

**RSA-1405-2008(O&M)
and connected case**

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

1. RSA-1405-2008(O&M)

Sukhpal and others

.....Appellants

Versus

Chhattar Singh and others

.....Respondents

2. RSA-1406-2008(O&M)

Sukhpal and others

.....Appellants

Versus

Haryana State through the Collector, Gurgaon and another

.....Respondents

Date of decision:15.01.2020

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.C.B.Goel, Advocate, for the appellants

Mr. D.Khanna, Addl. AG, Haryana

**Mr. Vikas Bahl, Sr. Advocate with
Mr. Abhilaksh Grover, Advocate for respondents
no. 1 to 3 in RSA No.1405-2008**

ANIL KSHETARPAL, J.

**By this judgment, RSA Nos. 1405 and 1406 of 2008 arising
from a common judgment passed by learned Trial Court and First
Appellate Court shall stand disposed of. Learned counsel for the parties**

have also agreed that both these appeals can be conveniently disposed of by a common judgment. In the considered view of this Court, following question of law arise for determination:-

“1. *Whether an ex parte judgment and decree passed by a Court of competent jurisdiction between the same parties can be ignored by the Court?*

2. *Whether a civil suit is liable to be dismissed on the ground that the civil court does not have jurisdiction in view of bar provided under Section 26 of the Haryana Ceiling on Land Holdings Act, 1972, even after finding the tribunal of limited jurisdiction, has failed to follow the mandatory procedure laid down in the statute itself.?”*

The plaintiffs have filed these two appeals against judgment dated 10.12.2007 passed by learned First Appellate Court while reversing the judgment and decree dated 25.2.2003 passed by learned Trial Court.

Facts:-

The plaintiffs have filed a suit for declaration claiming that they are owners in possession of the suit land alongwith performa defendants no. 10 to 21 to the extent of 3/5th share of the suit land mentioned in para 1 of the plaint and the allotment in the case nos. 59 and 60 decided on 22.12.1977 by Collector Agrarian, Nuh and consequent mutations no. 596, 597, 600, 607, 610, 611, 617, 661, 662 and sale deeds dated 23.6.1998, 20.7.1998, 13.7.1998, 17.7.1998 and 5.7.1996 are wrong, illegal, null void ab initio, ineffective and not binding on the rights of the plaintiffs and defendants no. 10 to 21 and the same are

liable to be set aside in view of judgment and decree dated 29.5.1985 in civil suit no. 252 decided by Sub Judge, First Class, Gurgaon with a decree for permanent injunction restraining defendants no.3 to 9(c) from interfering in the peaceful ownership and cultivating possession of the plaintiffs and performas defendants detailed in para 1 of the plaint and also from alienating the suit property.

Facts which are necessary for the disposal of the present appeals are that Kundan and Ramji Lal sons of Chhittar had mortgaged certain property, including the suit land, approximately 100 years before the filing of the suit. 2/5th share out of total mortgaged land was got redeemed by the owners in the years 1964 and 1968. The revenue record was accordingly updated vide mutation No. 293.

The State Government notified Haryana Ceiling of Land holdings Act, 1972 (hereinafter referred to as the 'Act of 1972'). As per the aforesaid Act, land owners were required to submit a declaration, if their land holding is more than permissible area, within the time prescribed. Kundan and Ramji Lal were owners of the land more than permissible area. Therefore, they filed declarations, as required under Section 9 of the Act of 1972, before the Collector, Agrarian. Pursuant to the aforesaid declaration, land measuring 66 kanals 1 marla in the hands of Ramji Lal son of Chhittar and land measuring 73 kanals 1 marlas in the hands of Kundan s/o Chhittar was declared, o being found to be beyond the ceiling (hereinafter referred to as surplus land). Pursuant to the aforesaid declaration of the land as surplus land, proceedings for allotment of the land to the eligible persons were initiated and allotments

came to be made in favour of defendants No. 3 to 8 in the year 1979. It is apparent that pursuant to the allotment made, the allottees have already sold substantive part of the land through sale deeds Ex..D2, D3, D4, D5, D6 in favour of defendants No. 9 (a) to 9(c) in the year 1998.

