

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1440-1991 (O&M)
Reserved On :- 21.09.2023
Date of Decision:-15.11.2023

Balwinder Singh

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. Ajay Jain, Advocate
for the appellant(s).

Mr. Neeraj Sheoran, DAG, Haryana
for the respondent.

KARAMJIT SINGH, J.

1. The appellants/plaintiffs have filed the present appeal against the judgment and decree dated 17.5.1991 passed by the Court of learned Additional District Judge, Hisar whereby the appeal filed by the appellants/plaintiffs against the judgment and decree dated 10.12.1990 passed by the Court of Sub-Judge 1st Class, Hisar, whereby suit of the appellants/plaintiffs was partly decreed regarding land measuring 3

kanals 4 marlas but the suit was dismissed regarding remaining land measuring 4 kanal 12 marlas, has been dismissed.

2. The brief facts of the appellants case are that the land in dispute measuring 7 kanals 16 marlas comprised in khasra No.716/1 and some other land were allotted to Saifi Kashmiri a political sufferer and the proprietary rights in the said land were transferred by the State Government in the name of said allottee. Thereafter Safi Kashmiri executed an agreement to sell the suit land along with some other land with Mehal Singh father of plaintiffs No.1 to 3 and Gurcharan Singh (plaintiff No.4) son of Mehal Singh. On the basis of the said agreement to sell the proposed vendees filed suit for specific performance against Saifi Kashmiri and the said suit was decreed and then sale deed was executed on 11.4.1986 in favour of proposed vendees Mehal Singh and Gurcharan Singh with the intervention of the Court of Sub-Judge 1st Class, Hisar. Mehal Singh transferred his share in favour of plaintiffs No.1 to 3 by suffering a decree dated 2.4.1986 passed by the Court of Senior Sub-Judge Hisar. Thus the plaintiffs became owners in possession of the suit land in equal shares. Prior to filing of the present suit defendant-respondent/State threatened to take possession of the suit land, illegally, without having any right, title or interest in the said property. Consequently the plaintiffs filed suit for declaration and permanent injunction restraining the defendant from taking possession of the suit land bearing khasra No.716/1(7-16).

3. The defendant in its written statement while contesting the claim of the plaintiffs took preliminary objections that the suit is liable to be dismissed for want of notice under Section 80 CPC; that the plaintiffs have no locus-standi and cause of action to file the suit; that the suit is not maintainable in the present form and that the jurisdiction of Civil Court is barred under Section 15 of the Public Premises Act. On merits, it was pleaded that plot No.131/9 measuring 104 Kanals 12 Marlas situated in Bir Hisar was allotted to Chandan Singh a political sufferer for a period of 20 years from 1955 to 1976. Subsequently the said land was transferred to Saifi Kashmiri another political sufferer, who was put in its possession on 13.6.1978. That as per Presidential Order dated 27.10.1966 only 100 kanals of land compromised in plot No.131 was to be transferred to Saifi Kashmiri a political sufferer. In view of the said Presidential Order, allotment of land measuring 4 Kanals 12 Marlas out of Khasra No.716/1 in name of Saifi Kashmiri was cancelled and the said area was resumed by the State Government and taken into its possession vide rapat roznamcha No.106 dated 1.12.1982, but subsequently Mehal Singh and Gurcharan Singh again occupied the said land in an unauthorized manner. That Saifi Kashmiri was having no right, title or interest in the aforesaid land measuring 4 Kanals 12 Marlas and as such Saifi Kashmiri was having no right to sell the said land to Mehal Singh and Gurcharan Singh and the sale deed dated 11.4.1986, which was executed in favour of Mehal Singh and Gurcharan Singh with the intervention of Court did not confer any title in favour of the aforesaid vendees qua land measuring

4 Kanals 12 Marlas. The possession of Mehal Singh and Gurcharan Singh over the said land was illegal and they were ordered to be evicted by the Collector-cum-Prescribed Authority, Hisar under the Public Premises Act vide order dated 6.3.1985. The appeal filed by the other party against the said order was also dismissed and the eviction order attained finality and the defendant-State initiated process to take possession of the land in question measuring 4 Kanals 12 Marlas in due course of law. The other averments of the plaint were denied being wrong and it was prayed that suit be dismissed.

