

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

RSA-1459-1999(O&M)

Date of decision:-25.3.2019

Smt.Meera Devi and another

...Appellants

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Ms.Rupinder K. Thind, Advocate
for the appellants.

Mr.D.R. Singla, Deputy Advocate General, Haryana and
Mr.Harkesh Kumar, Assistant Advocate General, Haryana.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Sh.Moti Ram (since dead) through his wife Smt.Meera Devi and son – Dhan Singh had brought a suit for declaration to the effect that they are owners in possession of the suit land measuring 55 kanals 15 marlas in equal shares, whereas defendant No.3 – Smt.Gulabi is owner in possession of land measuring 79 kanals 7 marlas situated at village Bhuna, Tehsil Fatehabad then District Hisar and defendant No.1 i.e. State of Haryana through Collector, District Hisar as well as defendant No.2 – Rehabilitation Department through Tehsildar Sales, Hisar have no concern therewith and

that orders dated 31.7.1989 and 16.4.1984 passed by defendant No.2 are wrong, illegal, null and void without jurisdiction so is the order of allotment passed by defendants No.1 and 2 in favour of Smt.Jai Kori and Sanad allotment dated 16.9.1991 and mutation No.1724/1 and report roznamcha No.407 dated 3.8.1991.

The plaintiffs claimed that they were owners in possession of the suit land situated at village Bhuna, Tehsil Fatehabad(now District), then District Hisar measuring 54 kanals 9 marlas having purchased it from Dhanpat Rai son of Shri Ram vide sale deed dated 26.5.1977 for a sale consideration of Rs.19,000/-; that defendant No.3 had purchased 10 acres of land vide sale deed dated 20.5.1970; that the predecessor in interest of the plaintiffs mortgaged the land to the Muslims to the extent of 817/3362 share vide mutation No.2040 dated 23.7.1943; that the possession of the land remained with mortgagor; that the plaintiffs were in possession as owners of the suit land to the extent of 55 kanals 15 marlas for the last 14 years and prior to them their predecessor in interest were in possession; that the defendant No.3 was in possession of the suit land measuring 79 kanals 7 marlas for the last 12 years peacefully without any disturbance and prior to her, her predecessor in interest had been in possession of that land; that defendant No.2 had passed impugned orders dated 16.4.1984 and 31.7.1989 in connection with the suit land, which are liable to be set aside since if the suit land was mortgaged with the Muslims then defendants No.1 and 2 never remained in possession thereof and plaintiffs and defendant No.3 have become owners by efflux of time; that defendant No.3 had previously filed a Civil Suit No.558 of 1986, which was decreed

by Civil Judge, consequently defendant No.3 was declared owner of 10 acres of land; that defendants No.1 and 2 were directed to get the land partitioned. According to the plaintiffs, the order of allotment passed by defendants No.1 and 2 in connection with land measuring 29 kanals 13 marlas in favour of Smt.Jai Kori and Sanad allotment dated 16.9.1991, the mutation sanctioned on the basis thereof as well as report roznamcha are wrong and illegal, liable to be set aside; that defendants No.1 and 2 wanted to interfere in the possession of the plaintiffs and defendant No.3 of which they have no right. As such feeling aggrieved, the plaintiffs had brought the suit in question.

On notice, defendants No.1, 2, 4 and 5 had appeared and filed written statement contesting the suit, whereas defendant No.3 did not appear despite service, as such was proceeded against ex parte.

Defendants No.1 and 2 filed a joint written statement raising preliminary objections with regard to jurisdiction of the Civil Court to entertain and try the suit contending that plaintiffs should have approached the higher authorities of the department instead of knocking at the door of the Civil Court; that the suit is bad for want of notice under Section 80 CPC; that the plaintiffs had no locus standi to file the suit; that the suit was not maintainable; that the suit was bad for non-joining of necessary parties; that the suit was barred by limitation; that the plaintiffs had not challenged the order dated 31.7.1989 of the Tehsildar (Sales) – cum – Assistant Collector Ist Grade in the competent Court of law and as such the suit was barred by the principle of *res judicata* as well as under Order II Rule 2 CPC. On merits, such defendants submitted that S/Sh.

