

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1507 of 1987 (O&M)

Date of Decision: March 18th, 2019

Inderjit (deceased) through L.Rs

...Appellant

Versus

Kapur Mal (deceased) through L.Rs

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Ms. Madhu Dayal, Advocate,
for the appellant.

None for the respondent.

AMIT RAWAL, J.

The present Regular Second Appeal, at the instance of the appellant-defendant, is directed against the concurrent findings of fact, whereby the suit of the respondent-plaintiff claiming declaration to be owner of Plot No.10, situated in Village Badali, Tehsil Kharar, District Ropar with consequential relief of possession, has been decreed by the trial Court and affirmed in appeal.

Plaintiff Kapur Mal son of Babu Ram sought the relief, aforementioned, in Civil Suit of 1984 on the premise that his forefathers, namely, Babu Ram, Arjan Dass and Nathu Ram were the original residents of Village Kailar, now Sector 24, Chandigarh and were evicted by the State Government. In lieu of the eviction, were allotted plots at Village Badali, Tehsil Kharar, District Ropar bearing No.15/1 and 3/2. One Jai Kishan and Diya Ram were also allotted plots at Village Badali, but as they shifted to Manimajra, their allotment was cancelled and the plots allotted to them were re-allotted to Basant Singh and Sham Singh sons of Partap Singh. Plaintiff

for his convenience, exchanged plot No.15/1 with Bachna Ram for plot No.3 in mutual agreement and also gave the possession. Plots of all the allottees were scattered all over and it was not convenient for any of the allottee barring few to use them usefully. Basant Singh and Sham Singh submitted an application to the Land Acquisition Officer, Chandigarh for transferring of plots No.10 and 1/5 with plot Nos.3, 3/2, 3/1 since plot Nos.3 and 3/2 belonged to the plaintiff and plot No. 3/1 to one Banarsi Dass. The aforementioned exchange agreement was signed by the defendant as the representative of the allottees, which was allowed. As a result thereof, Basant Singh and Sham Singh were given plots No.3, 3/1 and 3/2 and plot No.10 and 1/5 came to the share of the plaintiff. Plot No.1/5 was sold by the plaintiff to Charan Singh son of Jagir Singh and plot No.10 remained unoccupied.

It was further pleaded that the plaintiff continued to reside at Basanti Devi Mandir, Sector 24, Chandigarh and by taking undue advantage of the absence of the plaintiff from Village Badali, defendant tried to take forcible possession of plot No.10 in 1980, which was timely intervened and in this regard was constrained to sought injunction against the defendant, but during the pendency of the suit, the defendant had taken forcible possession of plot bearing No.10 and constructed a poultry shed temporarily over the suit land and in this background, the aforementioned relief was claimed.

Defendant opposed the suit and pleaded that the plots were allotted in the year 1952 being Capital oustees. Arjan Dass, Babu Ram and Nathu Ram sons of Rangi Ram were allotted two plots No.3/2 and 15/1 having an area of 4100 sq. ft., but the land out of which the plots were

allotted to all the Capital oustees, was not acquired and it was subsequently acquired in 1953. In the year 1956, in terms of the agreement dated 12.02.1956, the allotments of plots No.10 and 1/5, which stood in the name of Basant Singh and Sham Singh was cancelled and they were allotted plot Nos.3, 3/1, 3/2 in lieu of plot Nos.10 and 1/5 in village Badali and the remaining plots, i.e., plots other than 3, 3/1 and 3/2 were left to be privately partitioned by the remaining Capital oustees. For the purpose of private partition, existing possession was sought to be maintained. During this partition, Arjan Dass, Babu Ram and Nathu Ram were allowed to keep plot No.15/1 and in lieu of plot No.3/2, they were allotted plot No.1/5 and 1/4. Kapur Mal had already sold his plot No.1/5. Plot No.10 was allotted to Inderjit defendant in private partition and since 1956 had been in lawful possession of the plot and construction was raised in the year 1969.

The trial Court, on the basis of the pleadings of the parties, framed the following issues:-

- “1. Whether the plaintiff is the owner of plot No.10? OPP*
- 2. Whether the plaintiff is entitled for possession of Plot No.10? OPP*
- 3. Whether the suit of the plaintiff is properly valued for the purposes of court fee and jurisdiction? OPP*
- 4. Relief.”*

In support of the aforementioned pleadings, plaintiff examined five witnesses and brought on record documents Ex.P1, Ex.P2, Ex.P3, Ex.P4 and Ex.PW4/A and closed the evidence. On the other hand, the defendant appeared as DW-1.

