

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.326 of 1992 (O&M)

Reserved on: 11.03.2024

Pronounced on: 02.04.2024

State of Haryana and another

.....Appellants

Vs.

Jaswant Singh and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Amit Jain, Senior Advocate with Mr. Varun Parkash,
Advocate for respondents No.1 and 2.

DEEPAK GUPTA, J.

Civil suit bearing No.623 of 1991 for declaration and permanent injunction regarding land in dispute, as filed by the plaintiffs (*respondents herein*) was dismissed by the trial Court on 11.11.1988. The appeal preferred by them i.e., plaintiffs bearing CA No.85 of 1988 was accepted and consequent thereto, the suit was decreed by the First Appellate Court vide judgment dated 13.09.1991. Thus, the present Regular Second Appeal has been filed by the defendants (*appellants herein*) against the judgment dated 13.09.1991 of the First Appellate Court, decreeing the suit of the plaintiffs.

2. The trial Court record was called. The same has been perused. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3.1 The land in dispute is 13 kanal 12 marlas, situated within the revenue estates of Village Raipur Kalan, Tehsil Ballabgarh (Haryana) detailed and described in para No.1 of the plaint. Plaintiffs claimed to be in possession of the said land for the last more than 100 years as Ghair

Maurusee Kuzaran, since the time of their ancestors. According to them,

original owners of the suit land were Mohammadans, who had given the land to the forefathers of the plaintiffs on rent and the terms and conditions as recorded in record of rights was “*Bila Laggan Malkan Bawjahah Derina Kast*”.

3.2 As per plaintiffs, they and before them, their forefathers had been paying only the land revenue and other taxes regarding the suit land and that with the passage of time, they acquired occupancy rights in the suit land by virtue of Sections 5, 6 and 8 of the Punjab Tenancy Act, 1887. It was further pleaded by the plaintiffs that with migration of Muslim owners of the suit land to Pakistan on partition of the country in 1947, the rights and interest of the said Muslims vested in the custodian – defendant No.3 but it did not affect the occupancy rights of the plaintiffs, which they had acquired before migration of Muslims. Plaintiffs pleaded further that with the passing of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, (for short, ‘the 1952 Act’), which came into force w.e.f 15.06.1952, their occupancy rights were perfected into ownership and so, rights of the custodian in the suit land were extinguished.

3.3 In order to seek declaration to the above effect, plaintiffs approached Assistant Collector Ist Grade, Ballabgarh but their case was dismissed on 23.04.1979. They preferred appeal before the Collector but during pendency of that appeal, suit was withdrawn with permission to file the fresh suit in the Civil Court on the same cause of action due to formal and technical defect and that the Collector vide order dated 30.05.1980 granted the necessary permission.

3.4 Further case of the plaintiffs was that Tehsildar (Sales) Gurugram, acting for defendant No.3- Custodian Evacuee Property and contrary to the factual & legal position, allotted the suit land to defendant

No.4- Ibban. In substitution of this contention, it was averred later that Tehsildar (Sales), Gurugram intended to sell the suit land in open auction by ignoring the rights and interest of the plaintiffs.

3.5 Plaintiffs also pleaded that in view of revised Rules and Instructions, governing the sale and transfer of surplus Evacuee Property notified by the Erstwhile Government of Punjab on 11.07.1962, the plaintiffs were also entitled to get the land, as they had deposited the amount of ₹1365.08 as price of the land under the orders of the Tehsildar (Sales), Gurgaon, but their application was wrongly rejected. In the alternative, plaintiffs also pleaded that they had become owner of the suit land by way of adverse possession.

3.6 With all the afore-said contentions, petitioners prayed for a decree for declaration that they are owners and in possession of the suit land in equal shares. They further prayed for decree of permanent injunction to restrain the defendants No.1 to 3 from allotting the suit land to anyone.

