

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

**RSA No.487 of 1987 (O&M)
Date of Decision.14.03.2019**

Shangara Singh (deceased) through LRs and others ..Appellants

Vs

Thakur Dass and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjeet Singh, Advocate
for the appellants.

Mr. K.S. Cheema, Advocate
for the respondent.

-.-

AMIT RAWAL J.

The present regular second appeal is directed against the concurrent finding of fact whereby the suit of the respondents-plaintiffs decreed by the trial court has been affirmed by the lower Appellate Court.

Plaintiffs Thakur Dass and Lachhman Dass sons of Labhu Ram, caste Harijan claimed possession of land measuring 23 kanals 4 marlas situated in village Jalala HB No.277, Tehsil Dasuya and comprised in Khasra No./Rect. No.20 Killa No.11/2(7-7), 12/2(1-5) 19 (7-16) 20(4-13) 22 (2-3) as per jamabandi for the year 1980-81 on the premise that the aforementioned land was in the ownership of Malkiat Singh son of Jaswant Singh, big landowner, predecessor-in-interest of respondents No.7 to 11. During his life time had mortgaged the suit with possession vide registered mortgage deed dated 6.5.1960 for valuable consideration of ₹1500/- and accordingly, plaintiffs were put into possession. Mutation in respect of the

aforesaid mortgage was also incorporated and lawful, peaceful and cultivating possession continued till illegally obtained possession of the suit land on 20.09.1982 from the plaintiffs under the guise of some allotment. The aforementioned proceedings claiming allotment were totally at the back of the plaintiffs and in violation of principles of natural justice. Despite repeated requests did not hand over possession.

Defendants No.7 to 11 supported the case of the plaintiffs by filing joint written statement whereas defendants No.1 to 6 opposed the suit and stated that Malkiat Singh son of Jaswant Singh was big land owner. Punjab Government under the provisions of Punjab Security of Land Tenures Act, 1953 declared the suit land as surplus and all the rights of Malkiat Singh extinguished and disputed land vested in the State Government. The act of mortgage was stated to be illegal as the mortgagor did not have right to mortgage and status of the plaintiffs as mortgagees was also disputed. Objection qua jurisdiction of the Civil Court as per provisions of Section 21 of the Punjab Land Reforms Act, 1972 was also taken.

Replication was filed by the plaintiffs denying all the averments and reiterating pleadings of the plaint.

Since parties were at variance, the trial Court framed the following issues:-

- “1. Whether the land in suit was declared as surplus land under Pb. Security of Land Tenures Act? OPD*
- 2. If issue No.1 is proved, whether all rights of Sh. Malkiat Singh extinguished and the land in dispute*

vested with the State Government? OPD

3. Whether the land in suit has been lawfully allotted to the defendant No.1 to 6 by Collector, Dasuya? OPD

4. Whether the jurisdiction of the civil court under Section 21 of the Land Reforms Act, 1972 is barred? OPD

5. Whether the suit is not maintainable against defendants No.1 to 6? OPD

6. Whether the plaintiffs have locus standi to file the present suit? OPD

7. If issue No.3 is proved, whether the entire proceedings and order of the Collector Agrarian Dasuya are void and nullity in law as per the allegation of the plaintiffs in the plaint? OPP

8. Whether the plaintiffs are entitled to possession of the suit land? OPP

9. Whether the written statement is vague and indefinite for want of correct particulars of alleged allotment of Collector Agrarian, Dasuya? If so its effect? OPP

10. Relief.”

Plaintiffs in support of averments examined two witnesses and tendered into evidence Ex.P1 to P11 i.e. revenue record and proceedings and closed the evidence. On the other hand, defendants No.1 to 6 examined DW1 Paramjit Singh and Darshan Singh appeared as DW2 and brought on record Ex.D1 to D8.

As noticed above, the trial Court decreed the suit and the

appeal filed before the lower Appellate was also dismissed.

Mr. Sanjay Majithia, Senior Counsel assisted by Mr. Inderjeet Singh, learned counsel appearing on behalf of the appellants in support of the memorandum of appeal raised the following submissions:-

(i) Mortgage deed had not seen light of the day and therefore, could not have been looked into by the Courts below in the absence of secondary evidence. In support of aforementioned, relied upon ratio decidendi culled out by Hon'ble Supreme Court in *Kalyan Singh Vs. Smt. Chhoti (1990) 1 SCC 266* and also *Benga Behera and another Vs. Braja Kishore Nand and others 2007(3) RCR (Civil) 240* to contend that certified copy of document is not a primary evidence.

