

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

Date of decision: 8.10.2018

1.

RSA No.1000 of 2012(O&M)

Rattandeep Singh and others

.....Appellants

VERSUS

State of Punjab and others

.....Respondents

2.

RSA No.1001 of 2012(O&M)

Gurpartap Singh (deceased) through LR Jagdeep Singh

.....Appellant

VERSUS

Satnam Singh (since deceased) through LR Parvinder Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vikas Bahl, Senior Advocate with
Ms. Japneet Kaur, Advocate and
Ms. Aarzoo B. Grewal, Advocate for the appellant(s).

Mr. Ashok Singla, Sr. DAG, Punjab for respondents No.1 to
3.

Mr. Manjit Singh Khaira, Senior Advocate with
Ms. Kulwinder Kaur, Advocate for respondents No.4 and 5.

REKHA MITTAL, J.

CM No.2631-C of 2012

Prayer in this application is for condoning delay of 14 days in
filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Rattandeep Singh, the appellant, the application is allowed. Delay of 14 days in filing the appeal stands condoned.

Disposed of accordingly.

RSA No.1000 and 1001 of 2012

This order will dispose of RSA Nos.1000 and 1001 of 2012 as these have emerged out of the same judgments and decrees and involve identical questions of law and fact for adjudication. For brevity, the facts are taken from RSA No.1001 of 2012.

The facts relevant for disposal of the appeal are that Harmohan Singh @ Harbans Singh son of Rajinder Singh son of Narain Singh died on 04.02.1985. He was in cultivating possession of suit land, detailed in head-note of the plaint measuring 23 kanal 10 marlas situated at village Arian Majra, Tehsil and District Patiala since the year 1955. He purchased the same from Makhan Singh son of Sardara Singh vide sale deed No.1356. Makhan Singh was allotted suit land by the Rehabilitation Department, Punjab. Harmohan Singh had to pay Rs.12,000/- to the Rehabilitation Department in the year 1974. Harmohan Singh had got installed a tubewell connection S.No.188/82-83 on 15.06.1981 for irrigation of suit land and other adjoining land. After death of Harmohan Singh, plaintiffs and defendants No.2 to 7 of civil suit No.230-T/02 dated 27.01.1995 became owners in possession of the suit land. It is further alleged that on 16.01.1995, defendant No.1 (Smt. Daljit Kaur) along with Patwari of village Arian Majra came to the suit land and tried to take forcible possession. Defendant No.1 claimed to be in possession of some document in her favour. The plaintiffs applied for issuance of khasra

girdawari and jamabandi but it was informed that record pertaining to suit land has been misplaced. Since defendant No.1 was not admitting claim of the plaintiffs and threatening to dispossess the plaintiffs and defendants No.2 to 7 from the suit land, hence the suit.

Defendant No.1/respondent filed the written statement raising preliminary objections inter alia that the suit land is an evacuee property and governed by the State Government, therefore, the suit is liable to be dismissed for not impleading State Government as a party. The suit land had already been allotted to answering defendant and Civil Court has no jurisdiction to try the suit. It is denied that the plaintiffs have been in possession of suit land. Sale deed No.1356 is illegal, null and void as the land was never allotted to Makhan Singh. It is further denied that the plaintiffs have become owners of suit land by way of adverse possession.

The plaintiffs preferred replication reiterating their stand taken in the plaint and controverted the averments raised in the written statement.

Two civil suits namely Baldev Singh and another Vs. Smt. Daljit Kaur and others bearing No.230-T/02 dated 27.01.1995 (hereinafter referred to as the first suit) and suit captioned Smt. Vardeep Kaur and others Vs. State of Punjab and others bearing Civil Suit No.229-T/02/26.7.1995 (hereinafter referred to as the second suit) were decided together vide common judgment dated 03.03.2007 passed by the trial Court.

On the basis of pleadings of the parties, following issues were framed in first suit:-

1. Whether the plaintiffs are entitled to the relief of declaration as prayed for? OPP
2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP
3. Whether plaintiffs have concealed the true facts of the case from the Court and suit is liable to be dismissed? OPD
4. Whether this Court has got no jurisdiction to try the present suit? OPD
5. Whether plaintiff has filed the present suit only to harass the defendants and the suit is baseless? OPD
6. Relief.

In second suit, following issues were framed:-

1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
3. Whether the plaintiff has no locus –standi to file the present suit? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the suit is bad for want of legal notice u/s 80 CPC? OPD
6. Relief.

In the first suit, the plaintiffs examined Jagjit Singh PW-1, Mohkam Singh PW-2, Baldev Singh- plaintiff PW-3, Mohan Singh Reader to Naib Tehsildar, Patiala PW-4, Rattandeep Singh PW-5. To rebut evidence of the plaintiffs, Madanjit Singh, Attorney of defendant Daljit Kaur appeared in the witness box DW1 and also examined Jatinder Pal Singh, Clerk office of Tehsildar Patiala DW-2.