The trial Court, on the basis of the aforementioned pleadings and documents, decreed the suit and the appeal preferred, as noticed above,

was also dismissed.

Ms. Madhu Dayal, learned counsel representing the appellant-defendant submitted that both the Courts below have misread the contents of the order Ex.PW4/A, as plain and simple reading of the same, did not remotely connect with plot No.10, for, from the order dated 16.07.1981 of the Land Acquisition Officer, it is evident that plot No.10 and 1/5 which was allotted to Basant Singh was exchanged with plot No. 3, 3/1 and 3/2. Plot No.3 was allotted to Bachna, Hukam Chand and Sawan Ram etc., whereas plot No.3/1 to Banarsi Dass son of Prabhu and Kartaro widow of Banarsi Dass and plot No.3/2 to Arjan Dass, Babu Ram and Nathu Ram sons of Rangi Ram (forefathers of Kapur Mal). The mutual agreement between the parties did not show which area was taken and given to each right holder. In such circumstances, identity of the plot remained in mystery. The Courts below should not have ordered the possession. Even translation of Ex.P3 and Ex.P4 does not reflect any allotment of plot No.10 in favour of the plaintiff or his forefathers as the remaining plots were ordered to be partitioned amongst the parties, therefore, there is a gross illegality and perversity.

The present appeal was taken up on 05.06.1987 and the following order was passed:-

“Notice of motion for 7.8.1987.

Till then status quo as it stands today shall be maintained.”

Respondent appeared through one Mr. S.M.Sharma Advocate and on 24.09.1987, in the presence of the counsel, appeal was admitted and the status quo order was ordered to be continued. The same reads as under:-

“Admitted.

Status quo shall continue to be maintained.”

On 14.09.2011, none appeared for the respondent. The counsel

for the appellant informed the Court that the counsel appearing on behalf of the respondent expired and the Registry be directed to issue actual date notice of hearing to the respondent. As per the order dated 08.04.2013, it was recorded that sole respondent died and steps be taken to implead his legal heirs. An application bearing No.1541-C of 2014 under Order 22 Rules, 3, 4 and 11 CPC for impleading the legal heirs of the appellant and as well as the respondent was submitted. On 05.02.2014, notice of this application was ordered to be issued to the non-applicant. The order reads thus:-

“Notice of the applications to the non-applicant for 21.4.2014.”

On the adjourned date, noticing that the notice issued to the non-applicant sole respondent received back with the report of not residing at the given address, the following order was passed:-

“Following report has been received from the registry:-

“Notice issued to non-applicant sole respondent for 21.04.2014 received back with the report that no residing at the given address”

Learned counsel prays for more time to take appropriate steps.

Adjourned to 28.07.2014.”

However, during the interregnum, the appeal was dismissed in default and an application for restoration accompanied by applications seeking condonation of delay and impleadment of the legal representatives was taken up and on 21.04.2015, the following order was passed:-

“CM-0009-C-2014

The appeal was dismissed for non-prosecution on May 23, 2015. Thereafter, three applications were moved by the applicant seeking condonation of delay, restoration of appeal

and impleadment of LR's.

It is stated today that it has not been possible to serve LR's of the respondent in ordinary course as their last address is not known.

For the reasons mentioned in the application, same is allowed. Service of LR's of deceased respondent-Kapur Mal be effected by publication in two leading newspapers of the area.
CM Nos.1535-C, 1536-C, 1541-C in RSA-1507-1987

To come up on 10.08.2015."

From the perusal of the aforementioned order, the legal heirs were ordered to be served through publication in two leading newspapers of the area. On 27.11.2015, delay was condoned and the appeal was restored. It was also noticed that the publication had already been made in two leading newspapers, but they remained unrepresented and application for impleadment of the legal representatives was ordered to be heard with the main case. The order dated 27.11.2015 reads as under:-

"C.M. No. 1535-C of 2014

This is an application for condonation of 209 days delay in filing the application for restoration of appeal.

