

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2175 of 1989

Date of Decision: 21.02.2024

Hameed and Another
... Appellant(s)
Versus
Daulat Ram (Deceased) through his Legal Representatives and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. O.P.Goyal, Senior Advocate
with Mr. Yugank Goyal, Advocate
for the appellant(s).

Mr. A.P.Bhandari and Mr. Manoj K. Sood, Advocates
for the respondent No.1.

Mr. Jaspal Singh Pannu, Assistant Advocate General,
Haryana, for the respondent No.2 and 3.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.
2. In this regular second appeal, the defendant No.3 and 4 assail the correctness of the judgment and decree passed by the First Appellate Court modifying the judgment and decree passed by the Trial Court.
3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. Late Sh. Hotu Ram

Pakistan. In the year 1949, he was allotted the agricultural land measuring 2-13 ^{3/4} standard acres. In the year 1950, he was delivered possession of the allotted land and Sanad (allotment certificate) was issued. In the year 1954, the consolidation of holdings of the agricultural land took place in the village and late Sh. Hotu Ram was given possession of the land measuring 48 kanals and 12 marlas in lieu of the land which was allotted to him. However, in the year 1959, vide rapat No. 483 dated 13.06.1959, the land measuring 11 kanals and 5 marlas was taken away from the land measuring 48 kanals and 12 marlas allotted to late Sh. Hotu Ram which was later on given to Kale son of Sultan, the predecessor-in-interest of defendant No.3 and 4. The plaintiff, at the first instance, filed an application before the Chief Settlement Commissioner, which was dismissed vide order dated 24.08.1983 on account of delay and not maintainable. Thereafter, he filed a suit for possession with a consequential relief of mandatory injunction basically seeking three alternative reliefs:-

- a) Restore possession of the land measuring 11 kanals and 5 marlas comprised in rectangle No. 98 and khasra No.2 and 9.
- b) Allot him the alternative equivalent area.
- c) Pay him compensation if no land can be allotted to him.

4. The Trial Court, on appreciation of the evidence, came to a conclusion that the plaintiff's case is genuine. However, the Trial Court declared that the property, which was not an evacuee property, could not be allotted to late Sh. Hotu Ram by the consolidation authorities. Hence, the Trial Court passed the decree directing the State of Haryana to pay compensation to late Sh. Hotu Ram. The State of Haryana filed the first

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appeal which was allowed and the plaintiff, namely Daulat Ram son of late Sh. Hotu Ram has been held entitled to decree of possession of the land measuring 11 kanals and 5 marlas comprised in rectangle No. 98 and khasra No.2 and 9. The correctness of the judgment and decree passed by the First Appellate Court has been assailed in this regular second appeal.

5. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book along with the requisitioned record.

6. The learned counsel representing the appellants has made the following submissions:-

- I) The jurisdiction of the Civil Court is barred because as per the provisions of the East Punjab Holdings of (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the 1948 Act”).
- II) The appellants have perfected their title by efflux of time (adverse possession) because they are in open possession since 1959.
- III) The First Appellate Court has wrongly exercised the power under Order XLI Rule 33 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) particularly when the plaintiff did not file any appeal.
- IV) The correctness of order dated 13.06.1959 has never been challenged by the plaintiff.

7. On the other hand, the learned counsel representing the respondents, while referring to the judgment passed by the First Appellate

Court, submits that there is no scope for interference.

8. This Court has considered the submissions of the learned counsel representing the parties.

9. Section 44 of the 1948 Act reads as under:-

“44. Jurisdiction of Civil Court barred as regards matters arising under Act-No civil court shall entertain any suit instituted on application made, to obtain a decision or order in respect of any matter which the State Government or any office is, by this Act. empowered to determine, decide or dispose of.”

10. It is evident that the jurisdiction of the Civil Court is barred to obtain possession or order in case of any matter which the State Government or any officer is, by its act, empowered to determine, decide or dispose of under the 1948 Act.

11. In this case, there is no conscious decision of the competent authority under the 1948 Act to hold that the land measuring 11 kanals and 5 marlas allocated to late Sh. Hotu Ram at the time of consolidation of holdings was wrong or excessive. In the year 1954, the consolidation of holdings was completed. Late Sh. Hotu Ram was allotted the land measuring 48 kanals and 12 marlas. Subsequently, without granting any opportunity of hearing to late Sh. Hotu Ram, his land measuring 11 kanals and 5 marlas was taken away by merely entering the rapat. The rapat has been entered on the ground that late Sh. Hotu Ram has been allotted the land measuring 11 kanals and 5 marlas which was not an evacuee property. In the consolidation of holdings, the total land of the village is put in a common pool. Thereafter, the land is allocated on the basis of evaluation which is determined taking into consideration the quality of land, its location,

irrigation facilities and various other factors. In the year 1954, in lieu of late Sh. Hotu Ram's land prior to consolidation of holdings, he was allotted the land measuring 48 kanals and 12 marlas. It is not the case of anybody that late Sh. Hotu Ram was allotted the land in excess of his allotment. The identification of the land as non-evacuee land was totally irrelevant particularly when the entire land holding of the village was put in a common pool. Thereafter, the identification of the property as non-evacuee land was totally without any jurisdiction. The consolidation authorities have no jurisdiction to style the land as a non-evacuee property. In fact, the initial job of the authorities, while consolidating the holdings, is to consolidate the holdings of owners who may have different parcels of land located at separate locations. The authority constituted under the 1948 Act are required to handover the possession of land of same value to every owner when compared with his land prior to consolidation. The step taken by the Patwari to reduce 11 kanals and 5 marlas from the land of late Sh. Hotu Ram was totally without any jurisdiction. Hence, the objection with regard to maintainability of the suit has no substance.

12. The second argument of the learned senior counsel representing the appellants is based on adverse possession. It shall be noted here that defendant No.3 and 4 were delivered possession by the Consolidation Authorities. Their possession was permissive. Thereafter, late Sh. Hotu Ram has been contesting the matter before the one authority or the other. He initially filed a petition before the Chief Settlement Commissioner. Subsequently, he filed a suit. There is no evidence as to when the possession of defendant No.3 and 4 became adverse. Hence, this Court is unable to

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accept the argument of the learned senior counsel representing the appellants.

13. The next submission of the learned senior counsel representing the appellants is based on Order XLI Rule 33 CPC, which gives wide discretion to the First Appellate Court to pass an appropriate order in the facts and circumstances of the present case. In this case, the Trial Court granted an alternative relief directing the State of Haryana to grant compensation to late Sh. Hotu Ram. The State of Haryana filed an appeal in which the judgment and decree passed by the Trial Court was modified. In fact, one of the defendants filed an appeal against the judgment and decree passed by the Trial Court. This order was passed after hearing all the parties and in accordance with the prayer made in the suit. Hence, the argument of the learned senior counsel representing the appellants lacks substance.

15. The last submission of the learned senior counsel representing the appellants is also without any substance because in the year 1959, there is only an entry in the daily diary delivering possession. In any case, even if there was any order, still the same was without jurisdiction. Hence, it was not required to be specifically challenged.

16. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned judgment and decree passed by the First Appellate Court. Hence, the present appeal is dismissed.

(Anil Kshetarpal)
Judge

February 21, 2024
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No