

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

**RSA No.1896 of 1995 (O&M)
Date of Decision: 02.07.2019**

State of Punjab and another

.....Appellants

Versus

Karnail Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Arun Kumar, DAG., Punjab
for the appellant.

Mr. Anish Setia, Advocate
and Mr. Surinder Singh, Advocate
for respondent no.1.

LISA GILL, J.

State of Punjab, through Tehsildar (Sales) and Central Government through Collector, Hoshiarpur, being aggrieved of judgement and decree dated 16.02.1995 passed by the learned Additional District Judge, Hoshiarpur, whereby judgement and decree dated 01.06.1990, passed by the learned Sub Judge, Ist Class, Garhshankar, has been set aside, have preferred the present appeal.

Brief facts necessary for the adjudication of the case are that the plaintiffs i.e. Karnail Singh, Piara Singh, sons of Dilbagh Singh and Satnam Singh son of Piara Singh filed a suit for declaration to the effect that the said plaintiffs along with defendants no.4 and 5 were owners in possession of land measuring 10 Kanals i.e., 2/ 5th share of the land as detailed in the plaint. As a consequential relief, they prayed for permanent injunction for

restraining defendants no.1 to 3 from interfering in their lawful and peaceful possession and in the alternate, suit for possession of 10 Kanals out of 25 Kanals of land as detailed above.

It is pleaded that Karam Singh son of Gopal Singh, the predecessor-in-interest of the plaintiffs and defendants no.4 and 5 was the owner in possession of land measuring 25 Kanals. He mortgaged the same with Muslims before partition. In the year 1947, when the partition of the country took place, the suit property vested with the Central Government. They continued in possession over the property. Beant Singh died and was succeeded by Kabal Singh, Dilbagh Singh and Chanan Singh. Dilbagh Singh also passed away and was succeeded by Karnail Singh and Piara Singh i.e., plaintiffs no.1 and 2. It is further pleaded that Kabal Singh, Chanan Singh sons of Beant Singh, Karnail Singh, Piara Singh sons of Dilbagh Singh and Karam Singh son of Gopal Singh got redeemed, 10 Kanals of land out of 25 kanals of land as detailed above. Order of redemption dated 22.08.1956 was passed by the competent officer, Gharshankar. Mutation no. 2044 in this regard was sanctioned in the names of Kabal Singh and Chanan Singh etc. Rest of the 15 Kanals out of 25 Kanals of said land was put to auction in 1957. Plaintiffs and defendants no.4 and 5 were claimed to be owners in possession of the suit land. Karam Singh on his death was succeeded by Chanan Kaur, who died and was succeeded by Satna Singh son of Piara Singh, Karnail Singh, Piara Singh sons of Dilbagh Singh on the basis of a registered will dated 10.01.1979. Chanan Singh son of Beant Singh died and was succeeded by his brother Kabal Singh. Kabal Singh also passed away and he was succeeded by Gian Kaur and Parkash Kaur. Plaintiffs earlier

filed a civil suit, which was withdrawn with liberty to file fresh on the same cause of action. It is pleaded that defendant no.1-Ram Asra was a very strong headed person and was threatening to take forcible possession of the land from the plaintiffs and defendants no.4 and 5, claiming to have purchased the whole land measuring 25 Kanals from the present appellants. Hence, the suit was filed.

Defendant no.1-Ram Asra, resisted the suit. All the averments in the plaint were denied. It is alleged that he purchased land measuring 25 Kanals for a sum of ₹50,000/- on 06.12.1984 from the present appellants in auction proceedings. He was put in possession of the suit property and is in possession thereof since then. Defendant no.2, was competent to transfer the land to him being its rightful owner. Various preliminary objections were also raised by defendant no.1 in his written statement.

The present appellants i.e. defendants no.2 and 3 also contested the suit with the averments that the land measuring 25 Kanals was mortgaged with Muslims before partition of the country. The suit property earlier vested in the Central Government. Plaintiffs were never in possession of the entire property and the same was never redeemed as alleged. The suit land measuring 25 Kanals was thus auctioned on 24.09.1984 in accordance with the provisions of the Punjab Package Deal Properties (Disposal) Act, 1976 (for short 'Act'). Defendant no.1 was stated to be the successful auction purchaser, who was put in possession of the property in question on 06.12.1984.

Defendants no.4 and 6 were proceeded against ex parte vide order dated 21.05.1990.

