

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

RSA No. 4074 of 2015(O&M)

Date of decision: 11.9.2019

Sunder Lal and another

.....Appellants

VERSUS

Arun Kumar Bhardwaj and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vikram Singh, Advocate for the appellants.

Mr. Ashwani Gaur, Advocate for respondent No.1.

Mr. Rohit Arya, AAG, Haryana for respondent No.2.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against judgment and decree dated 20.05.2015 passed by the Additional District Judge, Gurgaon whereby appeal against judgment and decree dated 29.08.2014 passed by the trial Court was accepted, impugned judgment and decree was set aside and suit filed by the respondent/plaintiff for possession of suit land measuring 8 marlas was decreed to the following effect:-

“21....Hence the appeal filed by the plaintiff is hereby accepted with costs, whereby the suit of the plaintiff for possession of the suit property is hereby decreed in favour of the plaintiff and against the defendants whereby the defendants are given direction to remove the constructions raised thereupon at their own expenses and they shall hand

over the vacant possession of the suit property to the plaintiff within 2 months from today, failing which the plaintiff would be entitled to carry out the execution proceedings before executing court as per law...”

The case set up by the respondent/plaintiff is that he is owner of residential plot measuring 8 marlas i.e. 242 square yards out of Killa No.10/2 (1-10) to the extent of 8/30 share situated in the revenue estate of village Dundahera, Tehsil and District Gurgaon, shown in red colour marked by letters ABCD in the site plan. He purchased the said plot vide registered sale deed bearing vasika No.6077 dated 13.08.1999 from Sh. Sunil Kumar son of Rajender Singh resident of village Dundahera for valuable consideration. Sh. Sunil Kumar was in actual physical possession of the suit land prior to 1999. He moved an application for allotment of land being surplus to Sub Divisional Officer. On verification, the competent authority allotted the suit land in favour of Sh. Sunil Kumar. As Sunil Kumar was in possession of the suit land, symbolic possession thereof was delivered to him by Revenue Officer vide order dated 28.04.1999 and mutation was sanctioned in his favour. The said land was part of land measuring 1 kanal 10 marlas and other co-owners of the total land are Balbir Singh and Harman Singh to the extent of 1/30th share and 7/30th share respectively. After purchasing the suit land from Sunil Kumar, the plaintiff and other co-sharers partitioned the whole area and since then the plaintiff was in peaceful possession of the suit land till mid of May, 2003. Due to repeated illegal attempts of the defendants to interfere in possession of the plaintiff, he filed a suit for permanent injunction bearing

No.159 dated 27.05.2003. The defendant along with his father took forcible possession of the suit property in February 2004, during pendency of the suit, in collusion with local commissioner and local police. Hence the suit.

The appellants/defendants filed the written statement raising preliminary objections qua maintainability; locus standi; suit being barred by res judicata etc. On merits, it is averred that neither plaintiff nor his vendee had any valid title to the suit land. The land in question never vested in Haryana State and the State was not competent to allot the land in question. Proceedings of allotment are void and without jurisdiction. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

The trial Court framed the issues, noticed in para 7 of the judgment of said Court. The parties adduced evidence, referred to in paras 8 and 9 of the judgment of trial Court. Having heard counsel for the parties in the light of materials on record, the trial Court decided issues No.1, 3 and 4 taken up together against the respondent/plaintiff and ultimately the suit was dismissed leaving the parties to bear their own costs. As has been noticed hereinbefore, the appeal preferred by the respondent/plaintiff was allowed by the first Appellate Court at Gurgaon.

Counsel for the appellants submitted that true owner of the suit land is Gram Panchayat, therefore, declaration of suit land as surplus and its allotment to Sunil Kumar was invalid rather void because land in the hands of Gram Panchayat cannot be declared surplus.

In order to clarify this aspect of the matter, this Court passed orders dated 04.05.2016, 28.07.2016, 10.08.2016, 14.09.2016 and 19.10.2016. In pursuance of directions issued by this Court vide order dated 14.09.2016, Ms. Keshni Anand Arora, Additional Chief Secretary and Financial Commissioner to Government of Haryana, Revenue and Disaster Management Department filed her affidavit with regard to suit land having been declared surplus in the hands of Dholidar and subsequent allotment made in the year 1999 after the land had vested in the respondent – State and utilized by it.

