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

RSA No.2346 of 1988 (O&M)
Date of Decision.05.04.2019

Sunder Ram and others ...Appellants

Vs

State of Haryana and others ..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jagdish Manchanda, Advocate
for the appellants.

None for the respondents.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the concurrent finding of fact whereby the suit of the appellant-plaintiff for declaration and consequential relief of permanent injunction by setting aside the orders dated 03.11.1981, 13.05.1982 and 11.05.1985 passed by the Collector, Commissioner and Financial Commissioner respectively has been dismissed by the trial Court and affirmed in appeal.

Plaintiffs sought, the aforementioned relief, on the ground that they were residents of the village and earned their livelihood by means of cultivation of the agricultural land. They were ordered to be ejected from the land of Sardara and Telu as per the order of the Collector dated 15.11.1976 with the condition that they were settled on the surplus land which was to be allotted. Plaintiffs were allotted land by the prescribed authority under the Haryana Ceiling on Land Holdings Act, 1972 on 30.09.1980 and amount of ₹1229.35 paise was deposited as first installment on 1.1.1981. Possession was delivered to them and thus, became full-fledged owners. Even necessary mutation was also sanctioned but the Collector vide order dated 3.11.1981 cancelled the allotment letter which power was not conferred upon him and affirmed by the Commissioner as well as Financial Commissioner. The aforementioned orders were not sustainable in the eyes of law, as defendants were neither entitled for allotment nor deposited installments by virtue of allotment by the concerned Department. A writ petition was filed by the plaintiff in this Court but the same was dismissed *in limine*. The allotment in favour of defendant No.2 to 21 vide impugned order was against the provisions of law as actual physical possession of the suit land was never disturbed.

Defendants opposed the suit and denied allotment. It was stated that land at the hands of Sardara and Telu was declared surplus but the allotment made by the prescribed authority was cancelled on 3.11.1981 and thereafter, defendants No.2 to 21 were given the allotment and physical possession.

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

> *"1. Whether plaintiffs were in cultivating possession of some land and were ejected vide order of the Assistant Collector as alleged? OPP*
> *2. Whether the suit land was allotted to the plaintiff vide order dated 30.09.1980 by the prescribed authority and they were in possession as such? OPP*
> *3. Whether the plaintiffs have deposited installments in respect of the suit land, if so, its effect? OPP*

4. Whether impugned orders passed by the Financial Commissioner and lower Revenue Authorities are illegal, void and not binding of the plaintiffs as alleged? OPP

5. Whether the suit is bad for want of notice under Section 80 of the Code of Civil Procedure? OPD.

6. Whether Civil Court has no jurisdiction? OPD

7. Whether plaintiffs have no locus standi? OPD

8. Whether suit is barred by limitation? OPD

9. Whether suit is not properly valued for the purposes of court fee and jurisdiction?

10. Whether plaintiffs are estopped from filing the present suit? OPD

11. Relief."

Plaintiffs examined four witnesses and brought on record umpteen number of documentary evidence including proceedings under Section 145 Cr.P.C. On the other hand, defendants examined DW1 Brij Lal and tendered into evidence copy of the order passed in the writ petition as Ex.D1 and order passed in suit Telu Ram and others Vs. State of Haryana as Ex.D2.

The trial Court on examining the treasury challans Ex.P19 to P25 amounting ₹1229/- found that though the amount was deposited by the plaintiffs but the order of the Collector had become final, in view of the fact that the plaintiffs had lost right in the writ petition bearing No.1972 of 1978 which was dismissed on 8.1.1978 (Ex.D1), thus, dismissed the suit. The appeal taken before the lower Appellate Court was also dismissed.

Mr. Jagdish Manchanda, learned counsel appearing on behalf of the appellants submitted that judgments and decrees of the

Courts below are not sustainable in the eyes of law. Both the Courts below erred in holding that they did not have jurisdiction, as when the orders are without jurisdiction, provisions of Section 9 CPC can always be pressed into service. Ex.P-31 to P-33 were not looked into in correct perspective as the respondents were not eligible as they were residents of different places. The impugned orders of Collector Ex.P15 and Financial Commissioner Ex.P27 were *ultra vires* as there was a provision of review duly vested in the Prescribed Authority, therefore, there was overstepping of jurisdiction. Since the appellants were ejected tenants, thus, fell within category C of Para 4 of the Scheme, in such circumstances, defendants did not have any eligibility for allotment. True interpretation of Punjab Security of Land Tenures Act and Ceiling Act envisage vesting of power of review in the Prescribed Authority, thus, urges this Court for setting aside the judgments and decrees under challenge.

There is no representation on behalf of the respondents despite service.

I have heard learned counsel for the parties, appraised the paper book and of the view that no substantial question of law involves in the present appeal for determination by this Court. The core question involved for adjudication is whether on non-deposit of balance installment after allotment, the suit property would be vested in the Prescribed Authority as per the provisions of Section 12 (3) of the Haryana Ceiling on Land Holdings Act, the answer would be 'YES', for, on coming into force of the Act, all the properties stood vested in the Prescribed Authority. Section 26 of the aforementioned Act lays an embargo on the jurisdiction of the Civil Court to entertain and proceed with the suit for transfer of the land affecting rights of the State Government or settle, decide and deal in any matter. In other words, that order of the Financial Commissioner cannot be challenged. Plaintiffs have not been able to establish on record that they ever belonged to Category C and were entitled to allotment over and above the claim of defendants No.2 to 21. No express provisions of law were brought on record in respect of aforementioned argument and pleadings.

In pursuance of proclamation was made for allotment of surplus land on 15.6.1976, appellants did not submit application in Form U.S.2 for allotment of disputed land as they had become ejected tenants only on 15.11.1976 i.e. after allotment of the disputed land. In such circumstances, they were not eligible for allotment of the land being ejected tenants.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 05, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No