Replications were filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether Karam Singh and Beant Singh were the owners of land measuring 25 Kanals and they mortgaged the same with the Muslims as alleged?OPP
2. Whether Karam Singh and Beant Singh remained in possession of the mortgaged land as alleged, if so its effect?OPP
3. Whether Beant Singh was succeeded by his sons Kabul Singh, Dilbagh Singh and Chanan Singh?OPP
4. Whether Kabul Singh etc., not land measuring 10 Kanals out of land measuring 25 Kanals redeemed as alleged in para no.4 of the plaint, if so its effect?OPP
5. Whether Karam Singh was succeeded by Chanan Kaur as alleged?OPP
6. Whether Chanan Kaur executed a valid will dated 10.01.1979 in favour of Satnam Singh etc., as alleged? OPP
7. Whether Chanan Singh was succeeded by Kabul Singh? OPP
8. Whether Kabul Singh executed a valid will dated 13.10.1970 in favour of Gian Kaur etc., as alleged?OPP
9. Whether the plaintiffs are in possession of the suit land? OPP.
10. Whether the suit is within time?OPP
11. Whether the plaintiffs have locus standi to file this suit? OPP
12. Whether the suit is not maintainable in the present form? OPD-1
13. Whether the plaintiffs are estopped to file this suit by their acts, conduct and admissions?OPD
14. Whether the plaint is vague and defective as alleged, if so its effect?OPD-1
15. Whether the suit is bad for non-joinder of necessary parties?OPD-1
16. Whether the plaintiffs can claim joint possession of more than their shares?OPP
17. What is the effect of previous pleadings of Civil Suit titled as Karnail Singh Vs. Ram Asra etc., on the present suit?OPD-1
18. Whether defendant no.1 has purchased land measuring 25 Kanals on 06.12.1984 as alleged, if so its effect?OPD-1
19. Whether defendant no.1 is a *bona fide* purchaser for consideration and without notice as alleged?OPD-1
20. Whether the civil court has jurisdiction to try this suit? OPP
21. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court observed that the plaintiffs failed to prove that 10 Kanals of land was ever redeemed by them, as the redemption deed was not proved or even placed on record. Therefore, the suit filed by them was dismissed.

Appeal was preferred by plaintiff-Karnail Singh. By way of leading additional evidence permitted by the learned First Appellate Court, redemption deed dated 22.08.1956 was placed on record. Learned Additional District Judge, Hoshiarpur, held that 10 Kanals of land stood redeemed. Redemption order dated 22.08.1956 was duly proved on record. Thus, judgement and decree dated 01.06.1990 passed by the learned Sub-Judge, Ist Class, Gharshankar, was set aside and a decree for declaration to the effect that the plaintiffs along with defendants no.4 and 5 are owners in possession of 10 Kanals of land, was passed.

Aggrieved therefrom, present appeal has been filed by the present appellants.

It is relevant to note that defendant-Ram Asra, has not preferred any appeal in this matter.

Learned counsel for the appellants vehemently argues that jurisdiction of the Civil Court is barred in this case. As per Section 16 of the Act, the land in question (i.e., 25 Kanals), it is stated has been rightly auctioned in 1984 in favour of respondent-Ram Asra, who was the highest bidder. In case, the plaintiffs were aggrieved thereof, an efficacious remedy was available to the plaintiffs, which was not availed by them. Present suit is

barred under the Act as above. It is further submitted that the plaintiffs were wrongly permitted to produce the redemption order dated 22.08.1956 by way of additional evidence by the learned Additional District Judge, Hoshiarpur. It only amounts to filling up of lacunae in their case. Learned counsel for the appellants submits that the following substantial questions of law arise for consideration of this appeal:-

1. Whether the jurisdiction of the Civil Court to entertain the suit was barred as per Section 16 of the Act.?
2. Whether auction of the suit property was rightly conducted by the appellants in 1984.?
3. Whether judgement and decree dated 16.02.1995, passed by the learned Additional District Judge, Hoshiarpur, is liable to be set aside being illegal and perverse.?

It is thus prayed that the present appeal be allowed and impugned judgement and decree dated 16.02.1995, passed by the learned Additional District Judge, Hoshiarpur, be set aside and judgement and decree dated 01.06.1990 passed by the learned trial Court, be upheld.

