

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

RSA 4539 of 2011 (O&M)

Date of Decision: March 21, 2022

1. Mohd. Ashraf Khan ...Appellant
Versus
Sufi Mohd. Ibrahim and others
... Respondents

RSA 4546 of 2011 (O&M)

2. Mohd. Ashraf Khan LR of Balqeesah Begum ... Appellant
Vs.
State of Punjab and others ...Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Rajinder Goyal, Advocate
for the appellant in RSA 4546 of 2011.

Mr. Arun Jain, Advocate
for the appellant in RSA 4539 of 2011.

Mr. Harsh Aggarwal, Advocate
for respondent No. 1 in RSA 4539 of 2011 and
for respondent No. 4 in RSA 4546 of 2011.

Mr. Aditya Sharda, AAG, Punjab
for respondents No. 2 and 3/State in RSA 4539 of
2011 and for respondents No. 1 and 2/State in RSA
4546 of 2011.

None for respondent No. 3 in RSA 4546 of 2011 and
for respondent No.4 in RSA No. 4539 of 2011.

FATEH DEEP SINGH, J. (Oral)

Then plaintiff Balqeesh Begum preferred against State of Punjab and others a suit for declaration etc. The claim of the plaintiff was that she belongs to the family of Ajube Khan and that the suit land as per the jamabandi pertaining to the year 1925-26 measuring 19 bighas 19 biswa '**gair mumkin theh**' and No. 5662 measuring 19 biswas comprised of '**Kotha**' and '**Chah**' for drinking water and which property was equally owned by Nawab Khan and Sajjawal Khan. It is alleged that during preparation of the records in the year 1944-45 Khasra No. 7408 measuring 19 bighas 19 biswas and Khasra No. 7409 measuring 19 biswas which was owned and possessed by Nawab Khan @ Babu, grand father of the plaintiff to the extent of ½ share, the numbers were changed.

It is alleged that upon death of Sajjawal Khan one of the co-sharer his widow Hussana Begum subsequently also died and was succeeded by Nawan Khan @ Babu Khan who happened to be the grand father of the plaintiff in whose name

the mutation was sanctioned on 07.06.1929. It is worthwhile to mention here that as per the pleadings Nawab Khan was succeeded upon his death by sons Abdul Gafoor Khan @ Nathu and Rafiq Khan and mutation No. 2778 dated 24.08.1953 was sanctioned. Upon death of both these persons Ruqia Begum widow of Abdul Gafoor Khan @ Nathu became the sole legal heir who was not bestowed with any issue. The plaintiff claimed to be the daughter of Ruqia Begum and upon her death claims to have inherited the estate. Another property owned by Abdul Gafoor Khan and Rafiq Khan in village Dhano, Tehsil Malerkotla inherited by the plaintiff vide mutation Nos. 13146 and 13147 and 13157. It is against the act of the respondent Custodian Sub Urban Area in the jamabandi for the year 1959-60, one Khaira Shah Fakir was shown as tenant and the property was shown to be a evacuee property. It is precisely this dispute which has led to the institution of the present suit challenging this act of the respondents/State.

The official respondents in their response took the

plea that the Civil Court was not vested with the jurisdiction.

Being a evacuee property terming that the suit is barred by limitation, non-joinder of necessary parties and denied the averments of the plaint sought the dismissal of the suit. However, co-proforma defendants supported the case of the plaintiff.

The trial Court framed the following issues:-

1. Whether the plaintiff is entitled to declaration prayed for? OPP.
2. Whether the plaintiff is entitled to injunction and possession prayed for? OPP.
3. Whether the plaintiff has got no locus standi to file the instant suit? OPD.
4. Whether the instant suit is not maintainable? OPD
5. Whether the plaintiff has got no cause of action to file the instant suit? OPD.
6. Whether the instant suit is bad for non joinder of necessary parties? OPD.

7. Whether this Court has got no jurisdiction to try the suit? OPD.

8. Relief.

Plaintiff examined Riaq Khan as PW1, Ashraf Ali Khan as PW2, Sham Lal document writer as PW3, Mohd. Munir as PW4, Harpal Singh as PW5, Manjit Singh as PW6 and Pandit Girsh Parshad as PW7 and closed the evidence. While, the defendant side examined Amit thind as DW1 and defendant No. 4 Sufi Mohd. Ibrahim examined as DW2 and thereafter closed the evidence.

The Court of learned Civil Judge (Junior Division) Malerkotla vide judgment dated 27.03.2002 decreed the suit of the plaintiff holding that the plaintiff was the owner of the suit land in which the defendants have no right, title or interest.

The State challenged the same before the learned Court of Additional District Judge, Sangrur who vide impugned findings dated 02.08.2011 accepted the appeal and set aside the findings of the trial Court.

It is against these findings, the present two regular second appeals by Mohd. Ashraf Khan legal heir of Balqees Begum have come about. Since both these appeals have arisen out of the common judgment and decree and therefore are being disposed off together by this common judgment.

Heard learned counsel for the parties and perused the records.

In the light of admitted legal proposition as has been laid down in 'Kirodi (since deceased) through his L.R. Vs. Ram Parkash and others' Civil Appeal No. 4988 of 2019; SLP(C) No. 11527 of 2019 decided on 10.05.2019, the Court is not supposed to frame substantial question of law in view of the provisions enshrined under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana.