4. Defendants No.1 to 3, who contested the suit admitted the plaintiffs to be in cultivating possession of the suit land in view of entries in the pre-consolidation revenue record. However, it was denied that tenancy of the plaintiffs was for more than 100 years since the time of their predecessors. According to defendants, the land being under the ownership of Mohammadans immediately prior to the partition of the country, vested in the custodian by operation of law under Section 4 of the East Punjab Evacuee (Administration of Property) Act, 1947 (for short, 'the 1947 Act'). They further pleaded that in view of Section 8(4) of the Administration of Evacuee Property Act, 1950 (for short, 'the 1950 Act'), the rights, if any, of the plaintiffs in the suit land stood extinguished and their possession became unauthorised. Defendants further pointed out that application of the plaintiffs

for transfer of the land in their favour was rejected by the Tehsildar (Sales) and that order was never challenged in the appeal. Defendants denied that plaintiffs had acquired the occupancy rights in the suit land or that any such rights had been perfected into the ownership rights. The objection was also raised that the suit was barred by the principle of res-judicata, as the previous suit for declaration was dismissed on 23.04.1979 by Assistant Collector First Grade, Ballabgarh. It was also pleaded that jurisdiction of the Civil Court was barred in view of Sections 36 and 46 of the Displaced Persons (Compensation and Rehabilitation Act) 1954. Prayer was made for dismissal of the suit.

5. As the record would reveal that initially, the trial Court vide order dated 05.08.1985 came to the conclusion that Civil Court did not have jurisdiction in the matter and so, directed to return the plaint for presentation before the proper Forum. On appeal, the said order was set aside by the First Appellate Court vide order dated 30.11.1987 by holding that only the Civil Court had the jurisdiction to settle the dispute. The matter was remanded back to the trial Court for fresh trial on merits.

6. Following issues were settled for adjudication:-

1. Whether the plaintiffs are in possession of the agricultural land as tenants for the last more than 100 years of the suit land as alleged? OPP
2. Whether the plaintiffs have acquired the occupancy rights regarding the suit land and thus they have become owners of the suit land as alleged, if so, to what effect? OPP
3. Whether temporary allotment made by the concerned authority in respect of suit land to defendant No.4 is illegal as alleged? OPP
4. Whether a notice under Section 80 CPC has been served upon the defendant? OPP
5. Whether this Court has got no jurisdiction to try the

present suit? OPD

6. Whether the suit is barred by the principle of res-judicata? OPD

7. Whether the suit is not maintainable in the present form? OPD

7a. Whether the plaintiffs are entitled for ownership rights in the suit land as pleaded in para No.9(a) of the amended plaint? OPP

8. Relief.

7. Evidence produced by the parties was taken on record. After hearing both the sides, the trial Court though found the possession of the plaintiffs over the suit land for the last more than 40 years but held the same to be unauthorised. It was further held that plaintiffs had not acquired occupancy rights in the suit land and so, they had not become owner of the same under the provisions of Punjab Occupancy (Vesting of Proprietary Rights) Act, 1952, (for short, 'the 1952 Act') and so, they were not entitled to the declaration as prayed for. Issues No.1, 2 and additional issue (7a) were accordingly decided against the plaintiffs. Issue No.3 was found to have become redundant. Under Issue No.4, notice under Section 80 CPC was found to have been served upon defendants and so, the issue was decided against the defendants. The finding on Issue No.5 went against the defendants by holding that Civil Court had the jurisdiction to entertain the matter. Under Issue No.6, the suit was held to be barred by res-judicata. Under Issue No.7, suit was held to be maintainable and so, finding on issue went against the defendants. Consequent to all these findings, suit was dismissed on 11.11.1988.

8. The aggrieved plaintiffs filed appeal. The First Appellate Court found the possession of the plaintiffs/ their forefathers over the suit land at least since 1914-15, as non occupancy tenants. Learned First Appellate

Court then referred to Section 4 of the East Punjab Displaced Persons Land Settlement Act, 1949 (for short, 'the 1949 Act'); and Section 12 of the 1950 Act and held that the tenancy rights of the plaintiffs were not affected at all after migration of the Muslim owners to Pakistan. It was further held that the plaintiffs had become occupancy tenants in view of the provisions of Punjab Tenancy Act, 1887 and that after coming into force of the 1952 Act, they had acquired ownership rights. The First Appellate Court also came to the conclusion that merely because plaintiffs had applied to the custodian for transfer of ownership rights or had deposited any sale price would not mean that they had surrendered their rights in the suit land. The appellate Court further found that against the order of the Assistant Collector Ist Grade dismissing the earlier suit filed by the plaintiffs, appeal had been filed before the Collector, who had accorded necessary liberty to bring a fresh suit before the Civil Court and, therefore, the bar of res-judicata was not attracted. The alternative plea of the plaintiffs to have become owner of the suit land by adverse possession was rejected. Consequent to all these findings, the appeal was accepted. Judgment and decree of the trial Court was set aside and the suit of the plaintiffs was decreed by the Appellate Court vide judgment dated 13.09.1991.

