

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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RSA No.540 of 2017 (O&M)

Date of decision:28.1.2020

Hukamdeen and another

... Appellants

versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

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

...

AMOL RATTAN SINGH, J. (Oral)

1. The appellants, Hukamdeen and Sajjaudeen, have come in Regular Second Appeal, they having remained unsuccessful in both the courts below, with the suit filed by them (alongwith other plaintiffs) having been dismissed.

The appellants (plaintiffs no.2 and 10, along with 8 others), filed a suit seeking declaration along with permanent injunction (prohibitory) against respondents no.1 to 3 (defendants in the suit), to the effect that they are owners in possession of *Khasra* nos.362, 363 and 363 min 24-B, as per *Jamabandi* for the year 1944-45, for which new *Khasra* nos.179//3, 4, 5, 6, 13, 14, 7, 8, 1, 2, 9 and 12 were carved out as per the *Jamabandi* for the year 1964-65, situated at Village Burak, Tehsil and District Hisar.

The defendants denied the contents of the plaint and averred that all rights, title and interest of Muslims properties, on migration to Pakistan at the time of partition of the country, came to be vested in the Custodian/Government automatically, by operation of law under Section 4

of the East Punjab Evacuees Administration of Property Act, 1947, and thereafter they were deemed to have vested in the Custodian/Government under Section 8(4) of the Administration of Evacuee Property Act, 1950. The land in dispute was taken over as evacuee property and allotted to one Ram Dayal son of Ditta Ram. Various others pleas, like non-joinder of necessary parties, and the suit being time barred, were also raised.

2. From the pleadings of the parties, the following issues were framed:-

- “1. Whether the plaintiffs are owners in possession regarding the land as mentioned in the plaint? OPP.
2. Whether the suit of plaintiffs is hopelessly time barred? OPD
3. Whether the suit is liable to be dismissed for non-joinder of necessary parties? OPD
4. Whether the suit is liable to be dismissed for want of mandatory notice under Section 80 CPC? OPD
5. Relief.”

3. The learned Civil Judge (Junior Division), Hisar, vide his judgment and decree dated 26.2.2013, dismissed the suit of the plaintiffs. The first appeal preferred by the plaintiffs has also been dismissed by the learned Additional District Judge, Hisar, vide a judgment and decree dated 15.7.2016. Feeling aggrieved, plaintiffs no.2 and 10 have preferred the instant regular second appeal, as already said.

4. I have heard the learned counsel for the appellants and perused the case file.

5. Learned counsel for the appellants having submitted that no order was passed under the Administration of Evacuee Property Act, 1950, declaring the property to be such, however, is not able to refute what is stated in the written statement filed by the respondents, to the plaint of the appellants (in paragraph 3 thereof), that no application under Section 16 of the Act of 1950 was filed claiming that the property was not an evacuee property, with it also stated in that paragraph that in fact the property was allotted to one Ram Dayal son of Ditta Ram, who is obviously not a party to the *lis*.

Mr.Parminder Singh has also pointed to the revenue record in the form of *Jamabandis* shown to be led by way of evidence before the learned trial court (collectively as Ex.P-5), in which though undoubtedly in the *Jamabandis* for the years 1932-33, 1936-37 and 1944-45, Mehardeen is shown to be the owner of what is stated to be the suit property (with the *khasra* numbers shown being those before consolidation), but thereafter, the first *Jamabandi* exhibited is for the year 1961-62, wherein in respect of *Khasra* nos.179//3, 4, 5, 6, 13, 14, the ownership is shown to be in the name of *Mustarka Malkan Ve Deegar Hakdaran Arazi Hasab Rasab Rakba Khewat*, with the name of the cultivator shown to be Ludinda Mal son of Sahnu Ram.

Similarly, as regards other *khasra* numbers that were claimed by the appellants-plaintiffs in their plaint (in respect of which they were seeking a declaration of ownership), it has not been pointed out that the plaintiffs are shown to be in the ownership or cultivation thereof, in any subsequent *Jamabandi*.

6. Keeping in view the above, with not even the person who is originally stated to have been allotted the suit land by the authorities impleaded as a party to the *lis*, and the suit itself having been filed in the year 2008, I see absolutely no ground to interfere with the judgments of the learned courts below, which have held that in fact the jurisdiction of the civil court to entertain the suit itself was barred, there being an adequate remedy available to the appellants under the provisions of the Administration of Evacuee Property Act, 1950, even if there was a wrong allotment made.

Thus, they not having availed that remedy for about 58 years after the Act came into existence, I would find no error in the judgments of those courts.

7. It is, of course, to be noticed that as the suit of the appellants-plaintiffs is based on the 'alleged' inherent title to the suit land (as claimed by them), limitation would not come in their way unless a plea of adverse possession was taken by the defendants. However, in the present case, the question of inherent title itself to the suit land has not been proved by the appellants-plaintiffs, inasmuch as, to repeat, firstly, the revenue record led by way of evidence for the first time after 1947, is in the form of the *Jamabandi* for the year 1961-62, in which they are not shown to be owners of the suit property, and secondly, the suit land obviously having been allotted as evacuee property to one Ram Dayal son of Ditta Ram, the contention of the appellants that there was no order passed declaring the land to be an evacuee property cannot be accepted, in the face of the written statement of the respondents to the aforesaid effect, with nothing pointed

out to this court that any evidence was led to controvert the factum of such allotment made.

It is to be noticed in that context that it is not a case where the appellants were continuing in possession of the suit land and therefore could claim that some orders had been passed by the Rehabilitation authorities behind their back.

Thus, with them not having been in possession of the suit property at least since 1947, and they not having challenged the re-allotment thereof to Ram Dayal in any proceedings under the Act of 1950, and the suit in the present *lis* having been instituted in the year 2008, even the judgment cited by learned counsel in case of Dr.Rajendra Prakash Sharma vs. Gyan Chandra and others, AIR 1980 (SC) 1206, would not come to their aid in my opinion.

In that case, their Lordships had undoubtedly held that where a property is not declared as evacuee property by the Custodian, jurisdiction of the civil court would not be barred to entertain a suit seeking a declaration that the property belongs to the plaintiff.

However, as already observed herein above, with the respondents having taken a specific stand that the property stood allotted to one Ram Dayal after it was declared to be an evacuee property and with nothing shown to this court even from any cross-examination of any witnesses to the effect that no such allotment had actually been made for declaring the property to be an evacuee property, I would hold that the appellants have not been able to show that an order under the said Act was not passed and in any case, to repeat yet again, they not having challenged

any such allotment for about 58 years, they cannot even take a plea that such allotment was made behind their back while they continued to be in possession, with even the revenue record between 1944-45 and 1961-62 (i.e. the 'crucial period'), not having been led by way of evidence by the appellants, to try and show that it was they or their immediate predecessor in interest who was in possession of the land, or to show the manner in which the revenue entries were made to show a change in ownership and possession.

The onus to prove any wrong or 'perverse' entries in the revenue record to that effect, was wholly on the appellant-plaintiffs, which they did not even begin to discharge by producing the revenue record for that period.

Very obviously they were not in possession of the suit land and if any one else was cultivating their land after such allotment etc., the onus again was upon the appellants to approach the court within time to challenge any order of allotment. They obviously slept over any right they had, if at all they had such right, and have not shown even before this court, that they were the direct descendants of Mehardeen who had ownership of the property prior to 1947, and that in fact he had not left for Pakistan after partition of the country,

7. Consequently, finding no merit in this appeal, it is dismissed *in limine*.

28.1.2020
pk/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No