

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

**RSA-1702-2014 (O&M)**  
**Date of decision: 19.01.2023**

|                             |     |               |
|-----------------------------|-----|---------------|
| State of Haryana and others | V/S | ...Appellants |
| Ram Kumar                   |     | ...Respondent |

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present: Mr. Harish Nain, AAG, Haryana.

Mr. Sanjeev Kodan, Advocate,  
For the respondent.

**ARUN MONGA, J. (ORAL)**

**CM-11802-C-2014**

This is an application seeking condonation of delay of 405 days in re-filing the appeal.

For the reasons stated in the application, same is allowed. Delay stands condoned.

**CM-4188-C-2014**

Disposed of as infructuous.

**Main Case (O&M)**

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, defendants-State of Haryana and others are in second appeal before this Court assailing the trial Court judgment and decree dated 06.05.2010, as upheld by learned First Appellate Court vide its judgment and decree dated 09.10.2012.

3. Briefly stated, facts as noticed by Courts below are that father of plaintiff Shri Puran purchased the land measuring 16 Kanals 5 Marlas from one Wazir Singh son of Sulakhan Singh, who was allotted land measuring 620 Kanals 9 Marlas situated at village Ratera on migration from Pakistan by the custodian department as per the Jamabandi for the year 1958-59 vide registered sale deed dated 20.07.1961. Necessary mutation no.1786 was sanctioned on 12.08.1961. It is pleaded that latest Khasra Girdawari establishing the possession of plaintiff along with ownership is also in favour of plaintiff. It is also stated that passbook *qua* the land in dispute, Fard Jamabandi for the year 1958-59, latest Jamabandi for the year 2002-03 also show the possession of plaintiff.

3.1. It is further alleged that since 20.07.1961, plaintiff is in continuous possession as owner of the land in dispute. The Managing Officer of the Custodian Department later came to know that the allotment made to Wazir Singh had been obtained by misrepresentation and concealment of material facts and was liable to be set aside, upon which the Chief Settlement Commissioner set aside the proprietary rights in the name of Wazir Singh. The order was challenged and a petition was filed before the Financial Commissioner, Revenue, Haryana and vide order dated 23.05.1978, the case was remanded back to the Chief Settlement Commissioner, Haryana but again Chief Settlement Commissioner, reiterated his order and the proprietary rights issued in the name of Wazir Singh were cancelled vide order dated 31.03.1993.

3.2. It is further pleaded that some of the vendees of Wazir Singh challenged order dated 31.03.1993 before the Financial Commissioner and Secretary to Government of Haryana, Rehabilitation Department, who allowed their revision petition but on 23.05.2005, defendant No.3- Tehsildar (Sales) came to village Ratera for auctioning the suit land. But no auction could be held and for the first time plaintiff came to know on 23.05.2005 that the proprietary rights of

Wazir Singh *qua* the suit land (which was purchased by plaintiff from Wazir Singh) were cancelled.

3.3. It is the case of plaintiff that he is a *bonafide* purchaser and purchased the suit land from the original allottee. Plaintiff purchased the land in dispute more than 32-year ago and at that time name of Wazir Singh was duly confirmed by the department of Rehabilitation Department as the owner of the suit land. Defendants want to auction the land in dispute and want to dispossess the plaintiff from the disputed land for which they have no right. Hence, it is prayed that the defendants may be restrained from interfering in the peaceful possession of plaintiff and be further restrained from auctioning the suit land. Hence, the civil suit.

4. Upon notice, defendant/appellants appeared and filed their written statement taking some preliminary objections with regard to the maintainability etc.

4.1. On merits, it is stated by defendants that the suit land was put to auction on 09.06.1993 in which plaintiff himself participated and offered the highest bid of Rs. 15,500/- and deposited Rs. 4,000/- as earnest money but because the bid offered by plaintiff was below the reserve price, therefore, it was again put to auction on 12.10.1993 and on 30.12.1993 but "no bid" was recorded. Same was recorded on 18.10.1995 as well, though plaintiff had refused to receive the intimation in this regard. Similar was the case on 23.05.2005.

4.2. It has been further pleaded that the allotment made in the name of Wazir Singh was based on fraud, misrepresentation and is not binding upon the rights of defendants. Plaintiff himself admitted the ownership of the Government regarding the said land by himself participating in the auction proceedings regarding the land in dispute. It is further alleged that a person cannot transfer a better title to a vendee than what he himself has and since said Wazir Singh did not

have proper title regarding the suit land, therefore, plaintiff cannot be allowed to take protection under Section 41 of Transfer of Property Act.

4.3. It is further stated that plaintiff had the knowledge of the order passed by the Chief Settlement Commissioner in the year 1977 but he did not do anything for more than 28 years and when he participated in the auction proceedings undertaken by the Government, he himself admitted the ownership of the Custodian department. Hence, he does not have any locus standi to file the suit. Dismissal of the suit was prayed for.

