

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 184 of 2021(O&M)

Date of decision : March 26, 2021

Sunder Singh and others

.....Appellants

Versus

Dera Baba Brahpuri and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. J.P. Dhull, Advocate for the appellants.

LISA GILL, J.

Appellant-plaintiffs have filed this regular second appeal challenging judgment and decree dated 09.05.2019 passed by learned Additional District Judge, Jind whereby appeal preferred by respondent – defendant No. 1 has been allowed, thereby setting aside judgement and decree dated 07.09.2017, passed by learned Civil Judge (Junior Division), Jind consequently dismissing plaintiffs' suit seeking permanent injunction.

Brief facts necessary for adjudication of the matter are that in the plaint filed by the plaintiff – appellants, it is pleaded that plaintiffs are legal heirs of Ishwar Singh, who was cultivating property in question, as a tenant. It is stated that in fact the land in question was cultivated by forefathers of Ishwar Singh also in their capacity as tenant. After death of Ishwar Singh, the plaintiffs claimed to be cultivating the land, thus, asserting the land to be cultivated since the year 1946 by the plaintiffs and their predecessor-in-interest. Revenue officials in collusion with the defendant are alleged to have changed the khasra girdawaries without any notice to the plaintiffs in favour of defendant No. 1, since 13.03.2007. Name of the plaintiffs as well as Ishwar Singh is stated to have been removed from the column

of cultivation in the jamabandi of the year 2009-10. Plaintiffs claimed to be in actual cultivating possession of the suit land. Suit property was acquired by defendants/respondents No. 2 and 3 for construction of NH-71 Highway Jind-Rohtak under the National Highways Act, 1956 (for short – ‘the Highways Act’). It is, thus, prayed that permanent injunction should be issued for restraining defendant No. 1 from receipt of compensation of the disputed land.

Defendants contested the suit while taking preliminary objections that defendant No. 1 is owner in possession of acquired land and entries in the revenue record are rightly incorporated wherein plaintiffs – appellants were not reflected as tenants (gair marusi). Defendant No. 2 through BDPO pleaded that suit was not maintainable as the plaintiffs had not approached the concerned authority under Section 30 of the Land Acquisition Act.

Following issues were framed on the basis of the pleadings:-

1. Whether the plaintiff is entitled to decree for permanent injunction restraining the defendant No. 1 from taking/releasing payment of compensation of acquisition of agricultural land as mentioned in the body of plaint? OPP
2. Whether directions can be issued to defendant No. 2 and 3 to make payment of aforesaid compensation of the acquired land to the plaintiffs as well as benefits accrued? OPP
3. Whether the suit filed by plaintiff is not maintainable? OPD
4. Relief.

Evidence was led by both the parties.

Learned trial court after considering the evidence on record observed that Ishwar Singh, predecessor-in-interest of the plaintiffs was found to be in actual physical cultivating possession of the suit property on the basis of certain civil suits filed earlier. Reference was also made to Civil Suit No. 305 dated 28.05.2015 in which change in khasra girdawaries from Kharif 2007 was held to be null and void.

Learned trial Court held that the plaintiffs – appellants in the present case are held

entitled to compensation awarded for acquisition of the land in question. It is observed that the plaintiff had not claimed apportionment of compensation but at the time it was directed that defendants No. 2 and 3 instead of releasing the compensation in favour of defendant No. 1, should award compensation to the plaintiffs. It was held that plaintiffs – appellants are entitled to receive compensation qua acquired agricultural land as well as to all other benefits. Suit filed by the plaintiffs – appellants was, thus, decreed with the directions as above. Appeal preferred by the appellant – defendant No. 1 was, however, allowed by the learned Additional District Judge, Jind vide judgment and decree dated 09.05.2019. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that learned Additional District Judge, Jind has totally misdirected himself while allowing the appeal filed by respondent No. 1. It is submitted that possession of the plaintiffs over the suit property was proved. In such a situation, plaintiffs are definitely entitled to compensation awarded for acquisition of the land in question, therefore, learned trial Court has rightly decreed the suit filed by the plaintiffs. It is, thus, prayed that judgment and decree dated 09.05.2019 passed by the learned Additional District Judge, Jind be set aside and judgment and decree dated 07.09.2017 passed by the learned Civil Judge (Junior Division), Jind be upheld.

Heard learned counsel for the appellant and have gone through the file with his able assistance.

Suit filed by the appellants-plaintiffs is for permanent injunction, restraining defendant – respondent No. 1 from seeking release of compensation of acquired agricultural land as described in the plain and a direction to defendants No. 2 and 3 to release the compensation to the plaintiffs.

Learned First Appellate Court has rightly held that proper course available to the plaintiffs was to seek their remedy under the Highways Act.