4. Plaintiffs filed replication controverting the averments made by the defendant in its written statement. It was pleaded that the eviction order and order passed by the Commissioner are illegal null-&-void against which, revision petition has been filed.
5. On the pleading of the parties, following issues were framed:-
 1. Whether the plaintiffs are owner in possession of the suit land as alleged? OPP
 2. Whether no notice under Section 80 C.P.C. has been served upon the defendant? OPD
 3. Whether the plaintiffs have no locus standi to file the present suit? OPD
 4. Whether the plaintiffs have no cause of action? OPD
 5. Whether the suit is not maintainable in the present form? OPD
 6. Whether the suit is bad for non-joinder of necessary parties?
OPD

7. Whether the suit is barred by principle of res-judicata? O PD
 8. Whether the civil Court has no jurisdiction to entertain and try the present suit? OPD
 9. Whether the plaintiffs have not come to the Court with clean hands? OPD
 10. Relief.
6. The counsel for the plaintiffs examined PW-1 Rajinder Singh Clerk, Record Room; PW-2 Balbir Singh Ahlmad; PW-3 Mehal Singh father of plaintiffs No.1 to 3 and also examined plaintiff No.4-Gurcharan Singh as PW-4.
 7. On the other hand, counsel for the defendants examined DW-1 Sher Singh, Clerk, DC Office, Hisar; DW-2 Ram Sarup Patwari and DW-3 Jagdish Chander A.W.B.N. Hisar, who proved report No.106 dated 1.12.1982 of Rapat Roznamcha Ex.D2/A, copy of order dated 7.4.1986 Ex.DW3/B passed by Commissioner, Hisar and copy of order dated 6.3.1985 Ex.DW3/A passed by Collector, Hisar under Public Premises Act.
 8. After hearing the counsel for the parties, the learned trial Court partly decreed the suit of the plaintiffs qua the land measuring 3 Kanals 4 Marlas compromised in Khasra No.716/1. However, the suit of the plaintiffs with regard to remaining land measuring 4 Kanals 12 Marlas comprised in Khasra No.716/1 was dismissed.
 9. Being aggrieved, the plaintiffs preferred appeal against the judgment and decree passed by the learned trial Court.

10. The Court of Additional District Judge, Hisar dismissed the appeal filed by the plaintiffs vide its judgment dated 17.5.1991 and upheld the findings recorded by the learned trial Court.
11. The plaintiffs being not satisfied have filed the present appeal to challenge the judgments passed by the Courts below with prayer that the suit of the plaintiffs be decreed in toto.
12. I have heard the counsel for the parties, and gone through the summoned record.
13. The counsel for the plaintiffs/appellants submits that the learned trial Court has rightly decreed the suit of the plaintiffs to the extent of 3 Kanals 4 Marlas compromised in Khasra No.716/1 and that the said findings of the learned trial Court were affirmed by the 1st Appellate Court. It has been further contended that the learned trial Court fell into error while dismissing the suit of the appellants with regard to remaining land measuring 4 Kanals and 12 Marlas and even the findings given by the 1st Appellate Court with regard to the said land are not sustainable. The counsel for the appellants has further contended that 104 Kanals 12 Marlas of land was firstly allotted to Chandan Singh a political sufferer for a period of 20 years from 1955 to 1976. That on expiry of the said period, the said land reverted back to the State Government and even its possession was taken over by the Government. Subsequently the said land was allotted to Saifi Kashmiri another political sufferer on 18.6.1978 and proprietary rights of the land were also transferred in his favour. Thereafter Saifi Kashmiri being its owner executed an agreement to sell 83 Kanals 18

