Local Commissioner, the roads exists in the land in dispute. But the construction of road by the defendants over the land in dispute does not give any right to the defendants to occupy the land in question. Since the defendants have no concern with the land in question and the appellant-plaintiff is owner being allottee of the same, he is entitled to get injunction from the defendants-respondents. Consequently, the findings recorded by the ld.trial court on issues No.1 to 3 are set-aside. It is quite surprising that onus of issues No.2 and 3 lies upon the defendants. The ld.trial court has observed that the said issues were not pressed at the time of arguments. Still the ld.trial court decided the said issues against the appellants-plaintiff. If the defendants had not pressed the said issues, the same should have certainly been decided against the defendants-respondents.

17. As a result of above discussion, the instant appeal is allowed with costs and the impugned decree and judgment are set aside and a decree of permanent injunction restraining the defendants-respondents from occupying the land in dispute is passed in favour of the appellant-plaintiff and against the defendants-respondents with costs. Counsel fee is assessed to be Rs.1100/-. Decree-sheet be prepared. Trial court record be returned and appeal file be consigned to the record room.”

Since a subsequent event has taken place, which requires to be looked into for the adjudication of the lis, I deem it appropriate to remit the matter back to the Lower Appellate Court by taking the judgment which is *per se* admissible on record and direct the Lower Appellate Court to decide

the controversy afresh as expeditiously as possible by keeping in view the observations made above.

The parties, through their counsel, are directed to appear before the Lower Appellate Court on 12.2.2018.

The Registry is directed to send the exhibited documents, i.e., Ex.HC1 and Ex.HC2 alongwith photocopy of the record to the Lower Appellate Court.

Accordingly, Regular Second Appeal stands disposed of in the aforementioned terms.

January 16, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No