



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1413 of 1994 (O&M)
Date of decision : 14.08.2024

State of Punjab and anotherAppellants

Versus

Jagdish Ram and othersRespondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Soloman Partap Singh, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Defendant/State is in second appeal against the judgment and decree passed by the Courts below.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellants as the defendants and the respondents as the plaintiffs

3. Respondent No.1/plaintiff filed suit for declaration to the effect that the plaintiff and defendants No.3 and 4 are owners in possession w.r.t. land measuring 75 Kanal 2 Marlas as detailed out in the head note of the plaint with the further relief of permanent injunction seeking restrain against the defendants/appellants from

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re-auctioning, transferring and interfering in the peaceful possession of the plaintiff over the suit land.

4. The plaintiff pleaded that suit land was earlier owned by Central Government and was in possession of the custodian. The same was put to sale through public auction. Plaintiff Jagdish Ram being the highest bidder was declared to be the auctioneer/purchaser in auction dated 17th of September, 1982. Plaintiff deposited whole auction price. Sale in his favour was confirmed by Naib Tehsildar -cum- Sales Officer vide order dated 14th of February, 1983. Mutation was sanctioned on 30th of May, 1983. Later on the authorities realised that in terms of the Package Deal Rules, 1976 the land being *banjar kadim* ought not have been put to open auction but could have been sold in restricted auction. A reference was made to Chief Settlement Commissioner, Hoshiarpur. Plaintiff was issued notice for 5th of December, 1985. On 5th of December, 1985 the Chief Settlement Commissioner being not available, the matter was adjourned to 26th of December, 1985. On 26th of December, 1985 the plaintiff was proceeded *ex parte*. The Chief Settlement Commissioner, Hoshiarpur vide order dated 4th of March, 1986 set aside sale in favour of the plaintiff and directed the disputed land to be put to sale through a restricted auction. Plaintiff impugned

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the aforesaid order vide present suit claiming that the same was illegal, null and void having been passed at the back of the plaintiff. He claimed that he sold away portion of disputed land in favour of defendants No.3 and 4 who have been put to possession.

5. Defendants No.1 and 2/State contested the suit denying the material allegations in the plaint. It was asserted that the impugned order passed by the Chief Settlement Commissioner, Hoshiapur setting aside sale of the disputed land in favour of the plaintiff was legal and valid. The plaintiff was duly summoned and served before passing of the order. Question was raised w.r.t. maintainability of the suit for non-compliance of Section 80 of the Code of Civil Procedure as well.

6. Trial Court proceeded with the suit framing the following issues:

- “1. Whether the plaintiff is owner in possession, of the suit property on the basis of sale certificate dated 9-12-1982 issued by the defendants No1 and 2? OPP
2. Whether the plaintiff has sold some land out of the suit property in favour of defendant No.4, If so, its effect? OPP.
3. Whether the sale in favour of the plaintiff has been cancelled by the Chief Sales Commissioner, vide order dated 4-3-86, if so its effect? OPD.
4. Whether the suit is bad for want of notice under section 80 CPC? OPD.

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5. Whether the suit is bad for mis-joinder of the necessary parties? OPD.
6. Whether the civil court has got no jurisdiction to try the present suit? OPD.
7. Whether the suit is properly valued for the purpose of Court fee and jurisdiction? OPP.
8. Relief.”

7. Trial Court held that prior to passing of the order dated 4th of March, 1986 the plaintiff was not provided adequate opportunity of being heard. It was recorded that after reference was made to the Chief Settlement Commissioner, Hoshiarpur on 22nd of May, 1985, the plaintiff was summoned for 25th of July, 1985. On the said date, none of the parties appeared as the Chief Settlement Commissioner was not present. Plaintiff was again ordered to be summoned for 22nd of August, 1985. On 22nd of August, 1985 it was noticed that the respondent has not come present nor he has been served. He was again summoned for 17th of September, 1985. The matter was again adjourned for service of the plaintiff on 24th of October, 1985. Thereafter, on 19th of November, 1985 and then for 5th of December, 1985. On 5th of December, 1985, the defendants claim that the plaintiff was served. However, the order sheet shows that the Chief Settlement Commissioner was out of station and the file could not be taken up.

