

RSA No.1101 of 2015 (O&M)

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

RSA No.1101 of 2015 (O&M)
Date of decision: 01.02.2018

Ram Kumar and another

.....Appellants

versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Mukesh Yadav, Advocate, for the appellants.

RAMENDRA JAIN, J. (ORAL)

CM-3199-C of 2015

For the reasons mentioned in the application, same is allowed.

Delay of 150 days in filing the accompanying appeal is condoned.

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Unsuccessful plaintiffs have preferred this Regular Second Appeal against the judgment and decree dated 31.03.2014 of the First Appellate Court, Bhiwani, affirming the judgment and decree of the trial Court dated 28.07.2010, whereby suit of the plaintiffs for declaration was dismissed.

Put pithily, father of the appellants-plaintiff was the highest bidder of the suit land measuring 21 bighas situated at Village Pana Partamal Mojja, Tehsil Siwani, in a Limit Harijan Public auction held on 08.03.1968, therefore, the auction was confirmed in his favour against ₹

2500/-. Consequently, father of the appellants-plaintiff deposited ₹ 125/-

on 11.03.1968 in the treasury and in lieu thereof was handed over

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possession of the suit property vide order dated 04.06.1968. Balance sale price was to be paid in 20 half yearly equal instalments. However, he did not deposit the remaining instalments, therefore, respondents No.1 to 3-defendant after issuing due notice dated 16.12.1974 to the father of the appellants-plaintiff and passing order dated 01.07.1975, forfeiting the first instalment of ₹ 125/- paid by father of the appellants-plaintiff, re-auctioned the suit land jointly in favour of ancestors of respondents No.4 to 9 and respondent No.10 (defendants No.4 and 5 before the trial Court) and handed over the possession of the suit land to them. Father of the appellants, namely, Chuhria expired on 01.07.2006 without raising any grouse against the respondents qua re-auction of the suit land earlier allotted to him during his lifetime.

After his death, appellants, being legal heirs of Chuhria, filed a suit for declaration declaring them owner in possession of the suit land on the basis of auction aforesaid dated 08.03.1968 in favour of their father by setting aside the re-auction dated 17.07.1981 and orders dated 01.07.1975 and 04.01.1982 for re-auction of the land and handing over possession of the suit land to the ancestors of respondents No.4 to 9 and respondent No.10 (defendants No.4 and 5 before the trial Court) and further sale certificate dated 09.02.1987 issued by respondent No.3 in favour of ancestors of respondents No.4 to 9 and respondent No.10 and sale deed dated 19.02.1988 executed by them in favour of respondents No.11 and 12 (defendants No.6 and 7 before the trial Court) pleading that their father as an auction-purchaser was coming as owner in possession from 1968 and revenue record was continuously coming in his favour right from 1970 to

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shoes of their father and thus, became owner in possession of the suit land. No prior notice was given either to their father or to them before re-auctioning the suit land in favour of the ancestors of respondents No.4 to 9 and respondent No.10 and, therefore, re-auctioning of the suit land was illegal, null and void having no binding effect upon their rights.

Upon notice, defendants contested the suit.

The trial Court after holding trial, dismissed the suit vide impugned judgment and decree dated 28.07.2010.

Being dissatisfied, appellants preferred first appeal, but remained unsuccessful as their appeal too was dismissed by the First Appellate Court vide judgment and decree dated 31.03.2014.

Learned counsel for the appellants submits that both the Courts below failed to appreciate that no cogent and convincing evidence was led by respondents No.1 to 3 qua serving of alleged notice to the deceased father of the appellants prior to re-auctioning of the suit land. Therefore, the entire proceedings qua re-auctioning of the suit land in favour of ancestors of respondents No.4 to 9 and respondent No.10 being illegal and null and void have no binding effect upon the rights of the appellants.

Having given considerable thought to the submissions made by learned counsel for the appellants, I find instant appeal completely devoid of any merit for the reasons to follow.

No question of law muchless substantial arises or raised for consideration in this appeal.

Respondents No.1 to 3 have proved on record beyond doubt that due notice was served to the father of the appellants at his both the

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the father of the appellants-plaintiff was permanently residing.

The relevant portions of para Nos.19, 20 and 21 of the trial Court's judgment are reproduced hereunder for ready reference: -

“19.....The first question to be decided in this case is as to whether any prior notice was given to father of the plaintiffs before cancellation of the sale auction and forfeiting of bid money deposited by their father. It was contended by learned counsel for the plaintiffs that the notice to their father was sent to his alleged residence at Siwani (Bhiwani) but he was not residing there, which is clear from the report of the peon. It was further argued that a notice through registered letter was allegedly given to his father at his actual residence at village Ballu, but no acknowledge receipt was produced by the defendants so there was also no service in the eye of law.

20. On the other hand it was argued by learned counsel for the defendants that the father of the plaintiffs had given both above mentioned addresses to the defendants for correspondence and notices were sent at both the addresses. It was further argued that the registered letter was not received back unserved, so there was duly service effected on the father of the plaintiffs.

21. After hearing the rival contentions of the learned counsel for the parties, I am of the considered view that the contentions raised by learned counsel for the plaintiffs are without any merit. No doubt as per evidence brought on record by the plaintiffs regarding the notice sent to the address of the father of the plaintiff at Siwani, it was reported that he is not residing at the given address. However, there is sufficient evidence on record showing that registered letter containing the notice regarding forfeiture of the bid money and resumption of the suit property was sent to the father of the plaintiffs at his address at village Ballu, but there is no evidence on record that the same was received unserved. It is not disputed that the registered letter was sent to his father at given address at village Ballu then onus to prove the fact that the registered letter was not received by his

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father was upon the plaintiffs to prove the same, but they have failed to discharge this burden and this court has no hesitation to observe that their father was duly served before forfeiting the bid money and cancellation of the auction.”

Admittedly, limitation for challenging the re-auctioning of the suit land, held in the year 1981, had expired during the lifetime of the father of the appellants, but he never challenged the same and, therefore, both the Courts below have rightly declared the suit of the appellants-plaintiff as time-barred.

It is also evident from the record that appellants-plaintiff or their father never remained in possession of the suit land inasmuch as after re-auction of the suit land in the year 1981 possession of the suit land was handed over to the ancestors of respondents No.4 to 9 and respondent No.10 jointly on 25.01.1982. Had the father of the appellants, namely, Chuhria been ousted from the suit land in the year 1982 in that eventuality he must have raised some grouse before respondents No.1 to 3 or had filed some suit for injunction restraining the respondents from ousting him from the suit land except in due course of law.

As discussed above, Chuhria never adopted any such exercise till his death in the year 2006. More-so, the stand of the appellants that they came to know about the re-auctioning of the suit land after the death of their father in the year 2006 by in itself is sufficient to draw adverse inference that they or their father never remained in possession of the suit land.

The appellants claimed their possession over the suit land, therefore, they did not claim any such relief in their suit for declaration.

Therefore, both the Courts below have rightly held that simpliciter suit of

the appellants for declaration was not maintainable.

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There are concurrent findings against the appellants of both the Courts below. I have gone through the impugned judgments of both the Courts below and find no illegality or perversity in the same. Rather they are well-reasoned.

In view of above, present appeal, being completely devoid of any merit, is hereby dismissed.

February 01, 2018

R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.