In the second suit, the plaintiffs examined Mohkam Singh PW-1, Harbir Singh PW-2, Kuldeep Kumar PW-3 and Vardeep Kaur appeared as her own witness PW-4.

Having heard counsel for the parties in the light of materials on record, the trial Court dismissed the suits primarily on the ground that since allotment in favour of Makhan Singh from whom Harmohan Singh allegedly purchased the land vide sale deed Ex.P1 has not been proved on record, by no stretch of imagination, it can be said that Harmohan Singh acquired title on the basis of sale deed Ex.P1. Further held that once it is proved that suit property is an evacuee property, the civil Court does not have jurisdiction to record findings regarding title of suit property in view of provisions of Section 46(a) of the Administration of Evacuee Property Act, 1950. The trial Court also negated plea of the plaintiffs that they had become owners of suit property by way of adverse possession.

The judgment and decree passed by the trial Court led to filing of separate appeals by the plaintiffs of both the aforesaid civil suits and the same were decided by a common judgment and decree dated 07.10.2011 passed by the Additional District Judge, Patiala.

The Appellate Court affirmed findings of the trial Court with regard to Harmohan Singh having not become owner of suit land on the

basis of sale deed of 1958 Ex.P1 executed by Makhan Singh nor on the basis of adverse possession but reversed findings of the trial Court that Civil Court does not have jurisdiction to decide the suit with the observations that the plaintiffs have not disputed the suit property to be an evacuee property and they have rather sought their title qua the suit property on the basis of registered sale deed.

Feeling aggrieved, two separate appeals have been filed by different sets of plaintiffs claiming inheritance to the estate of Sh. Hamohan Singh.

Counsel for the appellants Sh. Vikas Bahl, Senior Advocate, would urge that Harmohan Singh was in possession of suit land even prior to purchase from Makhan Singh vide sale deed dated 24.07.1958. It is argued that prior to purchase of suit land by Harmohan Singh from Makhan Singh, Makhan Singh was recorded to be owner of suit land in the Jamabandi for the year 1958-59. On the basis of sale deed executed by Makhan Singh in favour of Harmohan Singh, name of Harmohan Singh was incorporated in the Jamabandi for the year 1962-63 Ex.P2 as owner of suit land and the same continued in the Jamabandi for the year 1969-70 Ex.P3 and 1974-75 Ex.P4. The entries with regard to possession of Harmohan Singh have been recorded in khasra girdawris marked as exhibits. It is further argued that in jamabandi for the year 1962-63 Ex.P2 in the remarks column, there is reference to rapat No.2078 dated 27.02.1970 with regard to cancellation of rakba comprising khasra No.20//12 (8-13), 13/1 (6-4), 14/1 (6-4), 15/1 (2-9) total measuring 23 kanal 10 marlas . In the Jamabandi for the year 1969-70 in column No.4, the land in question is recorded to be maturka rakba. It is vehemently

argued that once land in question was allotted in the name of Makhan Singh, recorded to be owner of suit land in Jamabandi for the year 1958-59 and Harmohan Singh was recorded to be owner of said land on the basis of sale deed Ex.P1 executed by Makhan Singh, appellants cannot be denied ownership of the suit land till the allotment in favour of Makhan Singh is cancelled by following due procedure in compliance with principles of natural justice. Any such entry of cancellation of allotment vide rapat No.2078 dated 27.02.1970 cannot form the basis to reject claim of the appellants until the allotment in favour of Makhan Singh is cancelled in accordance with law. In addition, it is argued that the respondents/defendants including the State of Punjab has not produced any proceedings much less an order qua cancellation of allotment made in favour of Makhan Singh.

Counsel representing Smt. Daljit Kaur, on the contrary, has supported findings of the Courts with the submission that the appellants/plaintiffs have to stand on their own legs and cannot take advantage of weakness of defence. As the appellants have failed to produce any documentary evidence to prove that the land in question was allotted to Sh. Makhan Singh, a stray entry in the Jamabandi for the year 1958-59 is not sufficient to establish title of Makhan Singh when otherwise Jamabandi is not a document of title. The Courts have rightly held that in absence of the plaintiffs proving title of Makhan Singh, they cannot claim ownership right in the suit land on the basis of sale deed Ex.P1 purported to be executed by Makhan Singh in favour of Harmohan Singh. Another submission made by counsel is that as the appellants have not produced any order of allotment in favour of Makhan Singh, there is no occasion or

question of the respondents producing an order qua cancellation of said allotment.

