

Daya Singh (deceased) through his LRs and others

....Appellants

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. K.S. Malik, Advocate for appellants.

Mr. S.S. Mann, Additional AG Haryana.

Mr. R.S. Joshi, Advocate and

Mr. Shivam Sharma, Advocate for respondent No.3.

ARUN MONGA, J. (ORAL)

CM-2587-C-2015

For reasons stated in the application, same is allowed. Delay of 12 days in filing appeal is condoned.

CM-2588-C-2015

For reasons stated in the application, same is allowed, subject to all just exceptions. Annexures A-1 (colly) and Annexure A-2 are taken on record.

Main case (O&M)

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

2. Having suffered concurrent adverse findings by the two Courts below, appellant-plaintiffs are in second appeal before this Court assailing learned trial Court judgment and decree dated 06.08.2011, as partly upheld by learned First Appellate Court vide its judgment and decree dated 17.11.2014 which affirmed the findings on issues No.1 and 2 and reversed the trial Court findings on issues No.3 and 4.

3. Briefly stated, facts, as noticed by learned Courts are as below.

3.1 Predecessor-in-interest of the plaintiff-appellants, namely, Bharto was wrongly declared a big land owner and her agricultural land measuring 79 Kanals 10 Marlas was wrongly declared surplus vide letter No.2620 dated 21.06.1976. Impugned mutation No.709 was thereafter wrongly sanctioned in the name of State of Haryana. Bharto contested the said mutation and filed representation against declaration of surplus land measuring 79 Kanals 10 Marlas. Said representation was accepted by the prescribed authority vide order dated 6.12.1977 and surplus land was released. But, inadvertently prescribed authority did not issue any instruction for declaring mutation No.709 dated 28.09.1977 as illegal null and void. Consequently, wrong entries were continuing in the revenue record and State of Haryana was shown as owner of surplus land instead of the plaintiffs. Defendant-respondents refused to accede to the request of plaintiffs in this regard.

4. Upon notice, defendants contested the suit on the ground that Saman Kaur, mother of Bharto was a big land owner and her five standard acres 9½ units land was declared surplus vide order dated 21.03.1961 passed by learned Collector, Rohtak as per the provisions of Punjab Security of Land Tenures Act, 1953. The land consequently stood mutated in the name of State of Haryana vide mutation No.709. Further denied that predecessor-in-interest of plaintiffs ever filed any representation against said order declaring land surplus. Rest of the contents of the plaint were denied and prayer for dismissal of same was made.

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

- “1. *Whether the mutation No.709 dated 29.09.1977 and entries in jamabandi and khasra girdawaries from Kharif 1977 till today are illegal, null, void, inoperative, on the grounds all alleged? OPP*
2. *If the issue No.1 is to be proved, whether the plaintiff is entitled to the injunction on the grounds alleged? OPD*
3. *Whether the suit is not maintainable? OPD*
4. *Whether the suit of the plaintiff is time barred? OPD*
5. *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, learned trial Court decided issues No.1 and 2 against plaintiffs. Issues No.3 and 4 were decided against defendants. Consequently, learned trial Court dismissed the suit of plaintiffs vide impugned judgment and decree dated 06.08.2011.

8. Feeling aggrieved against the said judgment and decree dated 06.08.2011, appellant-plaintiffs preferred first appeal.

9. Learned First Appellate Court below dismissed the appeal upholding findings of learned trial Court on issues No.1 and 2 and reversing on issues No.3 and 4, resulting in Regular Second Appeal before this Court.

10. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“15. If we take a look on the plaint which was filed by the plaintiffs in civil suit No. 340 of 2007/2009, it was the case of plaintiffs that Smt. Bharto d/o Shri Dhanni Ram resident of village Singhpura, Tehsil and District Rohtak was a small land owner and in possession of agricultural land in Khewat No.1, Khatoni No.1 and 2 as per jamabandi for the year 1968-69 measuring 362 kanal 18 Marla. It is stated that wrongly Smt. Bharto was declared to be big land owner and that her agricultural land measuring 79 Kanal 10 Marla was declared surplus as per details in para No.2 of the plaint. Thereafter, it is stated that letter No.2620 A-R dated 21.6.1976, mutation No.709 was wrongly sanctioned of the land mentioned above from the land of Smt. Bharto in the name of State of Haryana. That Smt. Bharto filed representations and objections against the declaration of surplus area to the extent of 79 Kanal 10 Marla and also objections of Smt. Bharto were accepted vide order of Prescribed Authority dated 6.12.1977 and that the land so wrongly acquired was released from surplus pool. In para 5 it is stated that L.Rs. of Smt. Bharto, are in actual and physical possession of the said land measuring 79 Kanal 10 Marlas as absolute owners but the revenue entries are still in the name of State of Haryana.