Plaintiffs (herein) filed a civil suit no. 252 of 1983 on 25.5.1983 by impleading original owners (Kundan and Ramji Lal) as well as defendants no. 3 to 8 (in the present suit) as defendants. In the aforesaid suit, it was claimed that plaintiffs and defendants no. 9 to 20 and their predecessor-in-interest had become owner of the suit land by efflux of time, as period of redemption of the mortgage property has already elapsed. In the aforesaid suit, defendants no. 1 and 2 i.e the big land owners as also defendants no. 3 to 8 (in the present suit) were proceeded against ex parte. The aforesaid suit was decreed on 29.5.1985 while granting decree of declaration with a consequential relief of permanent injunction to the effect that plaintiffs and defendants no. 9 to 20 in the aforesaid suit are owners in possession in the suit land and defendants no. 1 to 8 in the aforesaid suit have no right to interfere in their possession qua the suit land.

As noticed above, the plaintiffs filed the present suit on 1.2.1995 with the relief as noted above. This suit has been contested by defendants No. 9 (a), (b) and (c) purchasers from the allottees of the land only. Defendants No. 10 to 21 have admitted the claim of the plaintiffs and prayed for decreeing the suit. State of Haryana, i.e defendants No. 1 and 2, did not choose to contest the suit.

Learned Trial Court, on appreciation of evidence, decreed

the suit filed by the plaintiffs whereas learned First Appellate Court in appeal has set aside the judgment and decree passed by the learned Trial Court, forcing the plaintiffs to file these two appeals.

Learned First Appellate Court has recorded the following reasons to set aside the judgment and decree passed by the Trial Court:-

i) Kundan and Ramji Lal, the original owners (big land owners) had participated in the proceedings before the Collector for declaration of surplus land.

ii) The land declared surplus has been allotted to defendants No. 3 to 8 or their predecessor-in-interest. They have deposited the amount and the possession thereof has been delivered to them.

iii) The judgment and decree dated 29.5.1985 is not binding on the rights of defendants No. 1 and 2 i.e State Government and its officials.

iv) An adverse inference is required to be drawn against the plaintiffs as they have not produced on file jamabandi (revenue record) and produced only an excerpt of the revenue record as Ex.PX.

v) The plaintiffs have not challenged the order dated 22.12.1977.

vi) The statement of the plaintiffs that they came to know of the orders passed in the year 1977 is not believable in absence of corroboration.

vii) The suit is barred under Order 2 Rule 2 CPC as previous suit filed in the year 1983, was decided in the year 1985.

viii) Defendants No. 1 and 2 did not raise any objection regarding mortgage when proceeding for determination of surplus area was pending.

ix) The plaintiffs and defendants No. 10 to 21 are not owners as it was not a simple mortgage.

x) The suit filed by the plaintiffs is hopelessly barred by limitation.

xi) The suit filed by the plaintiffs is not maintainable. The plaintiffs are required to file execution petition under Order 21 Rule 32 CPC.

xii) The jurisdiction of Civil Court is barred under Section 26 of the Act of 1972.

This Court has heard learned counsel appearing for the appellant, counsel representing State of Haryana and the private respondents and with their able assistance has gone through the judgments passed by the Courts below and the record. At the outset before this Court proceeds to examine the correctness of the reasons given by the learned First Appellate Court, it shall be important to notice, at the cost of repetition, that defendants No. 3 to 8 are parties to the decree dated 29.5.1985 declaring the plaintiffs and defendants no. 10 to 21 to be owners in possession of the suit land to the extent of 3/5th share.

In the aforesaid proceedings defendants No. 3 to 8 were proceeded against ex parte as they did not choose to appear. The judgment passed by the Court, even if, ex parte is a valid and binding judgment, till it is set aside by a Court of competent jurisdiction. It may

be noted here that counsel for the respondents has failed to draw attention of the Court that the judgment and decree dated 9.5.1985 has ever been challenged or set aside. Keeping in view the aforesaid facts, plaintiffs alongwith performa defendants have already been declared owners in possession of the suit land.