For the reasons stated in the application, same is allowed. Delay of 209 days in filing application for restoration of the appeal is condoned.

C.M.No. 1536-C of 2014

This is an application for restoration of the appeal which was dismissed for non-prosecution vide order dated May 23, 2013.

Learned counsel for the applicant submits that pursuant to order dated April 21, 2015, publication has already been made in two leading news-papers of the region. However, respondent remains unrepresented.

Under the circumstances, application is allowed as

prayed for. Appeal is restored to its original position and number.

Be listed as per roster.

C.M. No. 1541-C of 2014

To be heard with the main case.”

Publication has already been effected and the respondents are not served, though order should have been passed for allowing application for impleadment. Once the notice had already been issued, accordingly the application is allowed and the legal heirs are ordered to be impleaded.

Since there is no representation on behalf of the respondents, accordingly I proceed to decide the appeal on merits, which is of 1987.

I have heard the learned counsel for the appellant-defendant, appraised the paper book and gone through the judgments and decrees under challenge and as well as orders of the courts below and of the view that there is force and merit in the submissions of the learned counsel for the appellant-defendant and the following substantial questions of law arise for determination:-

1. Whether the judgment and decree of the Lower Appellate Court suffers from perversity as it tantamounts to misreading the order Ex.PW4/A?
2. Whether the respondent-plaintiff was able to prove the identity of the property and its possession?

The order dated 16.07.1981 of the Land Acquisition Officer, Union Territory, Chandigarh shows allotment of various plots and the order of exchange. It would be apt to reproduce the order. The same reads thus:-

“From

The Land Acquisition Officer,

Union Territory, Chandigarh.

To

Sh.Kapur Mal S/o Babu Ram

Basanti Devi Mandir,

Sector-24, Chandigarh.

2. *Hatish Bandhu s/o Inderjit,*

V. Badali, P.O.Kharar,

District Ropar.

Memo No.9801-02/IAO

Subject: Dispute of Abadi Plot-Clarification thereof:

Reference your applications dated 7-4-81 and 4-6-81 respectively on the subjected cited above.

The record of this office has been examined and it has been noticed that the following Abadi plots were allotted to in V. Badali:

<u>Name of the allottee</u>	<u>Plot allotted</u>	<u>Area</u>
1. <i>S.Sh.Arjan Dass Babu</i>	<i>3/2</i>	<i>3100</i>
<i>Ram, Nathu Ram ss/o Rangi Ram</i>	<i>15/1</i>	<i>1000</i>
2. <i>Inderjit, Jograj etc.</i>	<i>Min-19</i>	<i>2368</i>
<i>s/o Mali Ram</i>		<i>1386</i>
		<i>1674</i>
		<i>936</i>
3. <i>Basant Singh, Shiam Singh</i>	<i>4</i>	<i>4312</i>
<i>ss/o Partap Singh</i>		
4. <i>Jai Kishan S/o Daya Ram</i>	<i>10</i>	<i>2175</i>
	<i>9</i>	<i>2263</i>
	<i>23</i>	<i>360</i>
	<i>1/5</i>	<i>2624</i>
5. <i>Bachna, Hukam Chand</i>	<i>14</i>	<i>960</i>
<i>Sawan Ram etc.</i>	<i>27</i>	<i>2436</i>
	<i>5/1</i>	<i>4929</i>
	<i>3</i>	<i>1100</i>
	<i>Min-A</i>	<i>709</i>
	<i>Min-B</i>	<i>224</i>
6. <i>Banarsi Dass s/o Prabhu</i>	<i>14/1</i>	<i>912</i>
<i>Kartari wd/o Banarsi Dass</i>	<i>3/1</i>	<i>200</i>

The allotment of Sr.No.4 was cancelled and P.No.10 &

1/5 allotted to Shri Basant Singh. Again on 12-2-56 an application was filed by Basant Singh under the signature of witnesses that the plot No.3, 3/1 and 3/2 be allotted to him in lieu of plot No.10 and 1/5 allotted to him after the cancellation of plot No.4. The case was put up to the then Estate Officer, who ordered on 15-2-56 "Exchange and allotment allowed as proposed".

