

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

LPA No.599 of 2016 (O&M) in
Civil Writ Petition No.5918 of 1991
Date of Decision: July 30, 2018

Sukhdev Raj & another

...Appellants

Versus

State of Punjab & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Som Nath Saini, Advocate
for the appellant.

Mr. R.S. Bains, Advocate
for respondent Nos.8(i) to (iii).

Ms. Anu Pal, Deputy Advocate General, Punjab.

AMIT RAWAL, J.

Present intra-court appeal has been preferred against the order dated 17.02.2016, whereby the civil writ petition filed by Roshan Lal (since deceased) being represented by legal heirs 8(i) to 8(iv), seeking quashing of the order dated 14.03.1991 (Annexure P-10) passed by the Financial Commissioner, Punjab at Chandigarh, has been allowed.

The facts resulting into litigation at the behest of Tilak Raj, predecessor-in-interest of the appellants and respondent No.8 Roshan Lal, extracted in the writ petition, are not in dispute. The only point which is required to be considered is whether Tilak Raj from whom Sukhdev Raj acquired the interest by way of sale deed, had become owner of the property

vide conveyance deed dated 18.08.1977 without any order of allotment.

Mr. Som Nath Saini, learned counsel representing the appellants submitted that learned Single Bench has erred in allowing the writ petition and as well as dismissing Regular Second Appeal preferred by the appellants against the judgments and decrees of the courts below, whereby the suit seeking declaration of ownership on the basis of the evidence brought on record, was dismissed, because possession of the suit property had, in fact, been with Tilak Raj and thereafter on purchase with the appellants. Learned Single Bench remained oblivious of the fact that the Regular Second Appeal had arisen out of the suit filed by the appellants to challenge the judgment and decree in suit filed under Section 6 of Specific Relief Act (for short, the Act). In fact, the arguments were heard only in writ petition and not in the Regular Second Appeal, which was decided as a consequential effect of the decision of the writ petition.

It was next argued that the learned Single Bench should not have held that the private respondents herein and the petitioners in writ petition, were entitled to suit property comprising of khasra No.626/13 on the basis of the transfer order dated 30.08.1977, which is contrary to the press note dated 24.12.1973 (Annexure R3/3), which stipulated that if a person is occupying more than one house and more than one built-up plot, he shall be entitled to transfer of only one of these two properties and the said principle was applicable to the occupants of commercial premises as well. Press note carries a legal sanctity in view of the judgment rendered by the Division Bench of this Court in **Bishan Singh and others Versus Chief Settlement Commissioner and others**, 1973 PLJ 183. Appellants had placed on record the receipts dated 31.7.1962 (Annexure A1) along with the

application for additional evidence) to prove that the property bearing aforementioned khasra number was transferred in favour of Tilak Raj against a sum of ₹ 300/- and deposited ₹ 60/- on 31.07.1962. The record of the aforementioned case could not be placed on record, for, it was misplaced. The official respondents were duty bound to produce the record before the learned Single Judge.

It was further contended that the order dated 04.10.1985 of the Tehsildar (Sales)-cum-Managing Officer was passed after spot inspection, wherein it was found that the possession of the suit property was of Tilak Raj, therefore, the property could not have been transferred in favour of the petitioners vide order dated 10.12.1980 (Annexure P-2). Against the said order, Tilak Raj filed Civil Writ Petition No.4499 of 1980 titled as 'Tilak Raj Versus The Financial Commissioner, Revenue and others', which was dismissed vide order dated 10.01.1981 (Annexure P-3), where petitioner was not precluded from pressing the claim before the authorities for determination of the rights of the parties, thus, for all intents and purposes, the order of the learned Single Bench is not sustainable.

Per contra, Mr. R.S. Bains, learned counsel representing respondents No.8 (i) to 8 (iii), i.e., legal heirs of Roshan Lal, submitted that Roshan Lal had filed Civil Suit No. 283 of 1985 against Tilak Raj and as well as appellant Sukhdev Raj, who was arrayed as defendant No.6, for possession of the aforementioned land as during the proceedings pending before the competent authority, possession was forcibly taken on 14.10.1985. The aforementioned suit was decreed as it was filed under Section 6 of the Act and revision petition No.3100 of 1993 preferred against the same was also dismissed on 08.12.1993. Even before the

aforementioned suit, injunction suit was filed on 20.03.1984 which was granted in favour of Roshan Lal. On 26.03.1984, Sukhdev Raj filed Civil Suit No.61 of 1984 for declaration that he had become owner in possession of the vacant plot bearing khasra No.626/13. The said suit was dismissed on 14.05.1984. Again on 27.01.1994, Sukhdev Raj filed a civil suit for declaration that he is owner in possession of the suit property alleged to have been purchased from Tilak Raj. For the same very property, he filed a civil suit seeking perpetual injunction against Roshan Lal. The said suit was dismissed. Civil appeal filed was also dismissed on 01.12.2006. Regular Second Appeal No.2245 of 2007 has been dismissed while deciding the writ petition.