Marlas out of said total land including the suit land, with Mehal Singh father of plaintiffs No.1 to 3 and his son Gurcharan Singh plaintiff No.4. The proposed vendees filed suit for specific performance against Saifi Kashmiri and the same was decreed and in execution proceedings sale deed (Ex.P1) of aforesaid land measuring 83 Kanals 18 Marlas was executed in favour of Mehal Singh and Gurcharan Singh with intervention of the Court and possession of the said land including suit land was also delivered to the vendees. The counsel for the appellants has further contended that Mehal Singh transferred his share out of the suit land in favour of plaintiffs No.1 to 3 in equal shares vide decree dated 2.4.1986 (Ex.P2) and as such, plaintiffs became owners in possession of the suit land. The counsel for the appellants has further contended that the plaintiffs were in lawful possession of the suit property being its owners at the time of filing of the suit. That entry in Rapat Roznamcha Ex.D2/A is bogus and is not bearing name of Patwari under his alleged signatures and possession of land measuring 4 Kanals 12 Marlas was never taken over by the defendant from appellants.

14. The counsel for the appellants has further contended that even in case there was any Presidential Order which debarred allotment of land beyond 100 Kanals to a political sufferer, it does not mean that the State Government has got right to dispossess lawful owners from their land. The reason being the land which was purchased by Mehal Singh and Gurcharan Singh was less than 100 Kanals and the Government should have resumed the excess area measuring 4 Kanals 12 Marlas

from the remaining allotted land, which remained with Saifi Kashmiri.

The counsel for the appellants has further submitted that the appellants are in settled lawful possession of disputed land measuring 4 Kanals and 12 Marlas and State is having no right to dispossess the appellants from the said land. So prayer is made that the present appeal be allowed and the suit of the appellants be decreed in toto.

15. On the other hand the counsel appearing on behalf of the State while supporting the judgments passed by the Courts below has *inter alia* submitted that the possession of the land in dispute measuring 4 Kanals and 12 Marlas was taken over by the State authorities on 1.12.1982 and to this effect entry was made in the Rapat Roznamcha and the copy of the same is Ex.D2/A which was proved by DW2 and DW3. The counsel for the State has further contended that the suit land measuring 4 Kanals and 12 Marlas was already resumed in 1982 by the State Government on the basis of Presidential Order and as such Saifi Kashmiri was having no right to sell the said land to Mehal Singh and Gurcharan Singh and sale deed Ex.P1 had not conferred any title in their favour with regard to land in question. That likewise was the effect of subsequent decree dated 2.4.1986 Ex.P2. Thus making it clear that none of the aforesaid persons were having any right, title or interest in the suit property. The State counsel has further contended that the appellants have failed to prove their ownership over the suit property. The counsel for State has further submitted that later on appellants took illegal possession and thus it is evident that at the time of filing of the suit the appellants were in

illegal possession of the suit land. The counsel for the State while referring to Orders Ex.DW3/A and Ex.DW3/B has further contended that the State moved application before the competent authority to seek eviction of Mehal Singh and Gurcharan Singh and the said application was allowed vide order dated 6.3.1985 Ex.DW3/A and the appeal filed against the said order by Mehal Singh and Gurcharan Singh was dismissed by Commissioner, Hisar vide order dated 7.4.1986 (Ex.DW3/B). The counsel for the State has further contended that the appellants being in unlawful possession of the suit property are having no right to protect their possession over the land in question measuring 4 Kanals 12 Marlas. Thus the Courts below rightly dismissed the suit of the appellants with regard to said land.