It is well established on the records through the evidence of the witnesses that plaintiff Balqees Begum happens to be the daughter of Abdul Gafoor @ Nathu Khan son

of Nawab Khan. It is also not put to question that Balqeesh Begum died on 22.11.1995 and has been represented by her legal heir Mohd. Ashraf Khan on the basis of Will dated 31.01.1994. Jamabandi pertaining to year 1925-26 shows that Khasra No. 5662 measuring 19 bighas and 19 biswas '**gair mumkin theh**' comprised of '**Kotha**' and '**Chah**' for drinking water both owned in equal shares by Nawab Khan and Sajjawal Khan. It is also well established on the records of rights prepared in the year 1944 the khasra numbers were changed to 7408 and 7409. It is on the basis of mutation No. 116 dated 07.06.1929, ½ share of Sajjawal Khan who had died was succeeded by his widow Hussana Begum and after her death by Nawab Khan @ Babu Khan (grand father of the plaintiff).

Counsel for the two sides did not put to question that upon death of Nawab Khan @ Babu Khan Mutation No. 2778 was sanctioned in favour of his sons namely Abdul Gafoor Khan @ Nathu and Rafiq Khan who both died issueless leaving behind Ruqia Begum widow of Abdul Gafoor Khan @ Nathu

being the sole legal heir and after death of Ruqia Begum, her lone daughter and legal heir Balqeesh Begum plaintiff inherited her estate and this became the owner of the suit land.

To corroborate the factum of inheritance of Abdul Gafoor Khan @ Nathu his property in village Dhano, Tehsil Malerkotla was also inherited by Ruqia Begum his widow through mutation No. 1100 dated 06.03.1979 and which was inherited subsequently by Balqeesh Begum daughter who happens to be the plaintiff upon death of Ruqia Begum by another quirk of fate that Abdul Gafoor Khan @ Nathu and Ragiq Khan who owned another property in Malerkotla after their death and that of Ruqia Begum was also inherited by the plaintiff for which mutation No. 13146, 13147 and 13157 were also sanctioned and which have never been displaced during the submissions of the counsel. The moot point that has come about is as to the the nature of the property, the official defendants claimed it to be a custodian evacuee property and for which reliance is placed on **Haji Siddik Haji Umar and**

others Vs. Union of India 1983 AIR (Supreme Court) 259 and Sowarn Dai Vs. Puran Chand 2011 (4) PLR 224 to bring home the point that the very question challenging the determination of evacuee property is beyond the jurisdiction of the civil court and has placed reliance on the provisions of Administration of Evacuee Property Act, 1950 (in short, '**the Act**') as well as the Displaced Persons (Compensation and Rehabilitation Act, 1954). The same is opposed by Mr. Rajender Goyal, learned counsel for the appellant claiming that there is no declaration under Section 7 of the Act for declaring the properties to be the evacuee property. No doubt, under the provisions of Administration of Evacuee Property Act, 1950, question as to whether a property is an evacuee property is beyond the decision of the civil court and the jurisdiction if any vests with the custodian general.

The defendants in their written statement invariably accepted the fact *inter se* relationship of Ruqia Begum widow of Abdul Gafoor Khan @ Nathu and plaintiff Balqeesh Begum their

daughter. How the suit land was declared as evacuee property by a stray entry in the jamabandi for the year 1988-89 when the earlier documents were otherwise could not be satisfactorily rebutted by the counsel for the official State. The Will in favour of the plaintiff dated 31.01.1994 has been well established by Sham Lal, Document Writer and PW4 attesting witness and the relationship of the plaintiffs are well deposed by PW1 Riaq Khan. The revenue record is brought on the records by none other than the official of the respondent PW4 Harpal Singh Patwari and PW6 Manjit Singh Clerk and PW7 Pandit Girsh Parshad Ex- Patwari who translated jamabandi for the year 1925-26 from Urdu to Punabi and documents have been proved in the statement of plaintiff Ex.P6 to P-44. When posed with the question on the veracity of the claim of the official defendants the stand of DW1 Amit Thind Tehsildar Malerkotla who claims that suit property was declared as evacuee in jamabandi for the year 1988-1989 to the specific query of the Court that what process has been adopted in terms of Section 7(A) and 7 of the

Administration of Evacuee Property Act, 1950, the counsel was clearly at loss of words. The defendants have taken this plea that it was subsequently in the year 1988-89, the property was declared as evacuee property and therefore the onus lay heavily upon these defendants to establish so in terms of Sections 101 and 106 of the Indian Evidence Act which they have failed to displace. How the property has been declared as an evacuee property and thus bars the jurisdiction of the Civil Court could not be satisfactorily answered by the respondents and therefore in view of law cited by the respondents of the Apex Court in **Dr. Rajendera Prakash Sharma Vs. Gyan Chandra and others** 1980 AIR (Supreme Court) 1206, jurisdiction of the civil court to go into the very finality of question of the status of the property under the the Displaced Persons (Compensation and Rehabilitation Act, 1954) cannot be ousted, where further reliance reliance was placed on the Full Bench view of the Allahabad High Court in **Khalil Ahmad Khan Vs. Malka Mehar Nigar Begum,** AIR 1954 Allahabad 362. The

learned trial Court has rightly appreciated the evidence oral and documentary and had come to a justifiable conclusion that the plaintiff happens to be the owner in possession of the suit land to which the defendants No. 1 to 3 have no concern.

The learned first Appellate Court has fell into an error by misconstruing the evidence as is elucidated from para 46 of the impugned judgment under challenge. The findings of the learned trial Court being wholly legal and valid needs to be upheld. The impugned findings rendered by the first appellate Court suffers from serious legal infirmity needs to be set aside by way of acceptance of the appeals.

March 21, 2022

(FATEH DEEP SINGH)

amit rana

JUDGE

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