Learned trial Court could, thus, not have assumed jurisdiction, which is specifically barred under the said Act. Learned counsel for the appellants has raised an apprehension that finding rendered by learned Additional District Judge, in respect to possession of the plaintiffs would be detrimental to the cause of the plaintiffs when they agitate and seek their claim before the competent authority under the Highways Act. It is observed by the learned Additional District Judge that as per Ex.P4, proceedings under Section 145 Cr.P.C. had been initiated and receiver had been appointed way back in the year 1984, therefore, plaintiffs could not have held possession of the suit land. Learned counsel further points out that as per Ex.P6 khasra girdawaries upto the year 2009-10 reflect the name of Ishar Singh, predecessor-in-interest as gair marusi upto year 2006-07, thus, it is apparent that khasra girdawari was illegally changed in favour of defendant – respondent No. 1.

It is relevant to note at this stage, that learned Additional District Judge, Jind while making an observation regarding possession of the plaintiffs has in the very next breath observed that in case the plaintiffs were in possession, their claim regarding possession was required to be lodged before the competent authority under the Highways Act. Therefore, such an observation, needless to say, would not have any effect whatsoever on any proceedings, which may be pending/initiated before the competent authority under the Highways Act. Learned Additional District Judge, Jind has specifically observed as under:-

“ Civil Court has got no jurisdiction to undo the order passed by tribunal under the special jurisdiction conferred by the statute. Admittedly, in the revenue record i.e. jamabandi name of plaintiff or their predecessor Ishwar was not reflected as stand revealed from the document Ex. D2 and Ex.D1 jamabandi for the year 2009-10. For the argument sake even if it is believed that the revenue record was wrongly going on (though at present this contention cannot be accepted as the civil suit No. 505 for declaration and mandatory

injunction has already been dismissed by the court of Ms. Gurneet Arora, ACJ, (SD), Jind) yet even if the plaintiff were in possession of the suit land then also when notification under Section 3-D of N.H. Act was made and the acquired land was marked out and measured as per section 3-E of the N.H. Act and as per section 3-G of the N.H. Act, notices are issued by the collector to all the person interested even to the occupier of such land but there is nothing in the file to show that the plaintiff ever filed any objections before the collector concerned that land which is being acquired by the State Government is being taken from the possession of plaintiff whereas as per section 3-D of N.H. Act Center Government would issue publication and the land acquired would vest in it free from all encumbrances. As per section 3-E of N.H. Act the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice. All this show that plaintiffs were having no interest in the acquired land that is why the plaintiffs have not approached the proper forum for redressal of his grievances. They have straightway come to the civil court but their entire contention about wrongly and illegally changing the revenue record were rejected by civil court as stand revealed from decision recorded in civil suit no. 505 decided by Ms. Guneet Arora, ACJ(SD), Jind. Learned trial Court of which this appeal is outcome has overlooked to the provision of N.H. Act, rather has tried to infer the possession of the plaintiff from some earlier litigations which in facts and circumstances could not have been inferred. Learned trial Court has assumed as if the plaintiffs were the tenant over the land and has exercised the power of tribunal by wrongly directing defendants no. 2 and 3 to pay the compensation amount to the plaintiffs alongwith other benefits which in my considered opinion was act of exceeding the jurisdiction and exercising the powers which never vested in it. So, learned trial Court has neither grasped the controversy well nor considered evidence adduced on file threadbare and has wrongly returned the findings in favour of plaintiffs in favour of plaintiffs under issue no. 1 without there being

any tangible record to that record. Perusal of Ex. P4 shows in para no. 8 that proceedings under Section 145 Cr.P.C. has been initiated and a receiver was appointed way back in the year 1984, therefore, plaintiff could not have been held in possession of the suit land and if they were in possession then their claim for possession were required to be lodged before the receiver/competent authority under N.H. Act so that the same could have been forwarded to the competent DRO for apportionment of the amount of compensation but that course has never been adopted by the plaintiff. So findings of learned trial Court under this issue are reversed. So, issues no. 1 and 2 are decided in favour of defendants and against the plaintiffs.”

A bare perusal of the impugned judgment reveals that observation regarding possession of the plaintiffs is for the purpose of adjudication of matter before the learned First Appellate Court. Needless to say any proceedings before the competent authority under the Act would be conducted by it without being influenced by any observations in the impugned order regarding possession, as has been duly clarified by the learned Additional District Judge, Jind in judgment dated 09.05.2019, itself.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 09.05.2019 passed by the learned Additional District Judge, Jind, which calls for any interference by this Court in second appeal. In my considered opinion, there is no question of law, much less a substantial question of law, which is involved for consideration in this regular second appeal.

No other argument has been addressed.

There is an application for condonation of delay in filing of this appeal. As the matter has been adjudicated on merits, delay of 224 days in filing of the appeal is rendered academic.

Application is disposed of accordingly.

This appeal is, accordingly, dismissed with no order as to costs.

March 26, 2021
Rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No