Learned counsel for the respondents while refuting the abovesaid arguments submits that a well reasoned and logical judgement has been rendered by the learned Additional District Judge, Hoshiarpur on the basis of the evidence on record. It is submitted that once the land in question was duly redeemed, the appellants had no right whatsoever to auction the same in 1984. It is further submitted that as the *lis* in the present matter pertains to the title of the property, it cannot be said that the jurisdiction of the learned Civil Court is barred in this case. It is thus prayed that the present appeal be dismissed and the judgement and decree passed by the learned Additional District Judge, Hoshiarpur, be upheld.

I have heard learned counsel for the parties and have gone through the record with their assistance.

There is no dispute regarding the land having been mortgaged with the Muslims by the predecessor-in-interest of the plaintiffs before the partition of the country. There is further no dispute that after partition of the country in the year 1947, the suit property vested with the Central Government. It is relevant to note at this juncture that the predecessor-in-interest of the plaintiffs were the owners of 25 Kanals of land. 10 Kanals of land, which is the subject matter of the present appeal, was duly redeemed on 22.08.1956. It is to be noticed that there is neither any pleading or averment to the effect that order dated 22.08.1956 is a forged, fabricated or a procured document. The said document, needless to say has a vital bearing on the matter and is essential for the just adjudication of the matter. Therefore, it cannot be said that application for leading additional evidence for placing on record the said document, has been wrongly allowed by the learned Additional District Judge, Hoshiarpur.

It is a matter of record that in respect to the rest of the 15 Kanals of land, another suit titled as 'Jaggu Vs. Ram Asra' was filed and decided by the learned trial Court on 01.06.1990 itself. In the suit titled 'Jaggu Vs. Ram Asra', the plaintiffs therein had sought a declaration to the effect that they are owners in possession of land measuring 15 Kanals having purchased the same in a public auction on 13.07.1957. The said civil suit was decreed and it was held that auction of land in favour of Ram Asra conducted in 1984, did not confer any right upon him. In both the decisions, diverse views were taken by the learned trial Court regarding validity of the

auction of this land conducted in 1984, whereby 25 Kanals of land was transferred to Ram Asra. The proceedings *qua* 15 Kanals out of 25 Kanals land were held illegal as the plaintiffs therein were proved to have purchased the same in a public auction on 13.07.1957 but the suit filed by the plaintiffs in the present case was dismissed for that reason that order of redemption and the mutation was not placed on record by the plaintiffs.

In the present case, the suit was dismissed by the learned trial Court on 01.06.1990, only on the ground that order of redemption of the mortgage was not placed on record. Order of redemption dated 22.08.1956 was duly taken on record by the learned Additional District Judge, Hoshiarpur. Therefore, it is apparent that out of 25 Kanals of the property belonging to Karam Singh (predecessor-in-interest of plaintiffs), 10 Kanals of land was redeemed in August 1956. Mutation no. 2004 was sanctioned in this respect. Remaining 15 Kanals of land was auctioned by the appellants on 13.07.1957. Therefore, the appellants clearly had no right whatsoever to auction 25 Kanals of land, including 10 Kanals of land, which is the subject matter of the present case, in the year 1984 to Ram Asra. It bears reiteration that no appeal has been filed by Ram Asra challenging judgement and decree dated 16.02.1995 passed by the learned Additional District Judge, Hoshiarpur. It is further informed that the matter arising out of the civil suit titled as 'Jaggu Vs. Ram Asra' i.e., the civil suit which was decided on 01.06.1990, has also attained finality against the defendants.

Similarly, I do not find any merit in the argument raised by learned counsel for the appellants that jurisdiction of the civil Court in this matter was barred. It is a matter of record that issue no.20 i.e., regarding

jurisdiction of the Civil Court to try the matter, was not opposed by the present appellants during the course of arguments, which is reflected in para no.31 of the judgement dated 01.06.1990, passed by the learned trial Court. Moreover, as discussed in the foregoing paras, in the factual matrix of the present case, where the question of title to the property is involved, it cannot be said that jurisdiction of Civil Court is barred.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in the impugned judgement and decree dated 16.02.1995, passed by the learned Additional District Judge, Hoshiarpur.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgment and decree dated 16.02.1995 passed by the learned Additional District Judge, Hoshiarpur, is upheld.

Present appeal is, consequently, dismissed with no order as to cost.

02.07.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.