16. The learned Civil Judge (Jr. Div.), Rohtak in the judgment dated 6.8.2011 observed in para 10 as under:-

“After considering the rival contention of the parties, this court is of the considered view that the contentions raised by the plaintiffs

are not tenable. The plaintiffs claim to have filed representation against order declaring their land surplus and claim that the surplus land was released vide order dated 6.12.1977 Exhibit PW2/A. However, a perusal of order Exhibit PW2/A clearly reveals that it does not mention any such thing. It is not reflected in the order that any representation was filed by the plaintiffs or that any surplus land was released by dint of that order. The order simply states that the land of Bharto Devi is within the permissible limit as per the provision of Haryana Ceiling on Land Holding Act, 1972. As such, the contention of the plaintiff that the surplus land has wrongly been shown mutated in the name of State of Haryana in the revenue record is not tenable. There is nothing else on record to show that the surplus land of the predecessor in interest of the plaintiffs was ever released by any subsequent order. As such, issues No.1 and 2 are decided against the plaintiffs.”

It is settled law that the plaintiff is required to prove on his own legs and the plaintiff cannot be allowed to take advantage of the weakness of defendant. It was the case of plaintiffs in para 4 of the plaint that Smt. Bharto had filed representations and objections against the declaration of surplus area to the extent of 79 Kanal 10 Marla and the objections of Smt. Bharto were accepted and the land was released from surplus pool. No such evidence has been led by the plaintiffs to substantiate the allegations or stand taken in the plaint. In para 8 of the plaint it has been stated that the ownership and cultivation entries in the column of khasra girdawari are in the name of State of Haryana but no such khasra girdawari has been produced in evidence so that an opinion could be formed by the Court regarding the matter in issue. The plaintiff has simply relied upon the declaration Exhibit PW2/A to claim the relief but nothing is clear as to for which land the Prescribed Authority, Rohtak had passed the order dated 6.12.1977. The learned Civil Judge rightly observed that the declaration Exhibit PW2/A containing the order does not mention that any surplus land was released by the said order, rather, the order simply says that the land of Bharto Devi was within permissible limit as per provisions of Haryana Ceiling Act, 1972. Thus, no cogent evidence has been led by the plaintiffs to prove their case. Even otherwise also the suit was filed on 4.1.2007 and thus, the plaintiffs had been sleeping over their rights for about 30 years. Even the suit also appears to be barred under Section 26(2) of the Haryana Ceiling of Land Act, 1972. Hence, it can not be said that the findings of learned Civil Judge (Jr. Div.), Rohtak on issues No.1 and 2 are perverse or erroneous. Hence, the aforesaid findings are upheld.

ISSUES No.3 and 4

17. Onus to prove these issues were upon the defendants .Learned trial Court has answered these issues against the defendants. In the plaint, it had been stated in para 12 that the cause of the action against the defendants had arisen from 6.12.1977 and 10.5.2006 whereas the suit has been filed by plaintiffs on 4.1.2007. The limitation to file a suit for declaration is 3 years. Hence, the suit filed in the year 2007 is clearly time barred. Moreover, in view of Section 26 (2) of the Act, jurisdiction of the civil court is barred, hence suit itself is not maintainable. The findings of learned trial Court over these issues are reversed.

RELIEF

18. Resultantly, the findings recorded by learned lower Court on the issues No.1 and 2 are hereby upheld and are reversed on issues No.3 and 4 and the appeal preferred by the appellants-plaintiffs is without any merits and same is dismissed accordingly. Decree-sheet be prepared. Trial Court record along with a copy of this judgment be sent back to the quarter concerned and appeal-file be consigned to the record room after due compliance.”

11. Learned State counsel, at this outset, points out that learned Courts below have rightly dismissed suit of appellant-plaintiffs as the same was not maintainable under Section 26 of the Haryana Ceiling of Land Holdings Act, 1972.

12. Per contra, learned counsel for appellant-plaintiffs states that even if aforesaid argument of learned State counsel is to be accepted, dismissal of the suit has rendered appellants completely remediless as the same would act *res judicata* in case, they wish to invoke their remedy under the Act *ibid*.

13. Being so, on a Court query, both learned counsels are *ad idem* that in case appellants wish to invoke their remedy under the Act *ibid*, then dismissal of the suit, which was held to be not maintainable, shall not come in the appellant’s way and all the other issues which have been agitated before this Court on merits are also left open for adjudication by the competent authority with liberty to appellants-plaintiffs to seek his remedy under Section 26 of the Act *ibid*.

14. Disposed of in aforesaid terms.

15. Pending application(s), if any, shall also stand disposed of.

16. No order as to costs.

(ARUN MONGA)
JUDGE

March 13, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No