Now let us examine the reasons given by learned first Appellate Court in reversing the judgment of the learned Trial Court:-

i) First reason assigned by the learned First Appellate Court is erroneous as the plaintiffs or the defendants No.10 to 21 were neither heard nor given notice when the proceedings for declaration of surplus area was pending. Section 11 (3) of the Act of 1972 mandates that before finalizing the surplus proceedings, statements of permissible and surplus area shall be sent to the persons concerned and to the tenants of the land owners by registered post. Sub Rule of Rule 8 of the Haryana Ceiling on Land Holdings Rules, 1973 (hereinafter referred to as the 'Rules of 1973') provides that the statement prepared in Form IV shall be sent to the land owners, the mortgagee with possession and their tenant by registered post. In other words, it is mandatory for the authorities under the the Act of 1972 to issue notice to the mortgagee with possession. Attention of the Court has not been drawn to any such notice which may have been issued to the plaintiffs and performa defendants no. 10 to 21 or their predecessor-in-interest, as statutorily required. Thus, the First Appellate Court has erred in assuming that the notice to Kundan and Ramji Lal, the big land owners, was sufficient compliance.

ii) As regards second reason, it may be noted that learned

First Appellate Court has held that the land has been allotted to defendants no. 3 to 8 and they have deposited instalments. Consequently, possession has been delivered.

In the considered view of this Court, question of allotment in favour of defendants no. 3 to 8 or their predecessor and deposit of certain instalments is not in dispute. However, question of possession already stands determined against defendants no.3 to 8 pursuant to a decree of the Court dated 29.5.1985. Therefore, the defendants no. 3 to 8 or their vendees-defendants no. 9 (a), (b) and (c) cannot claim that they are in possession.

Now, with regard to reason No.(iii) as noticed above, it may be noted that no doubt the judgment and decree dated 29.5.1985 is not binding on defendants no. 1 and 2 i.e State Government and its officials, however, it is binding on defendants no.3 to 8 or their successor in interest.

Reason No. (iv) given by the learned First Appellate Court does not need any discussion by this Court in view of the facts of the present case.

Reason No.(v) given by the learned First Appellate Court, as noticed above, is factually incorrect as the order dated 22.12.1977 has been challenged by the plaintiffs. The learned First Appellate Court has factually erred on this aspect.

Reason No.(vi) given by the learned First Appellate Court does not need discussion in the facts of the present case, particularly, in view of judgment passed by the Court on 29.5.1985. However, the

plaintiffs cannot be assumed to be having the knowledge of the order passed in the year 1977.

Reason no.(vii) given by the learned First Appellate Court is also incorrect for two reasons. Firstly, in the suit, neither any issue has been framed by the trial Court on bar to the maintainability of the suit under Order 2 Rule 2 CPC nor pleadings of the first suit have been brought on record. Order 2 Rule 2 CPC provides that if the plaintiff is entitled to further relief on same cause of action and omit to seek the aforesaid relief, then, such plaintiff is debarred from filing a subsequent suit on same cause of action. In the present case, previous suit was filed by the plaintiffs for declaration that they have become owners in possession by efflux of time. On that day, plaintiffs claim that they were not in knowledge of the orders of 1977. Defendants did not contest the aforesaid litigation. It is not proved on file that any notice was given to the plaintiffs or defendants no. 10 to 21, although, statutorily required. Therefore, the proceedings which took place before the competent authority for declaration of surplus area resulting in the order passed on 22.12.1977 were void ab initio and not binding on the rights of the plaintiffs and performas defendants no. 10 to 21. Thus, bar to the maintainability of fresh suit under Order 2 Rule 2 is not applicable because it is not established that the previous suit was on same cause of action.

Reason No.(viii) assigned by the learned First Appellate Court is also erroneous as it has held that since defendants no.1 and 2, the original big land owners, did not raise objection with respect to the land

having been mortgaged with possession, therefore, the plaintiffs were not required to be given notice. Statutory requirement of a notice to a mortgagee with possession as provided under Section 11 (3) of the Act read with Rule 8 (2) of the Rules of 1973 does not depend upon objection, if any, taken by the big land owners. It is statutory requirement which ought to have been followed by the Collector, Agrarian.