9. Assailing the findings of the First Appellate Court, it is contended by learned counsel for the appellants that after migration of the Muslim owners of the suit land to Pakistan, the land had vested in the custodian and so, possession of the plaintiffs even as tenant over the suit land had become unauthorised, as they never got permission of the custodian to continue in possession. It is argued that in these circumstances, plaintiffs could not acquire any occupancy rights nor any such rights could have matured into ownership. Still further, it is argued that the First Appellate

Court erred in ignoring the plea of res-judicata, inasmuch as the earlier suit filed by the plaintiffs had been dismissed on 23.04.1979 by the Assistant Collector First Grade, Ballabgarh. It is urged that the suit could not be withdrawn after its disposal, during the appeal proceedings. The appellants also assailed the finding of the Courts below to the effect that the plaintiffs were in possession of the land since 1914-15 in the capacity of tenants. The issue relating to the jurisdiction is also raised to contend that Civil Court did not have jurisdiction in the case pertaining to the evacuee properties. Learned counsel also argues that payment of ₹1365/- as cost of the land was wrongly treated as sale price, as it was the payment of damages for unauthorised use and occupation. With all these submissions, prayer is made for setting aside the judgment and decree passed by the First Appellate Court; and to dismiss the suit of the plaintiffs – respondents.

10. Learned counsel for the contesting respondents- plaintiffs have defended the judgment passed by the First Appellate Court and urged that findings of the First Appellate Court are based upon the evidence on record and so, appeal deserve to be dismissed.

11. I have considered submissions of both the sides and have appraised the record carefully.

12. The long possession of the plaintiffs over the suit land is evident from the revenue record. The same would reveal that as per jamabandi for the year 1977-78 Ex.P1, plaintiffs are recorded to be non-occupancy tenants, inasmuch as in the column of rent, the entry is “*Bashra Malkan Bewajah Derina Kast*”. Similar entries exist in all the previous jamabandis right from the year 1939-40 to 1972-73 Ex.P3 to P.9. The revenue record excerpt Ex.P10, duly proved on record, contain the earlier jamabandi entries for the year 1914-15 onwards, revealing the names of Prashadi and Posti sons of

Paltu to be in possession of the suit land as non-occupancy tenants. Pedigree table Ex.P.28 revealed that Prashadi has two sons, namely, Chiranji Lal and Bharat Singh. Plaintiff No.1 - Jaswant Singh is the son of Chiranji Lal; whereas plaintiff No.2 is Bharat Singh. Thus, plaintiffs are clearly linked to the entries in the revenue excerpt Ex.P10. It has not been disputed that at the time of consolidation, the suit land was allotted in lieu of the old Khasra numbers, which fact is otherwise also evident from *Khatouni Intemal* Ex.P11 & Ex.P12 and *Naksha Hakdaran* Ex.P13, as has been duly discussed by learned First Appellate Court. Thus, it stands established beyond any shadow of doubt that the plaintiffs/ their forefathers have been in possession of the suit land at least since 1914-1915 i.e. for the last more than 40 years. The concurrent finding in this regard, as recorded by the Courts below, could not be assailed by the appellants- defendants, as even otherwise also, the said finding is based upon the documentary evidence.

13. Admittedly, the land was owned by Muslims prior to the partition of the country in 1947. The contention of the appellants- defendants is that on migration of the Muslim owners, the suit property came to be vested in the custodian by virtue of Section 4 of the 1947 Act, to be read with Section 8(4) of the 1950 Act and that all tenancy rights on the evacuee land stood terminated and the possession of the plaintiffs became unauthorised in view of Section 9 of the 1949 Act.

14. The question is as to whether the suit property had automatically been vested in the custodian by virtue of Section 4 of the 1947 Act, as is contended by the defendants. Sections 4 and 6 of East Punjab Evacuee (Administration of Property) Act, 1947 (*as they stood at the relevant time*) read as under:-

“4. Vesting of evacuee property in the Custodian.-All evacuee property

situated within the province shall vest in the Custodian for the purposes of this Act and shall continue to be so vested until the Provincial Government by notification otherwise directs.

6. Custodian to take possession of evacuee property.-

(1) The Custodian shall take possession of all evacuee property vesting in him under this Act.

(2) The custodian shall comply with the following provisions in taking possession of any immovable property under Sub-section (1), namely :

(a) The custodian shall publish in the locality a notice specifying the property of which he intends to take possession.

(b) Where the property is occupied by any person.

