

RSA-1519-2017 (O&M)

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

RSA-1519-2017 (O&M)

Date of decision : 06.12.2018

Keshar Singh

... Appellant

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Virender Kumar, Advocate
for the appellant.

AMIT RAWAL, J.

CM-3661-C-2017

For the reasons stated in the application, the delay of 05 days in
refiling the appeal is condoned.

CM stands disposed of.

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The present regular second appeal is directed against the
judgments and decrees of the Courts below, whereby the suit for declaration
with consequential relief of mandatory and permanent injunction in respect
of land measuring 24 kanals 1 marla, by laying challenge to the action of
defendants in cancellation of the allotment and taking the possession on
17.06.2009, has been dismissed by the trial Court and affirmed the lower
Appellate Court.

It was alleged that on receipt of ₹13,931/-, Nazool land

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measuring 37K-3M was allotted. There was a some dispute with regard to the allotment at the behest of Hans Raj and the allotment, thereafter, was reduced to 24 kanals 1 marla. Revised deed was completed by the Collector and entry, in that effect, was reflected in the jamabandis for the year 1988-89 and 2003-04. Owing to the relationship of master and servant, Gulzar Singh son of Punjab Singh, got some land allotted in favour of the plaintiff at his back, on 09.12.1976. On acquiring the knowledge of illegal allotment, the appellants submitted an affidavit before the Financial Commissioner for cancellation of the surplus land measuring 8 kanals 17 marals. The competent authority cancelled the allotment on 15.03.1989. An FIR No.120 dated 16.07.1988 was registered against the plaintiff, which resulted into, acquittal on 23.04.1998. A civil suit bearing No.163 of 1997 was filed seeking direction for permanent allotment of Nazool land, since price had already been paid as per the terms and conditions of the agreement deed, which was decreed on 29.10.1997, but in appeal, vide judgment and decree dated 08.04.1989 reversed. Even the regular second appeal was also dismissed. The revenue department overlooked that the amount was deposited by the plaintiff.

The defendants opposed the suit regarding its maintainability particularly, when the previous suit had already been dismissed by the lower Appellate Court.

Both the parties led extensive evidence.

Learned counsel appearing on behalf of the appellant submitted that the relief sought is not connected with the previous one, therefore, the findings of Courts below in dismissing the suit on ground of *res judicata* are not sustainable. There was no attempt of any concealment as noticed by the

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lower Appellate Court.

I am afraid the aforementioned argument is not sustainable as the decree dated 29.10.1997 (Ex.P25), directed the defendants to execute the sale deed in favour of the plaintiff and with further restraint order from cancelling Nazool land, but the lower Appellate Court, as per the judgment and decree dated 08.04.1989, reversed the findings. In view of such, the plaintiff could not again rake up the issue and claim declaration and mandatory injunction. The finding with regard to the suit being barred by *doctrine akin to res integra* is correct appreciation of law. The person cannot be permitted to reagitate already decided issues in second round of litigation.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

06.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**