Reason No. (ix) as noticed above is also erroneous, particularly when, there is a previous judgment and decree passed by a competent Court on 29.5.1985 declaring the plaintiffs and defendants no. 10 to 21 to be owners in possession. Till the aforesaid decree is in force and has not been set aside, in a subsequent suit, the Court is debarred from returning any finding to the contrary.

Reason No. (x) given by the learned First Appellate Court is also erroneous because the order passed on 22.12.1977 is in violation of the mandatory requirements of the statute. Therefore, the order is non est in the eyes of law. Hence, strictly speaking, there was no requirement of challenging such order.

Reason No. (xi) given by the learned First Appellate Court is also erroneous as the Court has held that the present suit is not maintainable because the plaintiffs have a remedy of filing execution petition under Order 21 Rule 32 CPC enforcing the decree dated 29.5.1985. It may be mentioned here that the aforesaid decree is for declaration that the plaintiffs alongwith performa defendants have become owners in possession and the defendants no. 3 to 8 were

restrained from interfering in their possession with a consequential relief of permanent injunction. In such circumstances, particularly, when it came to the notice of the plaintiffs that some orders have been passed by the Revenue Authorities behind their back, without issuing any notice or hearing to them and the State Government is not party to the previous suit. The suit filed by them is maintainable, particularly, when it has been alleged that defendants have started interfering in their possession.

Now, let us examine the correctness of reason No. (xii) i.e jurisdiction of the Civil Court is barred under Section 26 of the Haryana Land Ceiling Act. Section 26 is extracted as under:-

“Section 26. Bar of jurisdiction – (1) No

civil court shall have jurisdiction to -

(a) entertain or proceed with a suit for specific performance of a contract for transfer of land which affects the right of the State Government to the surplus area under this Act; or

(b) settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Collector or the Prescribed Authority.

(2) No order of the Financial Commissioner, the Commissioner, the Collector, or the prescribed authority made under or in pursuance of this Act shall be called in question in any court.”

No doubt, the jurisdiction of the Civil Court is barred to

settle, deal or decide any matter required to be adjudicated/decided under the Act of 1996. However, it is well settled that if the order passed by the authority, constituted under a special statute, has proceeded in violation of the statutory requirement, the civil suit is maintainable. Reliance in this regard can be placed on Five Judges Bench judgment of the High Court in the case of **State of Haryana and others Vs. Vinod Kumar and others** 1986 (1) Punjab Law Reporter 222, wherein it has been held as under:-

“In the face of this authoritative pronouncement there is no room for any doubt that if an order is passed by a tribunal of limited jurisdiction without issuing a notice to the concerned party, the order would be a nullity and open to challenge in the civil court even if the statute expressly bars the jurisdiction of the civil court to entertain a suit to challenge the validity or legality of the order passed by such a tribunal. This question was once again considered by a Constitution Bench of the Supreme Court in *Dhulabhai etc. vs. State of Madhya Pradesh and another*, and the seven principles contained in the judgment of the learned Chief Justice were enunciated. The scope of the observations made and the rule laid down in *M/s Kamala Mill's case* (supra) came under specific consideration of the Bench and it was observed that the Special Bench (in M/s Kamala Mills

case) refrained from either accepting the dictum of *Mask Co's case* 67 Ind App 222- (AIR 1940 PC 105) or rejecting it, to the effect that even if jurisdiction is excluded by a provision making the decision of the authorities final, the civil courts have jurisdiction to examine into cases where the provisions of the particular Act are not complied with. The jurisdiction of the civil court to try the suits against the orders passed by the Tribunal of Special Jurisdiction in violation of the provisions of the statute or principles of natural justice was thus upheld even though the jurisdiction of civil court to question the legality or validity or the orders of the Tribunal was expressly barred by the statute.”

Keeping in view the aforesaid facts, the judgment passed by the learned First Appellate Court cannot be sustained. Accordingly, the same is set aside. Judgment passed by the learned Trial Court is restored. Hence, both the appeals are allowed.

15 .01.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No