Moti Ram son of Ratti Ram and Dhani Singh son of Moti Ram had purchased area measuring 168 kanals 2 marlas shown as Arazi Matruka in the jamabandi for the year 1976-77 subject to the rights of the Custodian/Government which is clear from the mutations No.663 and 1139, therefore, they were wrongly recorded as mortgagors and Arazi Matruka as mortgagee; that the area was mortgaged with muslims/evacuee much before the partition of the country and the right, title and interest of muslims evacuee in the land vested in custodian automatically by operation of law; that the land was not got redeemed within the period of limitation and therefore the Custodian/Government became its owner by efflux of time for redemption much before the alleged sale of the ownership rights by the mortgagors to the plaintiffs; that the mortgagors had no right to sell the same to the plaintiffs because he ceased to be owner/mortgagor of the land had no right, title and interest therein; that the plaintiffs have no right, title and interest in the evacuee shares in the land, which had already vested in the custodian department; that the land was partitioned vide order dated 24.7.1984 but the order was set aside by the Civil Court vide judgment and decree dated 12.4.1989 in the suit filed by Smt.Gulabo and fresh proceedings for partition of the land were initiated in compliance with the decree and the land was partitioned vide order dated 31.7.1989; that 29 kanals 13 marlas of land was allotted to Smt.Jai Kori and possession was delivered to her. Refuting the remaining allegations, such defendants prayed for dismissal of the suit.

In the written statement filed by defendant No.4, she also took various legal objections contending that she had obtained possession

of land to the extent of 29 kanals 13 marlas from the Custodian Department, which she exchanged with Rajinder Singh son of Sardool Singh vide judgment and decree dated 29.8.1992 and Rajinder Singh is in possession of that land. She also craved for dismissal of the suit.

Defendant No.5 in the written statement filed by him also raised various legal objections taking the stand so taken by defendant No.4 in the written statement. He also prayed for dismissal of the suit.

The plaintiffs had filed replication controverting the allegations in the written statements whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs and defendant No.3 are owners in possession over the suit land as alleged in the plaint? OPP.
2. Whether the orders dated 31.7.1989 and 16.4.84 passed by defendant No.2 is null and void, against fact and law, without authority and without notice and are liable to be set aside? OPP.
3. Whether the allotment order and sanad allotment dt. 16.9.91 is liable to be set aside? OPP.
4. Whether the mutation No.1724/1 sanctioned on 20.5.91 and rapat No.407 dated 3.8.91 are liable to be set aside? OPP.
5. Whether the suit is bad for want of notice under Section 80 CPC? OPD.
6. Whether the plaintiffs have no locus standi to file the present suit? OPD.

7. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD.
8. Whether the plaintiffs have suppressed the material facts in the suit? OPD.
9. Whether the suit is time barred? OPD.
10. Whether the defendants are entitled for special costs under Section 35-A of CPC? OPD.
11. An additional issue No.3A was framed on 27.4.1995, which is as under:
 - 3-A Whether the judgment and decree dated 29.9.1992 and mutation if any on the basis of such judgment and decree are without jurisdiction, fraudulent, null and void, not binding on the rights of the plaintiff and liable to be set aside as alleged? OPP.
12. Additional issues No.10A to 10-C were framed vide order dated 21.9.1995, which are as under:
 - 10-A Whether the suit is not maintainable in the present form? OPD.
 - 10-B Whether the civil Court has no jurisdiction to try the present suit? OPD.
 - 10-C Whether defendant No.5 is a bonafide purchaser of the suit land with consideration, if so to what effect? OPD(No.5).
13. Relief.

In order to prove their case, the plaintiffs examined Dhan Singh as PW1, Ganga Sahah as PW2, Sh.Dharam Pal, Patwari as PW3

and Sh.Mani Ram as PW4.

On the other hand, the defendants examined Sh.Hari Chand, Tehsildar (Sales) as DW1, Sh.Kirpal Singh as DW2, Sh.Suresh Kumar, Civil ahlmad as DW3, Sh.Dharam Parkash, Kanungo as DW4, Sh.Daya Kishan, Patwari as DW5, Sh.Nand Lal as DW6, Sh.Jibe Singh, Clerk as DW7, Sh.MR. Mehta, Advocate as DW8, Sh.I.P. Bishnoi as DW9, Sh.Ashok Kumar, Kanungo as DW10, Sh.Jaswant Singh as DW11 and Sh.Rajinder Singh as DW12.