It was also contended that this Court had already upheld the conveyance deed dated 10.01.1981 (Annexure P-3) vide order dated 10.01.1981 in Civil Writ Petition No.4499 of 1980, but had given liberty only for determination of right between the parties. Under the garb of such order, Roshan Lal could not have filed the petition before the Tehsildar against the order dated 10.12.1980 (Annexure P-2), in essence he was estopped to urge the issue of claiming ownership on the basis of the conveyance deed and thus, urged this Court for upholding the order under challenge.

He further buttressed that the learned Single Bench is not precluded to decide the Regular Second Appeal, as Tilak Raj and Sukhdev Raj failed to place on record any order/decision of the competent authority, i.e., from the office of Rehabilitation, regarding, allotment of aforementioned khasra number which resulted into issuance of conveyance deed. Pendency of the Regular Second Appeal, in view of the decision of

the learned Single Bench, would have been a farcical exercise.

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

The main thrust of Mr. Som Nath Saini, learned counsel for the appellants is that the learned Single Bench could not have adjudicated the Regular Second Appeal resulting into dismissal of civil suit bearing No.35 of 1994 titled as 'Sukhdev Raj Versus Roshan Lal and others' claiming ownership in possession of the property bearing khasra No.626/13, situated at Gali No.6, Haripura, Amritsar with perpetual injunction on the premise that Tilak Raj had become the owner by way of conveyance deed dated 18.08.1977 and there was no reference to the oral and documentary evidence as it was specifically urged in the memorandum of appeal that the question of title was subjudice in this Court. Once the question of title as well as the right to possession was to be adjudicated after the decision of the Civil Writ Petition No.5918 of 1991, which was later on decided by the learned Single Bench, the possession cannot be allowed to change during the pendency of the writ petition. The sale deed in favour of Sukhdev Raj executed by Tilak Raj had not been set-aside.

We are afraid, the aforementioned argument is misplaced, for, the adjudication of the suit seeking declaration of ownership and possession of the suit property on the basis of the conveyance deed dated 18.08.1977 which had already been set-aside and upheld by the learned Single Bench. Appellant (plaintiff in the suit) failed to establish on record any decision regarding allotment in favour of Tilak Raj.

As far as question of possession is concerned, plaintiff miserably failed to place on record khasra girdawari to establish the

possession, but on the contrary Roshan Lal placed on record jamabandies from the year 1971 to 1981 to prove the possession.

The alleged inspection by the Tehsildar was an eye wash, for, Naib Tehsildar on 10.12.1980, while approving the transfer of property to Roshan Lal on the basis of possession, also noticed that he was in exclusive possession of the khasra number, which was one of the requisite conditions for the purpose of allotment.

The receipts sought to be placed on record by way of additional evidence cannot be looked into, for, no explanation has come forth why the aforementioned receipts had not been placed on record at the relevant point of time when the writ petition was pending and also in the civil suit. Even no witness from the department had been summoned for adjudication of the lis in the suit. In fact, the appellants miserably failed to prove the justification in issuance of the conveyance deed. Placing on record receipts Annexure A-1 along with misc. application would pale into insignificance and would not render any assistance to this Court for adjudication of the lis.

In our view, the argument of Mr. Saini and as well as of the private respondents before the writ court and in the Regular Second Appeal would have been identical that appellant, plaintiff therein, was deriving title on the basis of the conveyance deed from Tilak Raj. It is settled law that a person who does not have a title, cannot pass on a better title. It is in this backdrop of the matter, learned Single Bench disposed of the Regular Second Appeal.

There is another aspect of the matter. We would be committing a fallacy in case we do not reproduce the order dated 10.01.1981, whereby the writ petition filed by Tilak Raj predecessor of petitioners was dismissed.

The same reads thus:-

“The learned counsel for the petitioner contends that the Financial Commissioner ought to have remanded to case, instead of stopping short at setting aside the Conveyance Deed in petitioner's favour, for considering the merits of his claim vis-a vis Roshan Lal, respondent. We are, however, not impressed with this argument because the Financial Commissioner has not made any observation on the merits of the respective claim of the parties and has only set aside the Conveyance Deed on the ground that there is no order to support the same. The petitioner would not be barred by this order from pressing his claim before the authorities concerned while determining the rights of the parties. Subject to these observations, this petition fails and the same is hereby dismissed.”

From the perusal of the aforementioned order, it is evident that cancellation of the conveyance deed had attained finality. The import of the order leaves no manner of doubt that at the best some opportunity was to be granted to Tilak Raj to assail the allotment in favour of Roshan Lal, but under the garb of the said order, raked the issue with regard to the title, again, as during the pendency of all these proceedings, passed on title to Sukhdev Raj.

Once the cancellation of sale deed has been upheld as a necessary corollary, the Regular Second Appeal would lose its significance or foundation and was rightly dismissed.

There is no dispute to the ratio decidendi culled out in **Bishan Singh's case (supra)**, as each and every case has to be examined on the basis of the facts of each case.

For the reasons stated above, we do not find any infirmity in the order under challenge. The same is upheld and the Letters Patent Appeal is

dismissed. Consequently, the application for additional evidence is also dismissed.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

July 30, 2018
ramesh

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No