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File was taken up by the Presiding Officer on 26th of December, 1985. The plaintiff was never summoned for 26th of December, 1985. Without recording any satisfaction w.r.t. summoning of the plaintiff, he was ordered to be proceeded against *ex parte* on 4th of March, 1986 and the sale in his favour was set aside. Trial Court thus held that the order having been passed at the back of the plaintiff without giving any opportunity of hearing to him, cannot be read to the prejudice of the plaintiff. Consequently, Trial Court decreed the suit. On the issue of non-compliance of Section 80 CPC, Trial Court recorded that the plaintiff filed an application along with suit seeking leave of the Court to file the suit exempting compliance of Section 80 CPC. The same was allowed by the Trial Court vide order dated 24th of May, 1989. The said order was never challenged and thus the suit cannot be held to be bad for non-compliance of Section 80 CPC. The aforesaid findings have been affirmed by the lower Appellate Court.

8. Ld. Assistant Advocate General, Punjab while assailing the impugned judgment and decree has pressed the issue of jurisdiction. He asserts that the jurisdiction of the Civil Court was barred and that the suit was beyond the period of limitation.

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9. I have heard counsel for the appellants and have carefully gone through the records of the case.

10. So far as the finding recorded by both the Courts below w.r.t. passing of the impugned order at the back of the plaintiff is concerned, State Counsel could not point out any evidence contrary to the findings recorded by the Courts below. So far as the question of limitation is concerned, indeed the impugned order was passed on 4th of March, 1986 and the present suit has been instituted on 24th of May, 1989. In para No.6 of the plaint, the plaintiff has pleaded as under :

“6. That the plaintiff recently came to know that the defts No 1 and 2 have published the programe to re-auction of the suit land and fixed the date 29.5.1989 for the said purpose of re-auction of the suit land for which the defts No 1 and 2 have absolutly got no right or interest to do so without legal and valid Notice to the plff and deft No 3 and 4.”

11. In preliminary objections, the defendants have taken objection that the suit is pre-mature. In whole of the written statement, there is no plea that the plaintiff was in the knowledge of the order whereby sale in his favour was annulled. Part No.III of the Schedule appended to the Limitation Act provides for period of limitation for

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filing suits seeking declaration. The limitation prescribed is three years and the same commences when the right to sue first accrues.

12. In the present case, since there is no evidence to suggest that the plaintiff was put to notice prior to passing of the impugned order, this Court has no hesitation in holding that the right to sue in favour of the plaintiff accrues when he came to know about cloud on his title. In the present case, in terms of Para No. 6 of the plaint cloud over the title of the plaintiff was discovered at first by the plaintiff on the day schedule for fresh auction was notified by the defendants. Thus, it cannot be said that the suit was beyond limitation. Before coming on to the bar of jurisdiction of the Civil Court, it will be apt to peruse Rule 16 of the Punjab Package Deal Properties (Disposal) Act, 1976. The same reads as under:

“16. Bar of jurisdiction and finality of orders: (1) Save as otherwise expressly provided in this Act, every order made by any officer or authority under this Act shall be final and no Civil Court shall have jurisdiction to entertain any suit or proceeding, in respect of any matter which the State Government, or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

(2) Nothing in the; Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, shall apply to package deal property.”

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13. The issue w.r.t. operation of express bar to the jurisdiction of the Civil Court has been dealt by Five Judges Bench of Supreme Court in the case of **Dhulabhai etc. vs. State of M.P. and anr, 1969 AIR (Supreme Court) 78**. The Supreme Court held as under :

“32. xxxxx. The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and

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liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply. ”

14. Once this Court has affirmed the finding w.r.t. passing of the order against the plaintiff at his back and in violation of the

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principles of natural justice, this Court is of the opinion that the matter is fully covered against the appellants in view of the dictum of *Dhulabhai’s* case (supra). Thus, finding no merit in the instant appeal, the instant appeal is dismissed.

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

August 14, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No