After hearing learned counsel for the parties, the trial Court decided issues No.1 to 4 against the plaintiffs, issue No.3-A against the defendants, issue No.5 against the defendants, issue No.6 in favour of the defendants, issue No.7 against the defendants issue No.8 against the defendants, issue No.9 in favour of the defendants, issue No.10 against the defendants, issue No.10-A in favour of the defendants, issue No.10-B in favour of the defendants, issue No.10-C in favour of defendant No.5. Resultantly, suit of the plaintiffs was dismissed with costs. This was so done vide judgment and decree dated 15.5.1996.

Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Hisar which was assigned to Additional District Judge, Hisar, who vide judgment and decree dated 21.10.1998 dismissed the same.

Feeling aggrieved by the judgments and decrees passed by the Courts below, the plaintiffs have knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside.

On getting notice of regular second appeal, the respondents/plaintiffs have appeared before this Court through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

The Courts below by properly analyzing the evidence adduced and correctly interpreting the law had found little merit in the case of the plaintiffs and the version of contesting defendants to be plausible and reliable. It has been observed that plaintiffs and defendant No.3 have no concern with the ownership and possession of the suit land as such there was no necessity of issuing any notice to them before passing of impugned orders. The orders are legal and valid and so in the mutation sanctioned on the basis thereof. As a matter of fact, the plaintiffs have no locus standi to bring the suit. Furthermore, the suit is barred by limitation since the mortgage had not been redeemed within the period of 30 years. The jurisdiction of the Civil Court was also found to be barred under Section 46 of the Administration of Evacuee Act, 1950.

Learned First Appellate Court dealt with the matter in a very clear and convincing manner. For ready reference the relevant paras are being reproduced as under:

10. At the outset, it may be mentioned that as is revealed from the pleadings of the parties, it is admitted case of the parties that the land in dispute was mortgaged with Jhumman vide mutation No.2040 dated 23.7.1943 and the said Jhumman or any of his successor in interest has not got

the same redeemed till today. The period of limitation for redemption already stands expired. The contention of learned counsel for the plaintiffs to the effect that suit land was purchased vide sale deed Ex.P1 and there is not mentioned name of mortgage in the sale deed is without any merit. Creation of mortgage is even admitted in the pleadings and further a perusal of the documents Ex.D26 and Ex.D27 shows that Jhumman s/o Rajput is recorded as mortgagee in possession. Thus, on migration of the muslims at the time of partition of the country, the interest of the evacuee vested in the custodian free from all incumbrances and the custodian i.e. defendant No.2 has partitioned the land vide order dated 31.7.1989 according to the shares of the custodian and has allotted the land to defendant NO.4, who is predecessor-in-interest of defendant No.5.

11. It is urged by the learned counsel for the plaintiff appellant that no notice was given before effecting partition vide order dated 31.7.1989 nor any notice was given at the time of delivering of possession on 3.8.91 and as such the order passed by custodian and the proceedings regarding delivery of possession are illegal and not binding on the rights of the plaintiff-appellant. But this contention of learned counsel for the appellant is without any merit because it has transpired from the evidence on the file that notice was given to Moti Ram s/o Rati Ram plaintiff

regarding the proceedings for partition and the same is Ex.D22. Notice Ex.D21 addressed to Dhanpat is also produced. Then it is also revealed from the perusal of notice Ex.D23 that defendant NO.2 has also issued notice regarding the order dated 16.4.84. Even Kanungo has also issued notice to the plaintiff on 31.7.91 regarding delivering of possession to defendant No.4 allottee on 3.8.91 and the said notice is Mark X. A perusal of the copy of the Rapat Roznamcha No.407 Ex.D10 shows that notice was given to both the parties to appear on the spot. In the order dated 16.4.80 Ex.P5 also presence of Moti Ram plaintiff is recorded and he has been heard. Thus, the argument advised by learned counsel for the plaintiff-appellants is without any merit. The plaintiffs have been given ample opportunity of being heard. Moreover, both the plaintiffs are father and sons besides they being co-owners in the joint land. Even otherwise it is well settled that notice to one of the joint owners is notice to all and the plaintiffs have filed this suit for their benefit as well as for the benefit of defendant No.3. Authorities Sunheri Devi Vs. State of Haryana 1983 PLJ 356, Parmeshwari Vs. Smt.Kauri 1986 PLJ 46 cited by learned counsel for the respondents may be looked into on the point that a co-sharer represents entire body of co-sharers and can ask for partition on their behalf.