With this order the plot No.10 and 1/5 already allotted to Sh.Basant Singh were exchanged with plot No.3, 3/1 and 3/2 but the mutual agreement does not show the area taken and given to each right holder in exchange, which can be now settled by you in the presence of the witnesses as this office has no jurisdiction over the Punjab Villages. In case of any dispute you are free to seek justice from any court of law.

Sd/-

*Land Acquisition Officer,
Union Territory, Chandigarh"*

From the perusal of the aforementioned order, it is evident that plot No.3/2 and 15/1 were allotted to Arjan Dass, Babu Ram, Nathu Ram sons of Rangi Ram, forefathers of Kapur Mal, whereas plot No.10, which is in dispute, was allotted to Jai Kishan. It is also a matter of record that plot No.10 allotted to Jai Kishan was cancelled and he was allotted some other plot. The exchange and allotment was allowed as proposed, but it was clarified that with this order, plot No.10 and 1/5 allotted to Jai Kishan and after cancellation allotted to Basant Singh were exchanged with plot Nos.3, 3/1 and 3/2. The order further revealed that the mutual agreement did not show the area taken and given to each right holder in exchange, which could not be settled in the presence of the witnesses and the office did not have the jurisdiction over the Punjab Villages. In case of any dispute, the parties were free to seek justice in accordance with law.

One can assume that some cause of action accrued to the plaintiff and as such filed the suit in 1984, but on reading of the translation of orders dated 12.02.1956 and 15.02.1956 regarding the exchange of land, it is nowhere deciphered that plot No.10 had fallen to the share of the plaintiff or his forefathers.

It is revealed that on 12.02.1956, Inderjit and Hazura Singh, on behalf of Basant Singh in the presence of the marginal witnesses and all residents of the Village, have compromised that plot No.10, 1/5, which was allotted to Basant Singh by the orders of the Estate Officer, has been given plot Nos.3,3/2, 3/1 measuring 4400 sq. ft. in mutual exchange. The reason for this exchange was that plot Nos.10, 1/5 had been allotted to other allottees on account of private settlement. The area given to Basant Singh was the area which was earlier given to Jai Kishan, but was subsequently cancelled. Aforementioned plot Nos.3,3/2, 3/1 have been given to Basant Singh through private arrangement and they did not have any dispute regarding abadi land. The remaining land belonged to all oustees jointly, therefore, this remaining property shall be partitioned amongst all the remaining oustees, except Basant Singh, Shyam Singh and Kapoor Singh. The rest of the allottees will do mutual partition as per remaining joint abadi land.

On the basis of the aforementioned letter, Kanungo passed the following order, the translated version of which is as under:-

“It is submitted that as per the orders of Naib Tehsildar Capital Village Badali, on 12.5.55, Basant Singh was allotted numbers 2/5, 10, land measuring 4794 sq. ft. as per orders of Estate Officer. Therefore, on an application made by Inderjit to the effect that the aforementioned plot had fallen to the share of other oustees and the plots allotted to Basant Singh were got

vacated from Jai Kishan. It was also stated that in a private settlement amongst the allottees, plot No. 3, 3/2, 3/1 has been given to Basant Singh in lieu of 1/5, 10. Hence, order of allotment of plot No.1/5, 10 has been cancelled. The order of allotment of plots No.3,3/2, 3/1 may be passed.”

The aforementioned request was approved by the competent authority. Plaintiff failed to place on record any documents to establish the identity of the property or possession. From the claim of the allottees, it was nowhere mentioned that plot No.10, 1/5 was already allotted to Kapur Mal. It cannot be lost sight of the fact that there was a categorical pleading that plot No.1/5 had already been sold by the plaintiff. If it was so, the sale deed had not seen the light of the day. I am of the view that the plaintiff failed to discharge the onus despite examination of five witnesses to establish the sale and identity of the property. Sardara Singh PW-4 only acknowledged about the mutation. The aforementioned oral evidence would not have credence over the documentary evidence. Moreover, after 15.02.1956, there is no other order or material on the file to show the allotment of plot No.10,1/5 to anybody.

As an upshot of the aforementioned observations, the judgments and decrees of the Courts below are not sustainable. The same are hereby set-aside. The substantial questions of law, as noticed above, are answered in the appellant-defendant and against the respondent- plaintiff. The appeal is allowed. Resultantly, the suit of the respondent- plaintiff is dismissed.

March 18th, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No