

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4138 of 2016 (O&M)

Date of Decision: November 19, 2018

Ranbir Singh & another

...Appellants

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Narender Pal Bhardwaj, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

CM No.10646-C of 2016

For the reasons mentioned in the application, which is supported by an affidavit, delay of 36 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.4138 of 2016

Appellant-plaintiffs have not been successful in claiming the possession of the suit land by laying challenge to the mutation Ex.D1, whereby the land was sold by order of the Sub Divisional Officer, Karnal.

The case set out by the plaintiffs in the plaint was that Kalawan, Mundan and Nathan were the shareholders of three panas of land measuring 55 bighas 3 biswas. As per the jamabandi for the year 1909-10, the suit land was owned by Baba Hari Dass Jamna Dass Baragi Dohlidar, but thereafter as per subsequent mutation, Kanshi son of Chaman was recorded as

cultivator. In the year 1962, some part of the suit land was acquired by the Punjab Government of Dutch Minor and a dispute arose between Chandgi Dass, Gopal Dass and proprietors of three panas with regard to the compensation and as per judgment dated 10.11.1961, it was held that Gopal Dass was the Chela and Dohlidar of Baba Hari Dass. Chandgi Dass filed an appeal before this court, which was dismissed vide order dated 26.07.1963. Gopal Dass filed a suit for possession in the year 1962, which was decreed on 05.11.1975. Chandgi Dass assailed the aforementioned decree by filing appeal, which was dismissed and in execution, Gopal Dass had taken the possession of the suit land. Many other litigations ensued, but the amount of compensation of the acquired land had not been given to the claimants. It was alleged that the Government had decided to return the acquired land to the owners and accordingly returned the acquired land to the original owners and mutation No.2961 in this regard was entered and sanctioned on 28.03.1976 in favour of the previous owner, but 63/1365 share of the acquired land was mutated in favour of the defendant, i.e., Sudhan son of Kishan Dutt, who was not the owner of the suit land at the time of the acquisition. There was an apparent collusion between the revenue department.

Defendant Nos.1 to 5, i.e., State of Punjab contested the suit on the ground of maintainability, limitation and supported the mutation on the ground that it was recorded as per sale deed dated 06.11.1968.

Defendant Nos.6 and 7 filed the written statement.

Plaintiffs attempted to bring on record numerous evidence to establish the averments made in the plaint and so did the defendants. Both the courts below did not agree with the plaintiffs and dismissed the suit.

Appeal laid before the Lower Appellate Court was also dismissed.

Mr. Narender Pal Bhardwaj, learned counsel representing the appellant-plaintiffs submitted that Ex.P4 cancellation of khewat of hadbast No.97 showed the ownership of pana. No sale deed has seen the light of the day. In such circumstances, the suit was liable to be decreed. Even the receipt of payment with regard to property having been sold in open auction has not seen the light of the day.

I am afraid, the aforementioned argument of the learned counsel is not sustainable as the plaintiffs have miserably failed to establish on record with regard to the return of the land. The same cannot be done in the manner and mode as pleaded but has to be under Section 48 of the erstwhile Land Acquisition Act, 1894. On the other hand, per pleaded case of the plaintiffs had been that there was a dispute with regard to the compensation amongst Dholdars. Both the pleadings cannot run parallel. Even otherwise, plaintiffs have not been able to prove the short fall of the land. If at all the land was returned, the mutation was effected in 1968 on the basis of the sale deed, whereas the suit was filed in 2010. Even no declaration laying challenge to the sale deed has been sought, therefore, the argument of Mr. Bhardwaj is not able to bring the case within the realm of perversity.

For the reasoned mentioned above, no ground for interference in the concurrent findings of fact and law arrived at by the courts below is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

November 19, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No