(i) The custodian shall give his notice in writing requiring such person to vacate the property;

(ii) And if that person claims to be entitled to continue in possession of the property, the Custodian shall hold a summary inquiry and determine the claim;

(iii) The Custodian may allow such person to continue in possession on such terms and conditions as he thinks proper if such person is held to be so entitled;

(iv) If such person refuses or fails to vacate the property the Custodian may evict such person and use all force necessary thereto, and may after giving reasonable warning and facility to any women not appearing in public to withdraw, remove or open any lock or bolt or break open any door or do any act necessary for taking possession.

(c) The Custodian shall proceed to take possession of the property in the presence of not less than two residents of the locality, at least one of whom if possible shall be a member of the community to which the evacuee owner belongs, and shall prepare a record, in duplicate, of the proceedings which shall be signed by him and each of the witnesses.”

15. Though as per Section 4 of the 1947 Act, the evacuee property situated in province of East Punjab is to vest in the custodian for the purpose of the Act but custodian is required to take possession of the same by following procedure laid down in Section 6 of the 1947 Act.

16. In the present case, plaintiffs were already in possession of the suit property much prior to the 1947 Act. It is not case of defendants-

appellants that they ever took possession of the property in dispute by following the procedure as laid down in Section 6 of the Act. As possession was never taken from the plaintiffs by following the procedure as laid down in Section 6 of the 1947 Act, therefore, said possession cannot be held to have become unauthorised.

17. Learned counsel for the appellants has also referred to Section 9 of The East Punjab Displaced Persons Land Re-settlement Act, 1949 so as to contend that possession of the plaintiff on the suit land, which was now evacuee property, had become unauthorised, as their lease was deemed to have terminated on 25.07.1949. Section 9 of 1949 Act reads as under:

“9. Termination of leases of land by evacuees in favour of non-evacuees. -

(1) Notwithstanding anything contained in any law for the time being in force, all leases of land except such leases as the Custodian may by order exempt from the operation of this section, made by an evacuee in favour of a person other than an evacuee shall be deemed to have terminated on the 25th July, 1949, and the land shall be deemed to have vested under this Act in the Custodian with effect from the same date free from all rights of the lessee or persons claiming under such lessee.

(2) Where any lease is determined under this section, there shall be paid compensation the amount which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say -

(a) Where the amount of compensation can be fixed by agreement between the Custodian and the lessee, it shall be paid in accordance with such agreement.

(b) Where no such agreement can be reached, the State Government shall appoint as arbitrator any Subordinate Judge having jurisdiction in the district where the land is situated.

(c) At the commencement of the proceedings before the arbitrator the Custodian and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.

(d) An appeal shall lie to the District Judge against an award of an arbitrator except in cases where the amount thereof does not exceed the amount prescribed in this behalf by the rule made by the [State] Government.

(e) Save as provided in this section and in any rules made thereunder nothing in any law for the time being in force shall apply to arbitration under this section.

(3) The compensation awarded shall be paid by the Custodian to the person entitled thereto according to the award :

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this section to pay the same to the person lawfully entitled thereto

18. Again, there is nothing on record to suggest that lease in favour of the plaintiffs, granted to them/their fore-fathers by their Muslim owners, who had become evacuee, was ever terminated by the custodian, in whom the property had been vested by virtue of Section 4 of the 1947 Act, by following the procedure laid down in Section 9 (2) of the 1949 Act.

19. Further, Section 12 of The Administration of Evacuee Property Act 1950 (*as it stood then*) provides about power of the custodian to cancel any lease. It reads as under:

“12. Power to vary or cancel leases or allotments of evacuee property.-

(1) Notwithstanding anything contained in any other law for the time being in force, the Custodian may cancel any allotment or terminate any lease or amend the terms of any lease or agreement under which any evacuee property is held or occupied by a person, whether such allotment, lease or agreement was granted or entered into before or after the 14th day of August, 1947.

Provided that in the case of any lease granted before the 14th day of August, 1947, the Custodian shall not exercise any of the powers conferred upon him under this sub-section unless he is satisfied that the lessee –

- a) has sublet, assigned or otherwise parted with the possession of the whole or any part of the property leased to him.
- b) has used or is using such property for a purpose other than that for which it was leased to him
- c) has failed to pay rent in accordance with the terms of the lease.”

20. Above provision make it quite clear that powers of the custodian to cancel any lease granted before 14th day of August, 1947, were taken away, unless the lease fell in any of the three categories mentioned in (a), (b) and (c) of the provision. In other words, all the leases given by the

owners prior to the partition were saved.