5. Based on the rival pleadings, following issues were framed:

- “(1). Whether the plaintiff is entitled to the decree for declaration as prayed for? OPP*
- (2) If issue no.1 is proved, then whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- (3) Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- (4) Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD*
- (5) Whether the plaintiff is estopped by her own act and conduct from filing the present suit? OPD*
- (6) Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issues No.1 to 5 were decided in favour of the plaintiff and against the defendants. Consequently, the suit of plaintiff was decreed with no order as to costs to the effect that the plaintiff was declared owner in possession of the suit land and he was entitled to the protection of the suit land under Section 41 of the Transfer of Property Act. Defendants were also restrained from interfering into peaceful possession of the plaintiff over the

suit land and they were further restrained from re-auctioning the suit land in any way.

8. First Appellate Court dismissed the appeal of the defendants, resulting in Regular Second Appeal by defendants before this Court.

9. In its judgment, the learned First Appellate Court, *inter alia*, observed as below:

*“21. In the present case, the appellants-defendants have challenged the impugned judgment on the grounds that allotment in favour of Wazir Singh was cancelled by Chief Settlement Commissioner vide order dated 31.03.1993 and this order was not challenged by the present plaintiff and it has got finality qua the present plaintiff and thereafter the present plaintiff participated in auction proceedings when the suit land was put on auction and he deposited Rs.4000/- as earnest money but the bid was cancelled as the same was below reserved price. Admittedly, the order dated 31.03.1993 by which allotment of Wazir Singh was cancelled by Chief Settlement Commissioner, Haryana that was challenged by other vendees who had purchased other land from Wazir Singh being Ram Narain etc. (20 persons) before Financial Commissioner and Secretary to Government of Haryana Rehabilitation Department and their revision was accepted on 29.07.1994. Copy of judgment on record is Ex. PWA/1 and relevant para of this judgment/order is reproduced as under:-*

*“In the instant case Wazir Singh was given proprietary rights of the land in 1960 and he sold the land to the present petitioners.*

*Later on the allotment in the name of Wazir Singh was cancelled and subsequent litigation has been continuing. Thus, the persons who purchased the land from Wazir Singh, have been in possession of the land for about 30 years. At the time they purchased the land, the proprietary rights were in the name of Wazir Singh, duly confirmed by the Department of Rehabilitation. Therefore, it can be said that the petitioners had purchased the land in good faith. In this view of the case, the petitioners would be entitled to the protection of Section 4t of the Transfer of Property Act in the light of the rulings cited above. Hence, the revision petition is accepted.”*

*22. It was necessary for the appellants -defendants to challenge order Ex. PWA/1 dated 29.7.1994 passed by Financial Commissioner and Secretary to Government of Haryana, Rehabilitation Department, but that order has not been challenged so far, which means that they have admitted the right of other vendees as protected under section 41 of the Transfer of Property Act and now it does not lie in their mouth*

*that since the present plaintiff has not challenged order dated 31.3.1993 and his right has been forfeited, but case of the plaintiff is on similar footing as that of Ram Narain etc. decided vide order Ex. PWA/A. Hence, the present plaintiff had purchased the suit land in good faith for consideration from owner Wazir Singh, who was given proprietary rights by the department and these rights were confirmed by the Rehabilitation Department.*

*23. Further, the plea of limitation is not available to the defendants as ordered dated 31.3.1993 was set aside and plaintiff has specifically alleged in the plaint that he came to know about this order later on and thereafter filed the present suit and hence, in this case limitation starts from the date of knowledge and thus, even suit of the plaintiff is within limitation. Hence, impugned judgment passed by learned Lower Court is well reasoned and findings of learned Lower Court on all the issues are hereby affirmed.*

*24. No other point was urged or argued before me.*

*25. In the result, the appeal filed by the appellant fails and the same is hereby dismissed with costs.”*

10. I have heard the learned counsel for the parties and perused the judgments of both the Courts below.

11. In short, the grounds of present appeal are that the plaintiff himself had never challenged the order dated 31.03.1993 cancelling the allotment of land in favour of his vendor Wazir Singh, but the learned Courts below wrongly equated his case with the other vendees from Wazir Singh; the suit was time barred and that the provisions of section 41 of the Transfer of Property Act not applicable in the State of Haryana.

