

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

RSA No.2882 of 2014 (O&M)

Date of decision: 06.03.2019

Satya Dev Kohli

..... Appellant

Versus

Chander Mohan and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rakesh Gupta, Advocate and
Mr. Indresh Goel, Advocate
for the appellant.

Mr. Amarjit Markan, Advocate
for respondent No.1.

Mr. Ravi Kant Sharma, Advocate
for respondents No.2 to 4.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the judgment passed by the First Appellate Court reversing the judgment of the trial Court.

In the considered view of this Court, the following substantial question of law arise for consideration:-

“Whether in view of the bar contained in the allotment letter to physically divide the immovable property, a suit for possession by way of partition is not maintainable?”

Undisputed facts are that plot No.825, Industrial Area, Phase-II, Chandigarh measuring 984.16 sq. yards was allotted to four persons namely Satya Dev Kohli-appellant, Chander Mohan, Hardev Mohan and Shambhu.

This was an allotment on 99 year lease hold basis with stipulation that lessee shall not sell or otherwise transfer his or her rights in the property for a period of 15 years. After a period of 15 years, the property was transferable or could be sold subject to the condition that 50% of the unearned increase in the value of the land at the time of sale shall be payable to the Chandigarh Administration. It was further provided that no fragmentation of the site or building is erected shall be permitted. It further provides that the building erected on the site shall be used by the lessees themselves exclusively for the specific industry which has been allotted.

Clauses 9, 13 and 16 of the allotment letter are extracted as under:-

“9. The site has been allotted on lease hold basis for 99 years in the first instance. After the expiry of this period lease may be renewed on such terms and conditions as the Government may decide.

13. The lessee shall not sell or otherwise transfer his/her rights in the site or part thereof for a period of 15 years from the date of completion of the building (issue of completion certificate). After the expiry of this period the lessee may be allowed by the Government to sell or transfer his rights in the site to any other party subject to the condition that 50% (fifty percent) of the unearned increase in the value of the land at the time the site is sold, or transferred shall be payable to the Chandigarh Administration before registering such sale or transfer. The value of the property for this purpose shall be assessed by the Estate Officer or any other authority which may be appointed by the Chief Administrator whose decision shall be final and binding on the lessee.

16. No fragmentation of the site or building erected on it shall be permitted. The building erected on the site shall be used by the lessee(s) themselves exclusively for the specific industry it has been allotted.”

Shambhu, one of the allottee died and in his place, a revised

allotment letter was issued along with the name of Brij Mohan who had also died and now represented by Pankaj and Dinesh.

It is not in dispute that in 1977, there was a partnership between 4 original allottees, however, the allotment was made in the name of each of the partner. The partnership is stated to have come to an end in 1980.

The plaintiff, namely, Satya Dev Kohli has filed a suit for possession by way of partition. Learned trial Court on appreciation of evidence passed a preliminary decree for partition which has been reversed by the learned First Appellate Court on the following grounds:-

1. A lessee cannot claim himself to be owner as ownership remains with Estate Office, Union Territory, Chandigarh.
2. The plot has been allotted on lease hold basis and therefore, the plaintiff cannot claim ownership.
3. Since the plaintiff has stated that he has no claim against defendants No.2 and 4, therefore, he has sought partial partition which is not permissible.

It will be significant to note here that defendant No.1 is in possession of 50% of the property whereas defendants No.2 and 3 are in joint possession of remaining 50% i.e. 25% each.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the allotment letter.

No doubt, the allotment is on lease hold basis. However, such allotment is for a period of 99 years. Such lease hold property is akin to ownership and hence, estate. Such lease hold rights as noted above are transferable and can be sold in market after taking permission from the

Government subject to the condition that unearned increase in the value of the land to the extent of 50% shall be deposited with the Chandigarh Administration. Therefore, such rights cannot be held to be simpliciter tenancy rights as is normally understood.

Once it is an estate, it can partitioned, may not be physically but on the sale of the property. Consideration received on the sale of the joint property can be divided amongst the co-owners or in other words, co-lessees. In such circumstances, learned First Appellate Court has clearly erred in accepting the appeal and dismissing the suit for partition.

Now let us deal with the reasons given by the First Appellate Court.

First reason given by the First Appellate Court should not detain the Court for a long time because lease hold rights in such circumstances are akin to ownership and hence, estate. As regards second reason, that the property was allotted on lease hold basis and the lessee cannot acquire title is also to be noticed and reversed particularly when it has been held to be an estate. Next reason given by the First Appellate Court is also erroneous because once defendants No.2 and 3 were in possession according to their entitlement, it was in that context the plaintiff made a statement that he does not claim against defendants No.2 and 4. The plaintiff has never stated that he does not want partition of the property.

Section 2 of the Partition Act provide that in case the Court finds that the property cannot be physically partitioned or nature of the property is such that it would not be possible to physically divide the property, the Court can order sale of the property instead of physical

division in the partition suits. In the present case, once the property was transferable after seeking permission of the authority, the Court ought to have adopted that method rather than dismissing the suit.

Learned counsel for respondent No.1 has brought to the notice of this Court that Satya Dev Kohli has died on 04.03.2015. As per amendment in Code of Civil Procedure applicable to States of Punjab, Haryana and U.T., Chandigarh, there is no abatement. The parties would be free to implead the legal heirs.

Hence, the judgment passed by the First Appellate Court is set aside and that of the trial Court is restored.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Regular Second Appeal is allowed.

There shall be a preliminary decree for partition. The parties would be free to move an application for preparation of final decree.

Let a copy of the judgment be sent to the concerned Additional District Judge for information.

06.03.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No