21. Learned First Appellate Court has rightly referred to *Union of India Vs. Nathi, 1985(1) Land LR 545*, in which it was held by the Financial Commissioner that Section 12 of the 1950 Act did not authorise the custodian to terminate any lease with tenant under Muslim owners, which were of a point in time prior to 14.08.1947 notwithstanding Section 9 of the 1949 Act. Hon'ble Supreme Court in *Moola Vs. Financial Commissioner and others, 1980 PLJ 80*, has also held that the 1949 Act did not alter this position. It has been held by Hon'ble Supreme Court that where a tenant was in possession of the land prior to 14.08.1947, Section 9 of the Act of 1949 Act did not have the effect of automatic cancellation of his lease.

22. In the present case, it is not the case of the defendants-appellants that the present case fails under any of the categories mentioned at (a), (b) and (c) of Section 12 of the 1950 Act and as such, it is held that Section 12 of the Central Act of 1950 or Section 9 of the 1949 East Punjab Act did not affect the rights of the plaintiffs – respondents as tenants on the suit land.

23. The next question arises as to whether with the passage of time, plaintiffs had acquired occupancy rights in the suit land by virtue of the provisions of the Punjab Tenancy Act, 1887. As has been noticed earlier that the plaintiffs are recorded to be in possession as tenants over the suit land at least since 1914-15 without paying any rent, except land revenue and cesses. In *Bishamber Vs. State of Haryana, 1989 P.L.J. 733*, it has been held that in case jamabandi shows possession on the disputed land for the last more than 30 years without payment of any rent to the land owner; and entry in the

column of rent is “*Bashra Malkan Bewajah Derina Kast*”; and the tenants are only paying the land revenue and cesses, then a presumption arises that such a tenant fulfils the conditions of clause (a) of sub Section (1) of Section 5 of the Punjab Tenancy Act and, therefore, entitled to occupancy rights.

24. In the present case, plaintiffs being in possession of the suit land at least since 1914-15, without paying any rent to the owners and paying only the land revenue and cesses and the entry in the revenue record being “*Bashra Malkan Bewajah Derina Kast*”, therefore, there can be no doubt in holding that plaintiffs had acquired the occupancy rights. The contention to the contrary as raised by counsel for the appellants- defendants is held to carry no weight.

25. Further, plaintiffs having acquired the occupancy rights in the suit land as has been found above, were vested with the ownership rights in view of the provisions of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952. The contention of learned counsel for the appellants to the effect that possession of the plaintiffs being unauthorised; or the suit land being evacuee property, so, plaintiffs cannot be vested with the ownership rights, has no merit, as it has been found in the supra discussion that possession of the plaintiffs over the suit land was never unauthorised; and that they had acquired occupancy rights in the suit land. Besides, Section 9 of the Amending Act (Punjab Act No.31 of 1958), as introduced in 1958, made the provisions of the 1952 Act to be applicable to occupancy tenants of a landlord, who is an evacuee as defined in clause (d) of Section 2 of the 1950 Act. This view was also taken in *Mam Chand Vs. Union of India, 1984 PLJ 446*. As such, it is held that the plaintiffs had acquired the ownership rights in the suit land by virtue of the 1952 Act.

26. As far as the jurisdiction of the Civil Court is concerned, it has

been authoritatively held by a Full Bench of this Court in *Shiv Charan Vs. Financial Commissioner, Haryana, Law Finder Doc Id #78308*, as under:-

“7. Mr. R.K. Jain relying on the definition of 'Occupancy Tenant' given in the Vesting Act has highlighted that the inquiry by the Civil Court could be confined only to such occupancy tenants, who were recorded as such in the revenue record before the commencement of this Act and the jurisdiction with regard to the second category i.e. of those occupancy tenants, who had attained rights of occupancy subsequently or whose rights as such could be proved by other evidence by with the Revenue Court.

