

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

209

RSA No.20 of 1990
Date of Decision:16.08.2023

State of Haryana and othersAppellants
Versus
Rameshwar and others ...Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Yuvraj Shandilya, AAG, Haryana
for the appellants/State.

Mr. Ashok Verma, Advocate for the respondents.

SANJAY VASHISTH, J.(Oral)

1. Present regular second appeal has been filed by the defendants-State against the concurrent findings of decretal of suit filed by sole plaintiff-Rameshwar.
2. Plaintiff-Ramweshwar filed a civil Suit No.63 dated 04.06.1984/31.01.1985 for seeking a decree of declaration to the effect that the order dated 16.11.1979 passed by the Prescribed Authority and form IV prepared on the basis of this order vide which land measuring **63 Kanals 11 Marlas** of 'C' category comprised in Rectangle No.271 Killa No.3/2(2-18), 8(6-14), 9(8-14), 11(7-12), 12/2 (6-2), 12/2(1-8), 10 (7-12) (equivalent to **40 Kanals 18 Marlas of ordinary category**) situated at Village Jamal, Tehsil and District Sirsa is wrong, illegal, null and void.
3. The land in question, in the ownership of the plaintiff was declared surplus and the same was sought to be wrong, illegal, null and void, against law and without jurisdiction. Consequent relief was

also sought of not delivering the possession of the aforesaid land to defendants No. 4 and 5. The order dated 12.03.1981 passed by allotment authority under the Provisions of The Haryana Utilization Surplus and Other Areas Scheme, 1976, order dated 12.10.1982 passed by the Collector under the provisions of the Haryana Ceiling on Land Holdings Act, 1972 and order dated 25.02.1983 passed by the Commissioner Hisar were also challenged.

4. Upon the notice issued to the defendants (appellants herein), the written statement was filed. In the written statement, it was pleaded that plaintiff is not a small land owner under the Haryana Ceiling on Land Holdings Act, 1972, rather he is a big land owner owing the land measuring **63 Kanals 16 Marlas** of 'C' Category, which was declared surplus by the concerned authority and such declaration was upheld in appeal and thereafter, in the revisional jurisdiction as well. Defendants also pleaded that though, the land measuring **43 Kanals 2 Marlas** was under mortgage before 24.01.1971, but it is incorrect to suggest that the said area cannot be considered as belonging to the plaintiff, while deciding the surplus land of the plaintiff. Similarly, plaintiff cannot take any benefit from the sale of land, which it claims to have been sold in order to satisfy the debt of the Co-operative society. Since, the land measuring **43 Kanals 2 Marlas** was sold out on 28.05.1973, no benefit can be extended to the plaintiff, moreso for the reason that the said sale was not a bonafide one. Thus, defending the order dated 12.03.1981 as

legal suit, was prayed to be dismissed.

5. Considering the legal issues, dismissal of the suit was also prayed by submitting that the civil Court has no jurisdiction to entertain the suit. After completion of pleadings of the parties, learned trial Court framed following five issues:

- '1. Whether the order dated 6.11.79 passed by prescribed authority and form IV prepared on the basis of this order vide which the land measuring 63 Kanals 11 marla situated in village Jamal was declared surplus in the hands of the defendants, is illegal, null &Void, without jurisdiction, in-operative, ineffective and not binding on the rights of the plaintiff and so is the case with order date 12.10.82 and 25.2.83 passed by Collector and Commissioner respectively? OPP.
2. Whether the civil court has no jurisdiction to try the present suit?OPD
3. Whether the suit is bad for not giving notice u/s 80 CPC? OPD
4. Whether the suit is not based on good intention?OPD
5. Relief.'

6. While dealing with issue No.1, learned Trial Court took note of the judgment titled as ***Savinder Singh Vs. State of Haryana PLJ 1982 page 419(c)*** and observed that as per the Haryana Ceiling on Land Holdings Act, 1972, cut off date fixed is 24.01.1971 and the land in question had been mortgaged alongwith possession prior to that. Therefore, sale of the said land on 28.05.1973 is protected from the provisions of the Act.

7. While deciding issue No.2, learned trial Court believed the submissions addressed by the plaintiff that where the order is illegal the same can be challenged before the Civil Court. Reliance is placed upon the judgment of **Full Bench of this Court (Punjab and**

**Haryana High Court) titled as State of Haryana and others Vs.
Vinod Kumar and others 1986 (1) PLR 222; Law Finder Doc ID#
52149.**

For the sake of convenience, findings recorded under
Issues No. 1 and 2 are as under:

'Issue No.1

6. It is admitted care of the defendants as is evident from the written statement filed by defendants Mo. 1 to 3, that the area measuring 63 kanals 16 marlas has been declared as surplus and that the plaintiff mortgaged land measuring 43 Kanal 2 marla prior to 24.1.1971 and similarly plain tiff sold this very land on 28.5.73 in order to satisfy the Award of a Cooperative Society. Now the case of the plaintiff is that the area which was under mortgage prior to 24.1.1971 and the area which he sold on 28.5.73 in order to satisfy the award of a Cooperative Society cannot be taken in to consideration while deciding the surplus case. On the contrary the claim of the defendant State is that the area which was under mortgage prior to 24.1.71 and the area which has been sold on 28.5.73 have been rightly taken into consideration as belonging to the plaintiff at the time of deciding the surplus case of the plaintiff. According to the defendant state since the plaintiff could not prove the sale to be bonafide which might come within the perview of Section 8 of the Haryana Ceiling on Land Holding Act, as the sale has been rightly ignored. Now the question to be decided is whether the plaintiff can take benefit from the mortgage which was executed much prior to 24.1.1971 and the sale which is effected on 28.5.73. It is admitted case of the plaintiff that the area measuring 43 kanals 2 marla which was was under mortgage prior to 24.1.1971 was sold on 28.5.73 to Bhagirth. The plea of the plaintiff is that he was to sell this area because the award of a Coopemtive Society was made against him and he has got no option except to sell the area in order to satisfy the said Award.

7. The plaintiff has examined PW1 Jagdish Rai who has proved that an Award was passed against the plaintiff. PW2 Jagdis Sharma, Secretary of the Jamal Cooperative Society, Stated that Ex.P1 is the correct copy of the

original. PW3 Bal Kishan Patwari has proved that the land measuring 68 kanal 17 marla was under mortgage with Surja son of Narain Dass prior to 24.1.1971 belonging to the plaintiff and out of this very land measuring 43 kanal 2 marla was sold by the plaintiff to Bhagirath on 28.5.73 for Rs.12000/- and this area was under mortgage with Birbal with possession since prior to 24.1.1971. He has also stated that now Bhagirath is the owner of this land in the revenue record and the plaintiff is no longer owner of this land. The Ld. Counsel for the plaintiff has drawn my attention towards section 8 (1) (b) of the Haryana Ceiling on Land Holdings Act, according to which the area by way of bonafide transfer or dispossession after the appointed day is excluded from the permissible area. It is also laid down in Section 8(2) ibid that it shall be for the transferee to prove that the alienation was bonafide. The Ld. counsel for the plaintiffs has also drawn my attention towards the executive instructions contained in the appendix issued under the Haryana Ceiling on Land Holdings Act, 1972, according to instruction No.6, the words 'transfers' or 'disposition' whenever used in the form, mean all types of transfers or dispositions (such as sale, mortgage with possession, exchange, lease, gift, bequest, family settlement, partition etc.) acquisition by the Union State Government or by a tenant under the Punjab Law or the Pepsu Law or by an heir by inheritance. It is also mentioned in this instruction that the words also include transfers or dispositions resulting from a judgment, decree or order of a court or other authority having the effect of changing the ownership or possession from one to another person. In PLJ 1982 page 419 (c) Savinder Singh Vs. State of Haryana it was observed that bonafides of transfer is to be seen in case of exemption under clause B of Section 8(1) In A.I.R. 1981 Supreme Court page 636 Baljinder Singh VS. State of Uttar Pradesh it was observed that the word 'good faith' does not require that transfer in good faith must be made for pressing necessity only. Similar view was expressed in A.I.R. 1981 S.C. 1157. In the present case it is admitted by the State that the land measuring 63 Kanals 16 marlas of C category which is equivalent to 43 kanals 2 marlas was already mortgaged prior to 24.1.1971 and this mortgage was with possession with Birbal and his very land was sold by the plaintiff to one Bhagirth in the year 1973. These facts are also admitted by PW. 3

Ram Kishan Patwari. It is proved that in the year 1973 the plain tige sold the land to one Bhagirth who was of a different Caste in order to satisfy an Award passed by a Cooperative Socieity against the plaintiff. The factum that the award was passed is not disputed by the defendants State and this is also proved from the evidence of PW.1 Jagdish Rai and PW2 Jagdish Rai Sharma, Secretary. There is no connection between the plaintiff an the vendee because the two belong to the different castes and mutation was also sanctioned in the name of Bhagirth and now in the revenue record the name of Bhagirth continues to be owner in possession. Under the Act a bonafide transfer is protected. However, the authorities while deciding the surplus case of the plain tiff also took into consideration this land. The case of the defendants-State is that the plain tiff has not been able to dow that the sale was a bonafide. However, there is nothing on the record that the sake might not be bonafide. On the contrary it is admitted case that the sale took place in order to satisfy an award passed by the Cooperative society and there is no connection between the vendee and the plaintiff and that after the sale Bhagirth who is of a different case and is not related to the plaintiff in any manner, continues to be owner in possession of the suit land. So this land is protected u/s 8(1) (b) of the Haryana Ceiling on Land Holding Act and the authorities have wrongly taken the same into consideration. So the order dated 16.11.79 passed by prescribed Authority and from IV prepared on the basis of this order is illegal, null and void, without jurisdiction, inoperatives and ineffective and not binding on the rights of the plaintiff and is liable to be set aside. Similarly the orders dated 12.10.82 and 25.2.1983 passed by the Collector and Commissioner respectively, are illegal and are liable to be set aside. This issue is decided in favour of the plaintiff and against the defendants. Issue No.2.

