

CM-3465-C-2023 in/&  
RSA-2652-1989 (O&M)      -1-

2023:PHHC:063661

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CM-3465-C-2023 in/&  
RSA-2652-1989 (O&M)  
Date of Decision :03.05.2023

Sada Ram @ Sada Lal and others

....Appellants

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. A.K. Verma, Advocate for appellants.

Ms. Vibha Tewari, AAG, Haryana.

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**Harsimran Singh Sethi, J. (Oral)**

**CM-3465-C-2023**

Present application has been filed for recalling the order dated 27.02.2023 passed by this Court by which, the main appeal was dismissed for non-prosecution.

Keeping in view the averments made in the application, which are duly supported by an affidavit, application is allowed. Order dated 27.02.2023 passed by this Court is recalled and the main appeal is ordered to be restored to its original number and status and on the request of the learned counsel for the parties is taken up for hearing today itself.

**RSA-2652-1989**

1. The present regular second appeal has been filed by the appellants-plaintiffs challenging the judgment and decree of the trial Court dated 01.03.1988 by which, a civil suit filed by the appellants-plaintiffs for

declaration that they were entitled for allotment of land in question in preference to the private respondents No.4 to 22 was dismissed as well as judgment and decree passed by the lower Appellate Court dated 02.12.1989 by which, judgment and decree of the trial Court was upheld.

2. Before considering the arguments raised by the learned counsel for the appellants-plaintiffs, it may be noticed that in the present case, the claim is qua the surplus land which was initially owned by Natha Singh. The said surplus land was allotted under the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as '1972 Act') to the private respondents No.4 to 22 vide order dated 30.12.1977 . The said allotment was challenged by the appellants-plaintiffs by way of filing a civil suit on the ground that they are tenants of land in question and had preferential right to be considered for allotment of the land under the 1972 Act hence, allotment made in favour of the private respondents No.4 to 22 is bad as the same has been done without considering the claim of the appellants-plaintiffs.

3. In reply to the civil suit, it has come on record that the land in question was allotted in favour of private respondents vide order dated 30.12.1977 and up to the said date, there was no record to show that appellants-plaintiffs were tenant of the said land and further, the allotment of the land was done after due publicity and munadi in the area but no claim was raised by the appellants-plaintiffs qua their claim before the authorities concerned and it was only after a period of 07 years of the allotment of the said land in favour of private respondents No.4 to 22, the same was being challenged.

4. The suit filed by the appellants-plaintiffs was dismissed by the

trial Court holding that the appellants-plaintiffs were not able to substantiate their claim that they are tenants in the land in question at any time before the land was allotted to the private respondents under the 1972 Act and rather as per the record produced by the appellants-plaintiffs, their possession has been shown from the year 1983 onwards whereas, allotment which is under challenge, was of year 1977 hence, it cannot be said that when allotment of the land was made under the 1972 Act to the private respondents, appellants-plaintiffs were even the tenants as being claimed by them. Trial Court has further held that due publicity was made before allotment of the land in favour of the private respondents under the 1972 Act by the authorities concerned and as no objection was taken at any given point of time by the appellants-plaintiffs claiming that they are tenants of land in question hence, no claim can be raised after 07 years of the allotment made and the suit was dismissed by the trial Court. Even the appeal filed against the said order was also dismissed by the lower Appellate Court by recording a finding that under Section 26 of the 1972 Act, the Civil Court did not have jurisdiction to entertain the said plea.

5. Learned counsel for the appellants-plaintiffs again argues that appellants-plaintiffs were tenants of land in question since 1963.

6. On being asked to prove the said fact so as to show that judgment and decree of the Courts below are perverse, learned counsel for the appellants-plaintiffs very fairly concedes that except the statements of the appellants-plaintiffs, there is no other document which proves that they were the tenants of land in question prior to the date of allotment of land in favour of private respondents and it is only from the year 1983, the record

had shown them to be the tenants of land in question. It has been conceded by the learned counsel for the appellants-plaintiffs that there is no record to support the claim of the appellants-plaintiffs that they were tenants of land in question since 1963 as being claimed by them and were tenants on the date when the said land was allotted to the private respondents under the 1972 Act. Keeping in view the facts and circumstances recorded hereinbefore coupled with the facts conceded by the learned counsel for the appellants-plaintiffs there is no perversity found in the findings recorded by the Court below and the same have been passed in accordance with law keeping in view the facts and evidence on record.

7. No other argument has been raised.

8. Keeping in view the above, as learned counsel for the appellants-plaintiffs failed to point out any perversity in the judgments and decrees passed by the Courts below, no interference is called for by this Court and the present regular second appeal is accordingly dismissed.

9. Before parting, it may be noticed that at the time when the appeal was filed in the year 1989, an order was passed by the Coordinate Bench on 03.08.1990, which is as under:-

“Admittedly the plaintiff-appellants are in possession of the disputed land. Private respondents have filed application for vacation of the stay, stating that the land in dispute was allotted to them in the year 1977. If stay is vacated, the appeal shall become infructuous. Consequently, the application for vacation of stay is dismissed and stay is confirmed. However, the appellants would furnish adequate security to the satisfaction of the trial Court for mesne profits within two months from today. The security would be accepted after notice to the contesting respondents. Hearing of the appeal be

expedited.”

10. Keeping in view the fact that land in question which was actually allotted to the private respondents has been used by the appellants-plaintiffs under the interim order of this Court and they have undertaken to compensate the allottees in case they fail in the present appeal, private respondents, who were allottees of the land in question are free to agitate their claim to claim profit of the land in question for the period the same remained in the possession of the appellants-plaintiffs.

CM-2170-CII-1990 &  
CM-4293-C-1989

Applications are disposed of.

May 03, 2023  
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(HARSIMRAN SINGH SETHI)  
JUDGE

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