8. We are, however, of the opinion that this very issue had been raised before and repelled by the **Division Bench in Amin Lal's case**. The Bench noticed that expression “Occupancy tenant” included two types of occupancy tenants, namely, (i) those who were recorded as such in the revenue record immediately before the commencement of the Act and (ii) those, whose rights as occupancy tenants could be established by other evidence. The Court observed that after the coming into force of the Vesting Act, what was required was in fact a declaration of title based on the fact as to whether a person claiming a right of occupancy had in fact become the owner, though for arriving at this conclusion. It would often be necessary for the Court to examine the conditions prescribed by the Vesting Act, and to determine as to whether they had been fulfilled. The court further observed that after the coming into force of the Vesting Act, there was a simultaneous extinguishment of the rights of Occupancy and conversion of the same into ownership and as such a declaration of title could be given only by the Civil Court. It was accordingly concluded as under:-

“A Civil Court has jurisdiction to try all suits of a civil nature unless its jurisdiction with regard to a particular type of a suit is expressly or implied barred. A suit in which the right to property is to be decided is beyond doubt a suit within the cognizance of a Civil Court. A provision of law which takes away such a jurisdiction has to be strictly construed. Section 77(3)(d) of the Tenancy Act takes out of the jurisdiction of a Civil Court only that suit which is instituted to establish a claim to a right of occupancy and not where title to property is to be decided on the determination of occupancy rights which determination was only to substantiate the plea of ownership. After the coming into force of the Vesting of Property Rights Act, occupancy rights had ceased to exist and all of them were automatically converted into statutory ownership.”

9. We are of the opinion that the reliance of the learned counsel on Omkar Singh's and Jiwan's case (supra) is misplaced. As already mentioned above,

the learned Single Judge in Omkar's case merely noticed the judgment of this Court in Amin Lal's case and did not even remotely discuss the issues involved therein. In Jiwan's case, no reference was made to Amin Lal's case by the learned Single Judge through primary reliance was placed on **Raghubir Singh V. Beli Ram, 1967 PLR (Delhi Section) 396** to hold that a revenue Court alone could go into the dispute. We, however, find from a perusal of the judgment in Amin Lal's case that the Division Bench had differed with the ratio of the judgment in Raghubir Singh's case (supra) by observing that "We, with all respect, to the learned Judge did not find ourselves in agreement with him." We are, therefore, of the opinion that the judgment of the Single Bench in Puran Lal Aggarwal's case (supra) relying on the decision of Amin Lal's case (supra) lays down the correct law. It was accordingly to be held that after the coming into force of the Vesting Act, the Civil Court alone would have the jurisdiction to determine the dispute envisaged in Section 77(3)(d) of the Act and the jurisdiction of the revenue Court would be barred. The judgments of the Single Bench in Omkar Singh and Jiwan's case (supra) and any other case holding likewise are overruled.

10. To our mind, therefore, a civil suit would lie with respect to both the categories of occupancy tenants envisaged in Section 2(f) of the Vesting Act."

27. In view of the above-said legal position, it is clear that it is only the Civil Court alone, which would have jurisdiction over the issue as to whether a person had acquired occupancy rights or not, and consequent to the acquiring of the occupancy rights, whether the ownership rights had vested in him or not.

28. The other point as raised by learned Counsel for the appellants is that payment of ₹1365/- by the plaintiffs was wrongly treated by the First Appellate Court as cost of the land, though it was payment of damages for unauthorised occupations.

29. It has been found by the First Appellate Court that the plaintiffs had moved an application dated 02.02.1981 Ex.D2 to the custodian – respondent No.3 for transfer of the ownership rights of the suit land on deposit of sale price of ₹1365/- through treasury receipt Ex.D3 and this was

done in pursuance of the instructions of the Government dated 11.07.1962 Ex.PX and Ex.ACRW1/A. This application was dismissed by the custodian vide order dated 23.03.1981 Ex.AX. Simply because plaintiffs had applied for transfer of ownerships to them, it did not in any manner take away the occupancy rights of the plaintiffs in the suit land as has been rightly concluded by the First Appellate Court.

30. The last contention of learned counsel for the appellants is that the earlier suit filed by the plaintiffs was dismissed by the revenue Court and the appeal filed by the Collector was dismissed as withdrawn and that with the dismissal of the earlier suit, the present suit became barred by res-judicata.

31. There is no merit in this contention. It has not been disputed before this Court that in the appeal filed before the Collector, the suit itself was withdrawn with liberty to file fresh suit on the same cause of action in the Civil Court. It has been held in *Veer Bhan Vs. Madan Gopal, 1991 PLJ 48* that when a suit is withdrawn with liberty to bring a fresh suit, the effect thereof is as if suit was never brought and that the parties could reagitate the matter de-novo on the same facts.

32. On account of entire discussion as above, this Court does not find any illegality in the impugned judgment and decree dated 13.09.1991 passed by the First Appellate Court. As such, finding no merit in the present appeal, the same is hereby dismissed.

April 02, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned Yes
Whether Reportable Yes