Counsel representing the State of Punjab has not disputed that Makhan Singh was allotted 11- 4½ standard acres of evacuee property in lieu of land left behind by him in villages Biram and Bhai Kot of Pakistan but as the allotment in favour of Makhan Singh was in excess to the extent of 2-4 standard acres, allotment of excess area was cancelled and an entry in this regard was made vide report No.2078 dated 27.02.1970. However, he has contested claim of the appellants on the ground that suit filed in the year 1995 to challenge cancellation of allotment made in the year 1970 is clearly barred by limitation having been filed beyond a period of three years from the date of accrual of cause of action. To substantiate his contention in this regard, he has referred to statement of Vardeep Kaur widow of Harmohan Singh PW-4 who in her cross examination had stated that when allotment of Makhan Singh was cancelled, her husband deposited Rs.1500/- with the Department for re-allotment. It is argued that once Harmohan Singh came to know about cancellation of allotment of Makhan Singh, he could file suit to challenge cancellation of allotment within a period of three years, therefore, suit filed by the appellants is liable to be dismissed on this score alone.

I have heard counsel for the parties, perused the paper-book and records.

Counsel for the State of Punjab has candidly admitted that Makhan Singh was allotted land more than 11 standard acres including the suit land but later as allotment in favour of Makhan Singh was found to be in excess, the same was cancelled in respect of area measuring 23 kanal 10

marlas in regard whereof rapat No.2078 dated 27.02.1970 was entered. This fact alone is sufficient to substantiate plea of the appellants that suit land was allotted to Makhan Singh who is recorded to be owner of suit land in Jamabandi for the year 1958-59 on the basis whereof Makhan Singh executed sale deed Ex.P1 in favour of Harmohan Singh. The State of Punjab and Department of Rehabilitation, Tehsildar (Sales) were made a party in the suit filed by Smt. Vardeep Kaur and others. The official respondents failed to adduce any evidence that before cancellation of allotment qua excess area, any notice was issued to Sh. Makhan Singh much less to Sh. Harmohan Singh who was recorded to be owner of suit land in Jamabandi for the year 1962-63 prepared by the revenue authorities in discharge of their official functions. The matter would have been different had the allotment in favour of Makhan Singh been the result of fraud because in that eventuality Makhan Singh or his successors in interest might not have been able to claim an opportunity of being heard before cancellation of allotment because fraud vitiates the transaction from its inception. In absence of the official respondents having alleged and proved that allotment in favour of Makhan Singh was cancelled after providing an opportunity of hearing to Makhan Singh or Harmohan Singh, cancellation of allotment by unilateral act of State Authorities cannot stand the test of judicial scrutiny and liable to be ignored. In this view of the matter, findings recorded by the Courts that Makhan Singh is not proved to be allottee of land in question or the appellants cannot claim ownership of suit land on the basis of sale deed Ex.P1 executed by Makhan Singh in favour of Harmohan Singh cannot be allowed to sustain and accordingly set aside.

This brings the Court to question of limitation raised by counsel for official respondents. Perusal of the records particularly judgments passed by the Courts makes it evident that no such plea of suit being barred by limitation was raised by the defendants nor any such issue was pressed before the Courts. As has been noticed hereinbefore, there is no material on record to prove that Makhan Singh or Harmohan Singh were given any notice much less an effective opportunity of being heard before allotment of alleged excess land was cancelled. There is no evidence adduced by the respondents that Makhan Singh or for that matter Harmohan Singh came to know about cancellation of allotment 3 years prior to institution of suit in the year 1995.

Counsel has tried to draw some mileage from the fact elicited in cross examination of Vardeep Kaur. Vardeep Kaur admitted that when the allotment of Makhan Singh was cancelled, her husband deposited Rs.1500/- with the Rehabilitation Department for re-allotment but in the same breath she again said that she did not know about the same. No evidence has been adduced by the respondents that Sh. Harmohan Singh ever applied for re-allotment of land or deposited Rs.1500/- with the Department. Under the circumstances, respondents cannot derive any advantage to their contention from the aforesaid fact to contend that suit filed by the appellants is barred by limitation. In view of the above, it can safely be held that judgments and decrees passed by the Courts suffer from perversity, thus, cannot be allowed to sustain. As a consequence, the appellants shall continue to be owner of suit land until the allotment of alleged excess area in favour of Makhan Singh is cancelled by a competent authority by following due procedure known to law. It is clarified that the

official respondents would be at liberty to take recourse to appropriate proceedings in law for cancellation of excess allotment in favour of Makhan Singh after providing an opportunity of hearing to successors in interest of Sh. Harmohan Singh.

In view of what has been discussed hereinbefore, the appeals are allowed. Judgments and decrees passed by the Courts are set aside. The suits filed by plaintiffs are decreed that Sh. Harmohan Singh and after his death his successors in interest are owners of suit land on the basis of sale deed Ex.P1. However, nothing stated hereinbefore shall prejudice right of official respondents to cancel excess allotment in favour of Makhan Singh by following due procedure in law. The allotment of suit land in favour of Ms. Daljit Kaur would be subject to outcome of further action, if any, taken by the State Authorities qua cancellation of excess allotment to Makhan Singh. In the peculiar circumstances, the parties are left to bear their own costs.

OCTOBER 8th, 2018

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no