(ii) Defendants were allotted land as per the allotment letter Ex.P8 dated 29.06.1979. Rule 18 of the Punjab Security of Land Tenures Rules, 1956 provides the procedure, which has been followed since Malkiat Singh did not have possession, mortgage in favour of plaintiffs automatically extinguished/cancelled.

(iii) The aim and object behind promulgation of the Punjab Land Reforms Act, 1972 was to consolidate and amend the law relating to ceiling on land holdings, acquisition of proprietary rights by tenants and other ancillary matters in the State of Punjab. The land as per provisions of Section 8 after declaration of surplus stood

vested in the State Government. Possession with the defendants was lawful, thus, suit was liable to be dismissed.

(iv) Plaintiffs could not claim possession by claiming themselves to be mortgagees or declaration as owners. The order of the Collector passed under the provisions of Punjab Security of Land Tenures Act did not automatically become invalid. It was obligatory upon the heirs of Malkiat Singh to submit an application for re-examination, for, the authorities at the helm of affairs would not know the factum of death or life of the big land owner.

(v) In view of the allotment, proprietary rights have been conferred upon the appellants-defendants making them absolute owners. The Civil Court did not have jurisdiction as order of allotment was challengeable under the provisions of Punjab Security of Land Tenures Act.

Per contra, Mr. K.S Cheema, learned counsel appearing on behalf of the respondents-plaintiffs supported the judgments and decrees rendered by the Courts below and stated that the appellants have not complied with the order dated 06.03.1987 whereby while issuing notice of motion and granting stay of dispossession, were directed to furnish the mesne profits to the satisfaction of the trial Court. The order of allotment Ex.P8 dated 29.06.1979 was at the back of the plaintiffs as well as the successors of Malkiat Singh,

defendants No.7 to 11. The law with regard to determination of surplus land on the demise of big land owner is no longer *res integra*. It cannot vest in the surplus the moment big land owner dies if matter is pending before any Court. It is settled law that Civil Court has jurisdiction in case the order of the Revenue Court or the quasi-judicial authority is not in conformity with the principles of natural justice or without jurisdiction, thus, there was bar for the Civil Court to assume jurisdiction under Section 9 of the Code of Civil Procedure.

I have heard learned counsel for the parties, appraised the paper book, records of the courts below and of the view that following substantial questions of law arise for determination by this Court:-

- (i) Whether the appellants were conferred proprietary rights and became absolute owners, in view of the allotment Ex.P8 dated 29.06.1979?
- (ii) Whether the order of allotment Ex.P8 dated 29.06.1979 was passed in compliance of principles of natural justice?

The proceedings Ex.P7 and P8 reveal that the Collector while entertaining the application of defendants No.1 to 6 did not issue any notice to the legal heirs i.e. defendants No.7 to 11 i.e. successors-in-interest of Malkiat Singh, big landowner and as well as the plaintiffs, who were in possession of the suit property. Though the plaintiffs were already given the allotment being the tenants as per the provisions of Punjab Land Reforms Act and Punjab Security

of Land Tenures Act wherein it was specifically provided that as and when proceedings of declaration of land surplus, permissible area of tenant is required to be determined. Once the proceedings do not indicate the compliance of natural justice, there would be no force in the argument of Mr. Majithia with regard to jurisdiction of the Civil Court, thus, objection of availing alternative remedy by filing appeal is hereby rejected.

There is no dispute to the ratio decidendi with regard to certified mortgage deed but the fact remains that claim of the plaintiffs was laid on two grounds. One of having put into possession on the basis of mortgage deed and other on the basis of allotment Ex.P2 and P3 dated 19.04.1962. It is also matter of record that proceedings qua declaration of land surplus at the hands of Malkiat Singh were decided on 28.09.1960 and mutation of inheritance in favour of defendants No.7 to 11 was sanctioned on 28.11.1963. For all intents and purposes, allotment in favour of plaintiffs was prior thereto. Right of Malkiat Singh did not extinguish owing to his demise, as the surplus land has to be re-determined by taking into consideration the number of legal heirs left by the deceased. The applicability of Rule 20 of Punjab Security of Land Tenures Act, 1956 would not also come into play as it deals with priority for resettlement of certain tenants. It has not come on record under what circumstances defendants No.1 to 6 obtained allotment without proving to be tenants of Malkiat Singh. The factum of non-compliance of the order dated 06.03.1987 could not be controverted by Mr. Majithia or his assisting counsel.

In view of such circumstances, concurrent finding of fact and law cannot be said to be suffering from illegality and perversity. The substantial questions of law are answered against the appellants-defendants No.1 to 6 and in favour of the respondents-plaintiffs. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 14, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No