12. Apart from it, it is also pertinent to mention that it has

transpired from the evidence adduced on the file that Smt.Gulabi defendant No.3 had filed a similar suit challenging the order dated 31.7.89 as is clear from copy of the plaintiff Ex.D19 and that suit was dismissed on 29.7.95 as is reflected from copy of the judgment Ex.D33. The said judgment has not been challenged in appeal by the plaintiffs and has become conclusive and final.

13. It is pertaining to mention that defendant No.2 is competent under Section 10(A)(iv) and Section 10(b)(iii) of the Evacuee Interst Separation Act, 1951 to partition the property according to the shares of the evacuee and the claimant and deliver possession accordingly. A perusal of these provisions also shows that even otherwise there is no requirement of the notice but still the impugned orders have been passed after giving notice to concerned parties. On the basis of the oral mortgage dated 25.6.1943, mutation No.2040 was sanctioned on 23.8.1943 and copy of that mutation is Ex.D26. It has transpired from the evidence lead that Jhumman mortgagee had taken possession of the moretgage land as is revealed from the revenue entries contained in jamabandi and Khasra Girdawari Ex.D20 and D28. Even otherwise as envisaged by provisions of Section 8(4) of the Administration of Evacuee Property Act, any person in possession of evacuee land shall be deemed to be holding it on behalf of the custodian and shall on demand

surrender possession to the custodian. Authority Sayyed Salahuddin Vs. Janki Menta AIR 1957 Patna 549 may be looked into on this point.

14. Learned counsel for the respondent has also submitted that ownership of mortgaged land can vest in the custodian even without any declaration from the Civil Court as the rights of the mortgagor stand extinguished by efflux of time as is clear from the notification Ex.D2. Authority Gianparkash Vs. State of Haryana AIR 1984 Punjab and Haryana 356 and Jagjeet Distilling Vs. Department Custodian General AIR 1963 Punjab 494 may be looked into on this point.

15. Learned counsel for the respondent has also urged that jurisdiction of the Civil Court is also barred to decide the question whether evacuee property has vested in the custodian or not in view of the provisions of Section 46 of the Administration of Evacuee Property Act and only competent authority under the Act is the custodian. Authority Parkash Chand Vs. Custodian AIR 1959 Punjab 64 and Custodian Evacuee Property Vs. Jafran Begum AIR 1968 Supreme Court 169 have been cited by learned counsel for the respondents. Thus, the order of partition of the joint land which has been passed under Section 10 of the Act of 1951 could only be challenged by way of appeal as proceedings under Section 14 of the Act but no appeal has been filed and

as such the order passed by custodian has become conclusive and final as envisaged by Section 18 of the said act. The plaintiffs have failed to prove any violation of the statutory provisions so as to invoke jurisdiction of the Civil Court.

16. *It has also transpired from the evidence adduced on the file that Smt.Jai Kouri defendant No.4 has exchanged the land allotted to her with the land belonging to defendant No.5 and a decree dated 29.6.92 has been passed declaring defendant No.5 as owner in possession of the allotted land measuring 29 kanals 13 marlas. Rajinder Singh DW12 has also categorically stated that he is in possession of the land for the last about 4 years and had got this land in exchange from Jaikouri. No evidence has been lead by the plaintiff to contradict the statement of Rajinder Singh DW12. Thus, in my considered opinion learned trial Court has rightly recorded findings on various issues and those findings are reaffirmed as correct.*

As regards the authorities referred to by learned counsel for the appellants i.e. **Dr.Rajendra Prakash Sharma Versus Gyan Chandra and Ors., 1980 AIR(SC) 1206, Abdul Hakim Khan and others Versus Regional Settlement Commissioner-cum-Custodian of Evacuee Property, Bhopal and others, 1961 AIR(SC) 1391, Sat Narain and another Versus State of Haryana and another, 2015(46) RCR(Civil)296** and **Devinder Nath @ Devinder Singh Versus Kishori Lal, 1993 RRR 8,**

those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

25.3.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No