12. I find no merit in any of these contentions.

13. Admittedly, Ram Narain etc (20 persons) other vendees from Wazir Singh had challenged the order dated 31.03.1993 cancelling the allotment of land in his favour before the Financial Commissioner & Secretary to Government, Haryana, who had accepted their revision vide order dated 29.07.1994. The relevant part of that order dated 29.07.1994 is incorporated in the judgment of the learned First Appellate Court, as extracted above. In the order dated 29.07.1994 it was held inter alia that the persons who had purchased the land

and had been in possession for about 30 years; that at the time they purchased the land from Wazir Singh, the proprietary rights were in the name of Wazir Singh duly confirmed by the Department of Rehabilitation; that therefore, it can be said that the petitioners had purchased the land in good faith and would be entitled to protection of section 41 of the Transfer of Property Act. Indisputably, the said revisional order was not challenged by the appellants and had attained finality at the relevant time. The learned first Appellate Court held that the plaintiff's case is on similar footing as that of Ram Narain etc., the other vendees from Wazir Singh and that the plaintiff had purchased the land in good faith for consideration from owner Wazir Singh, who was given proprietary rights by the Department, which were confirmed by the Rehabilitation Department. The learned First Appellate Court also found that it did not lie in the mouth of the appellants to say that since the plaintiff had not challenged the order dated 31.03.1993, his rights had been forfeited.

14. It is not shown on record nor even was anything urged before me during arguments to bring out how the case of the plaintiff was different from those other 20 vendees from Wazir Singh, except that the plaintiff was not a party to the revision decided vide order dated 29.07.1994. In my opinion, the appellants herein could not have treated the plaintiff differently from those other 20 vendees from Wazir Singh and made a hostile discrimination against him simply because he himself was not party to the revision decided vide order dated 29.07.1994. The learned Courts below, to my mind, were justified in equating the plaintiff's case with the other 20 vendees from Wazir Singh, who were admittedly held entitled to protection of section 41 of the Transfer of Property Act vide order dated 29.07.1994, which had attained finality.

15. The well settled legal position is that even in a territory where the provisions of the Transfer of Property Act are not applicable, the principles of

the Act which are in consonance with equity, justice and good conscience will apply. Both the courts below have recorded a concurrent finding of fact that the plaintiff had purchased the land in good faith for consideration from owner Wazir Singh, who was given proprietary rights by the Department, which were confirmed by the Rehabilitation Department. It is not shown on record nor even was anything urged before me during arguments to bring out how the case of the plaintiff was different from those other 20 vendees from Wazir Singh, except that the plaintiff was not a party to the revision decided vide order dated 29.07.1994. Merely because the provisions of section 41 of the Act *ibid* are not applicable in the State of Haryana, I am of the opinion that the same would be immaterial qua the plaintiff's rights, as the same were/are otherwise protected under the principles of the Act which are in consonance with equity, justice and good conscience and by virtue of parity with the cases of Ram Narain etc (20 persons) other vendees from Wazir Singh.

16. Learned counsel for the appellants vehemently argues that respondent/plaintiff had himself participated in the auction proceedings and as such he admitted the ownership of the Custodian Department. He further contends that since ownership of Wazir Singh was under a cloud, he could not have transferred a better title than he himself had. To buttress his claim, learned counsel for appellants relies on a Full Bench judgment dated 16.07.2010 rendered in ***CWP No.5662 of 1986*** titled "***Niranjan Kaur and others Vs. The Financial Commissioner, Revenue & Secretary to Government, Punjab and others***".

17. In **Niranjan Kaur and others** *supra*, firstly, there was no such situation of parity, as in the instant case, between the different purchasers of property from the same allottee. As noted above, Ram Narain etc. (20 persons) other vendees from Wazir Singh had challenged the order dated 31.03.1993 cancelling the allotment of land in his favour before the Financial Commissioner

& Secretary to Government, Haryana, who had accepted their revision vide order dated 29.07.1994. The learned Courts below, to my mind, were justified in equating the plaintiff's case with the other 20 vendees from Wazir Singh, who were admittedly held entitled to protection of section 41 of the Transfer of Property Act vide order dated 29.07.1994, which had attained finality.

17.1 Perusal of the judgment *ibid* reveals that in that case cancellation of allotment in favour of the original allottee took place less than 2 years after the sale of the property which was being claimed as against the present case where sale took place in the year 1961 and after 16 years of the said sale, the cancellation of the allotment of land in the name of vendor was done in 1977. Therefore, State cannot take recourse to its ratio in the abstract. The facts of the present case are clearly distinguishable.

18. On appreciation of the evidence, the two courts below recorded a firm finding of fact based on record that the suit had been filed within limitation, starting from the date of plaintiff's knowledge of the order dated 31.03.1993. The said finding of fact cannot be said perverse or contrary to record and does not call for interference in the second appeal.

19. On perusal of the impugned judgments, my considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law, with which I am inclined to agree.

20. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

21. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of

interference is made out.

22. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

23. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

24. Pending application/s, if any, shall also stand disposed of.

25. No order as to costs.

**(ARUN MONGA)**  
**JUDGE**

**January 19, 2023**

Vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No