Issue No.2

8. *The Ld. Counsel for the plaintiff has placed reliance upon 1986 (1) PLR page 222, Full Bench, Pb & Haryana High Court, where is at page 223 it was observed that if an order passed by a tribunal of limited jurisdiction without issuing an notice to the concerned party, the order would be nullity and open to challenge in civil court even if the statute expressly bars the jurisdiction of the citil court to entertain a suit to challenge the validity or legality of the order passed by such a tribunal.*

It was also observed in this authority that the jurisdictions 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 of the orders of the Tribunal was expressly barred by the Statute. In PLJ 1983 page 17 State of Haryana Versus. Bhagwanti it was observed that where act of utilizing land prima-facie without jurisdiction, suit in civil court for declaration and injunction against State and Authorities under Haryana Ceiling Act is maintainable. Similarly in PEJ 1983 page 40 Punjab State Vs. Bhagwan Singh it was observed that Revenue Officer of Tribunal under the Act if does not perform its duties in accordance with provisions of Act or Rules, Civil Court's jurisdiction comes in. In AIR 1974 Punjab & Haryana High Court page 28, Malkiat Singh Vs. Gram Panchayat it was observed that jurisdiction of civil court is not barred when concerned authority acts illegally. In the present case the authorities have taken into consideration the area of the plaintiff as that of the plaintiff which was already under mortgage with possession with Birbal and the area which he had already sold to Bhagirth in order to satisfy an award of a Cooperative Society, as that of the plaintiff. While deciding the surplus case and this was wrongly taken into consideration as discussed in issue No.1. In view of the law laid down in the above cited authorities, the jurisdiction of the civil Court to try the suit is not barred. So this issue is decided in favour of the plaintiff and against the defendant.'

8. When the appellants herein challenged the aforesaid findings, the same was affirmed by the First Appellate Court. The relevant part of the findings recorded by First Appellate Court is as under:

'14. *I have considered the submission of both the sides and an of the opinion that the arguments of the learned Govt. pleader are devoid of merit because it is an admitted case that the factum of award passed by the Arbitrator, appointed under the Punjab Cooperative Societies "ot is admitted and the*

sale of the land of the plaintiff was made in the year 1973 in order to satisfy the daid award. It is also admitted fact that prior to the day 24-1-1971 the land was mortgaged with possession with Birbal and later on it was sold to Bhagirath, and a mutation was also sanctioned in the name of Bhagirth and under the act a bonafide transferis protected. However, the authorities while deciding the surplus case of the plaintiff also took into consideration this land and passed the order dated 16-11-79 accordingly and form IV was also prepared on the basis of this order and has held by the learned trial Court both the order and form IV are illegal, null and void, without jurisdiction, in operative and in effective and not binding on the rights of the plaintiff and similarly the subsequent orders dated 12.10.1982 and 26.02.1983 passed by the Collector and Commissioner respectively are liable to be set aside and the learned trial court has rightly decided issue No.1 in favour of the plaintiff and there are no grounds to interfere with the findings of this issue, and rather the same are hereby affirmed.

15. When the authorities had excedded beyond their jurisdiction therefore the civil Court has certainly got the jurisdiction to entertain and try the present suit and it was rightly held by the learned trial Court under Issue No.2.'

9. While examining the record available before this Court and considering the arguments addressed by State counsel, nothing material is pointed out by him to change the view point taken by the Courts below. The only argument, addressed by the State counsel is that the alienation of the land in question by sale in the year 1973, cannot be said to be a bonafide one.

10. However, relying upon the judgments of Hon'ble Supreme Court titled as **Brijendra Singh Vs. State of U.P. and others 1981 AIR (Supreme Court) 636** and **Bhupendra Singh VS. State of U.P. and others 1981 AIR (Supreme Court) 1157**, learned counsel for the respondents submits that applying the principle of the noted

judgments, alienation of the property cannot be said to be with any malafide reason or not in 'good faith'. Rather, as per the law laid down by the Hon'ble Supreme Court in Brijendra Singh's case (supra) the word ('good faith') does not require that transfer in good faith must be made for pressing necessity only.

11. In the present case, land measuring 63 Kanals and 16 Marlas of 'C' Category, which is equivalent to 43 Kanals and 2 Marlas had already been mortgaged prior to 24.01.1971 alongwith possession to one Birbal and same land was sold out by the plaintiff in the year 1973 to one Bhagirath. It is not in dispute that infact, land was sold out to satisfy the award passed by the Co-operative Society against the plaintiff, therefore, there is nothing pointed out by the appellant that there was any malafide in the mind of the plaintiff in selling out the land in the year 1973, rather, it appears that because of the necessity at that particular time, land in question was sold out. As there is no force in the submissions addressed by learned State counsel, this Court does not find any irregularity, illegality or perversity in the findings recorded by the Courts below. Thus, **while maintaining the impugned judgment and decree of the Courts below, the present regular second appeal stands dismissed.**

[SANJAY VASHISTH]
JUDGE

August 16, 2023
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Whether speaking/reasoned
Whether reportable?

Yes/no
Yes/no