16. I have considered rival contentions made by counsel for the parties.
17. The present appeal has been filed by the appellants, who are sons of Mehal Singh. Admittedly land measuring 104 kanals 12 marlas including the suit land was allotted to Saifi Kashmiri by the State Government, on the ground that the said allottee was a political sufferer and possession of the said land was handed over to Saifi Kashmiri on 18.06.1978. As per Presidential Order dated 27.10.1966 only land measuring upto 100 kanals could be allotted to any such political sufferer. So land measuring 4 kanals 12 marlas was allotted in excess to Saifi Kashmiri against the upper limit of 100 kanals as per the Presidential Order dated 27.10.1966.
18. The plea of the State Government is that it took back the possession of aforesaid excess land, measuring 4 kanals 12 marlas on 1.12.1982

from the aforesaid allottee vide entry No.106 of Rapat Roznamcha (Ex.D2/A), but thereafter appellants took forcible possession of the suit property measuring 4 kanals 12 marlas. It appears that aforesaid rapat roznamcha is bearing signatures of concerned Patwari and same is proved by DW2 and DW3. As Mehal Singh and Gurcharan Singh took forcible possession, the State filed eviction petition against Mehal Singh and his son Gurcharan Singh under Public Premises Act and the said petition was allowed by Collector, Hisar vide order dated 6.3.1985 Ex.DW3/A and the appeal filed against the said eviction order was dismissed by Commissioner, Hisar vide order dated 7.4.1986 Ex.DW3/B.

19. Admittedly in the plaint dated 18.6.1986, there was no mention of aforesaid orders dated 6.3.1985 (Ex.DW3/A) and 7.4.1986 (Ex.DW3/B), passed by the Competent Authorities directing the appellants to hand over the vacant possession of the suit property to the State Government, thus making it clear that the appellants concealed material facts in their plaint while approaching the Court seeking decree of permanent injunction to restrain the respondents from taking over the possession of the land in question except in due course of law. In written statement, respondent-State disclosed about the passing of orders Ex.DW3/A and Ex.DW3/B. Only thereafter, the appellants in their replication took plea that said orders are illegal, null-&-void. However, till date appellants failed to show that subsequently both the said orders were set aside by any competent authority. It is settled position that when a person approaches a Court,

he should approach the Court not only with clean hands but also with clean objective. One who seeks equity must do equity. The Hon'ble Apex Court in **Kishore Samrite vs. State of UP (2013) 2 SCC 398**, has held that the party not approaching the Court with clean hands would be liable to be non-suited.

20. After going through orders Ex.DW3/A and Ex.DW3/B, it is evident that the respondent took recourse to legal action, in order to get possession of the land in question and procured eviction order, which was also upheld by the Appellate Authority. The facts and circumstances further shows that the respondent has resorted to legal process to take possession of the land in dispute from appellants in due course of law. Thus the plea taken by appellants that prior to filing of suit the respondent intended to take possession of the suit property in an unlawful manner, stands falsified.
21. Undisputedly Saifi Kashmiri was entitled to land only upto 100 kanals and any allotment of land beyond the said area to Saifi Kashmiri was illegal. So it is established on the record that at the time of execution of agreement to sell, Saifi Kashmiri was not owner of the property in question and thus decree for specific performance of agreement to sell passed in favour of Mehal Singh and his son Gurcharan Singh did not confer any proprietary rights in their favour with regard to land in question. Thus making it apparent that at the time of filing of the suit the appellants were in unlawful possession of the suit land measuring 4 kanals 12 marlas, having no right, title or interest in the same. It is

settled law that a trespasser could not claim injunction against the true owner of the property in question.

22. In the given circumstances as has been discussed above, the learned trial Court as well as the 1st Appellate Court rightly concluded that the appellants are not entitled to protect their possession over the land in question measuring 4 kanals 12 marlas by seeking decree for declaration and permanent injunction against the respondent. The concurrent findings recorded by both the Courts below with regard to property in question measuring 4 kanals 12 marlas are hereby affirmed.
23. No question of law much less any substantial question of law arises for determination in the present appeal warranting interference by this Court. Consequently the appeal is hereby dismissed being devoid of merits.

15.11.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No