A relevant extract from order dated 19.10.2016, reads as follows:-

“Prima facie, this court is of the opinion that there being a specific bar contained in Section 25 of the Punjab Security of Land Tenures Act, 1953 and under Section 26 of the Haryana Ceiling on Lands Holdings Act, 1972, ousting the jurisdiction of the civil Court to go into the proceedings declaring the land to be surplus in the hands of a big landlord, the contention would need to be rejected outright, the appellants never having challenged those proceeding before the competent authority.”

Subsequent thereto, the Naib Tehsildar-cum- Assistant Collector, Surplus, Gurgaon, in terms of order dated 26.10.2016 filed his affidavit and jamabandi of village Dundahera of the year 1994-95, report of the Halqa Girdawar with regard to ‘dakhal warrant’ submitted before the Sub Divisional Officer (Civil), Gurgaon by the Tehsildar on 14.05.1999 as

also the certificate of allotment in favour of one Sunil Kumar dated 21.04.1999 and conditions of allotment annexed with the said letter along with certain other documents referred to in order dated 30.11.2016.

Counsel for the appellants would further argue that as per the allotment made in favour of Sunil Kumar, he was debarred from further alienating the suit land for a period of 5 years but since Sunil Kumar executed the sale deed in favour of respondent/plaintiff on 13.08.1999, the respondent/plaintiff cannot claim a valid title to the suit property, therefore, suit for possession filed on the basis of sale deed dated 13.08.1999 is not maintainable.

Counsel representing the respondent/plaintiff has supported the judgment and decree passed by the Court in appeal with the submission that plea of adverse possession in respect of suit land raised by the defendants was negated in the earlier suit for permanent injunction filed by the respondent/plaintiff. It is further argued that as the earlier suit filed by the respondent was a simplicitor suit for injunction, the first Appellate Court has rightly held that provisions of Order 2 Rule 2 or Section 11 of the Code of Civil Procedure, 1908 would not create a legal bar to maintain the present suit for possession based upon title. It is further argued that even the appellants have failed to establish that they are in possession of the suit property for the past about 40/45 years.

I have heard counsel for the parties, perused the paper-book and records.

Counsel for the appellants, in response to a query, would fairly inform that till date they have not challenged validity of order vide

which has not been declared surplus or allotment of land in favour of Sunil Kumar in the present proceedings nor an order has been passed by a competent authority cancelling declaration of land as surplus or allotment thereof to Sunil Kumar. However, he would inform that challenge to aforesaid orders is pending before the authorities under the relevant Act.

The State Government has taken a categorical stand that the land does not belong to Gram Panchayat rather the same was declared surplus and thereafter allotted to Sunil Kumar. In this view of the matter, contention raised by the appellants with regard to land was declared surplus wrongly, thus, allotment in favour of Sunil Kumar, is vitiated being beyond pleadings would no longer stop the Court to decide entitlement of respondent to recover possession of suit land. This apart, the appellants have not claimed ownership right in suit land or any right better than that of allottee from the State, therefore, they cannot perpetuate their illegal possession against the valid title holder, as on date. On the contrary, if at a point of time in future, order of surplus and allotment in favour of Sunil Kumar are set aside, the person held entitled to suit property would recover its possession from the person in possession, at that time.

Assuming that allotment in favour of Sunil Kumar was made subject to condition that he will not alienate the land for a particular period. Even if the allottee had violated that condition, the same, at best, may entitle the allotting authority to take appropriate action against Sh. Sunil Kumar. That being so, contention raised by the appellants in this regard is patently misconceived and untenable but the same ipso facto would be of no consequence either for the allottee or transferee from him.

Counsel for the appellants has not disputed that plea of adverse possession raised by them in the earlier suit was rejected. He has fairly conceded that no such plea of ownership on the basis of adverse possession has been raised in the present suit. Counsel for the appellants has not advanced any arguments to assail findings of the first Appellate Court rejecting their plea that either the suit is barred under Order 2 Rule 2 or Section 11 of the Code of Civil Procedure, 1908. In this view of the matter, I find myself unable to differ with findings recorded by the first Appellate Court. Accordingly, judgment and decree impugned is liable to be affirmed and so ordered.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs.

SEPTEMBER 11, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no