

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

SAO No. 18 of 2009 (O&M)

Date of Decision: May 23, 2019

Munshi Ram

.....APPELLANT

VERSUS

Pardeep and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arun Singal, Advocate
for the appellant.

Mr. Sudhir Aggarwal, Advocate
for respondents No. 1 to 6.

Mr. Nitin Jain, Advocate
for respondent No. 9.

SURINDER GUPTA, J.(Oral)

Heard.

The only question raised in this appeal is as to whether the private defendants can raise the plea in appeal that the suit is bad for non-service of notice as required under Section 80 Code of Civil Procedure (for short CPC) on the State.

Plaintiff-Munshi Ram filed suit seeking relief of declaration that sale certificate issued by defendant No. 5-Tehsildar (Sales) Gurgaon (now Gurugram) on 09.01.1992 in the name of plaintiff to some fictitious person is illegal and is required to be re-issued and registered by way of Titma sale deed/sale certificate. He also challenged the General Power of Attorney No. 1302 dated 29.03.1994 in favour of defendant No. 1-Bhagwan

Dass (since deceased) now represented by his legal heirs and lease deed No. 11493 dated 29.03.1994 in favour of defendant No. 2 and sale deed No. 1468 dated 06.07.1994 in favour of defendant No. 3 as illegal, null and void.

Learned trial Court decreed the suit in following terms:

The suit is decreed. The Sale Certificate issued by defendant No. 5 on 09.01.1992 is declared illegal and null and void. The G.P.A in favour of defendant No. 1 dated 29.03.1994, lease deed dated 29.03.1994 in favour of defendant No. 2 and sale deed No. 1468 dated 29.06.1994 in favour of defendant No. 3 are declared illegal and null and void. The subsequent revenue entries entered on the basis of the above said documents including Mutation and Jamabandis are also declared null and void. A decree for possession is also passed in favour of the plaintiff. The defendants are directed to hand over the vacant possession of the suit property to the plaintiff within a period of 3 months.

Against the judgment and decree passed by the Additional Civil Judge, (Sr. Divn.), Gurgaon, State of Haryana or Tehsildar (Sales), Gurgaon did not prefer any appeal. However, defendants No. 1 and 2 preferred the appeal and an issue was raised before the Ist Appellate Court that the suit was barred against the State for want of notice as required under Section 80 CPC. Learned Ist Appellate Court upheld the plea taken by the private defendants and ordered the return of plaint for presentation after complying the provisions of Section 80 CPC. It is not disputed that the State has taken the objection that the suit was bad for want of notice as required under Section 80 CPC. The plaintiffs had moved application under Section 80 (2) CPC which appears to have not been disposed of by the trial Court

and no specific issue was framed as to whether the suit was bad for want of notice as required under Section 80 CPC or that the plaintiffs were not entitled for exemption of notice as per the provisions under Section 80(2) CPC.

The State of Haryana is not aggrieved by the judgment and decree passed by the Additional Civil Judge (Sr. Divn.), Gurgaon and had not preferred any appeal. The question which arise for consideration is as to whether in the absence of any appeal being filed by the State of Haryana, the appellant before the lower Appellate Court could raise the issue of service of notice as required under Section 80 CPC particularly when State of Haryana has not raised any issue with regard to grant of permission as sought vide application under Section 80(2) CPC. The appellant before the lower Court were not aggrieved due to filing of the suit against them without service of notice under Section 80 CPC or could raise any objection in this regard.

Relying upon the observations in the case of ***Jit Singh Versus State of Punjab, 2004(3) PLR 150***, learned counsel for the respondent has argued that prior notice to the Government as required under Section 80CPC is mandatory. In that case, the suit filed against the State was decreed by trial Court, but in appeal by State, judgment and decree of the trial Court was set aside on the ground that in the absence of notice under Section 80 CPC, the suit was not maintainable. On merit, learned Appellate Court observed that 'by no stretch of imagination plaintiff could be considered as lessee'. The plaintiff had claimed his status as 'permanent lessee' in possession of land owned by provincial Government. Observation in above referred case, as such, are not applicable to facts of this case as the

dispute in that case was between State and plaintiff, while in this case besides challenging issuance of sale certificate by Tehsildar (sales) plaintiff is seeking specific relief against the appellant qua the general power of attorney and sale deed which is not a relief against the State. Against the decree passed by trial Court the State has not come up with any appeal before the lower Appellate Court and the appellants before it being not aggrieved because of filing of suit against them without notice as required under Section 80 CPC could not raise such plea before the Ist Appellate Court.

In view of above, the order passed by the learned lower Appellate Court accepting the appeal and returning the plaint is perverse and not legally sustainable, as such set aside.

The appeal is allowed. The case is remitted to the lower Appellate Court/Successor Court with direction to take up the appeal on Board and decide the same on merits.

Parties are directed to appear before the Ist Appellate Court on 05.07.2019.

May 23, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No