



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

Sr. No.110

RSA No. 5011-2019(O&M)

Date of Decision : 03.05.2024

Arjun Singh

.... Appellant

vs.

Sudhir Kumar and Others

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Padamkant Dwivedi, Advocate
for the appellant.

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GURBIR SINGH, J. :

1. The plaintiffs having been failed before both the Courts below have approached this Court by way of present regular second appeal, challenging the judgment and decree dated 30.03.2019 passed by learned District Judge, Rupnagar (Lower Appellate Court), dismissing the appeal against the judgment and decree dated 27.03.2018 passed by learned Civil Judge (Junior Division) Rupnagar, whereby suit of the plaintiffs was dismissed.

2. Parties hereinafter shall be referred to as per their original status in the suit.

3. Plaintiffs filed a suit for declaration to the effect that the allotment of three parcels of land, as mentioned in the head note of the plaint, was illegal, null and void, as per the cancellation order dated



15.12.1965, passed by the then Tehsildar, Revenue-cum-Sales, Munak (Sunam) on the ground of non redeeming of the mortgaged land in West Pakistan and further that the plaintiffs are owners and possession of these parcels as per jamabandi for the year 2008-2009 on the basis of their continuous possession.

4. In the suit, it has been pleaded, by the plaintiffs that they being landless Harijans, were occupying three parcels of land measuring 25 kanals 17 marlas in village Kakarala, Tehsil & District Ropar, prior to year 1970 when the land was banjar qadim and uncultivable. They made it cultivable by their hard labour and spent Rs. 10,000/- on its reclamation and by installing tube-well. They also paid regular rent to the Revenue Department regarding the same. It has been further pleaded in the suit that according to a press note dated 04.09.1974 issued by the Rehabilitation Department, they filed applications for transfer of land and the aforesaid department was issuing press notes time and again to bestow transfer rights in favour of the occupants of rural evacuee land. However, the applications of the plaintiffs were not taken up for decision and the same remain pending with Tehsildar. To substantiate their right, plaintiffs relied upon a judgment of this Court titled *Bishan Singh and others Vs. Chief Settlement Commissioner and others* reported as PLJ 1973(183), wherein it has been held that the occupants covered by the press-note have enforceable legal rights and further, till their applications are decided, the disposal of the land by way of allotment should not be made. It has been further contended by the plaintiffs that the press-note dated 04.09.1974 reckoned Rabi 1972 as the scheduled



crop for examining eligibility of an occupant. Similarly, the subsequent press-notes considered occupants of evacuee rural land eligible if they had been in cultivating possession of the land since Rabi 1976. The plaintiffs also filed applications under the subsequent press-notes because of having continuous possession till Rabi 1976.

5. The plaintiffs in the meantime, came to know that one Walaiti Ram had got the land entered as allottee in the name of his father Chandu Lal, in spite of the fact that they never came into possession of the said land. So the plaintiffs made a complaint against such an allotment, which was inquired into by the Rehabilitation Department and allotment in the name of Chandu Ram etc. was held to be false based on fraud, vide order dated 19.03.1997. It was averred that the predecessor in interest of defendants abandoned land in Pakistan and allotment in lieu thereof fell in the districts of Karnal, Hoshiarpur and Ferozepur or in erstwhile PEPSU in Punjab. It was further averred that allotment had been made to them in village Mandvi Tehsil Sunam District Sangrur during general allotment, which continued there, as per record. In spite of the fact that the applications filed by the plaintiffs for transfer of land were still pending, Tehsildar Ropar, vide order dated 27.01.1978, allotted the suit land in favour of defendants and on enquiry made by the plaintiffs, they came to know that the defendants got cancelled the land allotted to them in village Mandvi for securing re-allotment of plaintiffs' land and further that the transfer of parcha claim was made by the State Govt. vide order dated 21.08.1977. The plaintiffs challenged the order of allotment dated 27.01.1978. Their appeal was



accepted by the Settlement Commissioner vide order dated 04.04.1983/04.11.1983, by setting aside the allotment made to defendants. Faced with this situation, the suit was filed before the trial Court.

6. Defendants No. 2 to 4 did not appear to contest the suit and were proceeded against ex-parte.

7. The legal representatives of defendant No.1 contested the suit by filing written statement on the grounds of non maintainability, locus standi, cause of action, estoppel and limitation etc. On merits it was pleaded that the plaintiffs had no right, title, concern with the suit land which was previously owned and possessed by Walaiti Ram, Chandu Lal, Nirmal Rani etc. because the same was allotted to them vide order dated 27.01.1978 under the provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1954 in lieu of the land abandoned by them in Pakistan. They pleaded that the said allotment was challenged by the plaintiffs on baseless frivolous grounds before the Settlement Commissioner resulting in acceptance of their appeal vide order dated 04.04.1983/04.11.1983. Against this order, Walaiti Ram went in revision before the Chief Settlement Commissioner, Punjab. The said revision was allowed vide order dated 15.02.1984 and order of Settlement Commissioner was set aside, meaning thereby that the order passed by Tehsildar was upheld. The matter did not stop here. The plaintiffs again filed a petition on wrong and distorted facts before the Financial Commissioner, who, vide his order dated 17.11.1987, dismissed the said petition. It was also averred that Walaiti Ram sold the suit land to Joginder Ram who was owner in possession of the suit land. The



defendants further apprised the Court that the plaintiffs concealed from the Court about the order dated 17.11.1987 passed by Financial Commissioner and tried to mislead the Court. In this manner, it was submitted that the plaintiffs had no concern with the suit property and are not entitled to the grant of any relief regarding the same.

8. After hearing learned counsel for the parties and considering the evidence on record, the learned trial Court came to the conclusion that as per jamabandi for the year 1973-74, the suit property was owned by Central Government. Plaintiffs- Arjun Singh and Pola Singh were recorded to be in possession thereof. Further, as per jamabandi for the year 2003-2004, Chandu Ram was recorded as owner of the suit property and the plaintiffs Arjun Singh, Amar Singh and Pola Singh were recorded to be in possession of the suit property. The same was the position in the jamabandi for year 2013-14. Thus, the plaintiffs were proved to be in possession of the suit property.

9. Considering the documentary as well as oral evidence produced on record, the learned trial Court held that no declaration of ownership could be granted on the basis of adverse possession and no other ground was established by the plaintiffs to claim ownership/possession of the suit property. So the suit of the plaintiffs was dismissed.

10. The appeal filed by the plaintiffs against the judgment and decree passed by learned trial Court also met the same fate. Hence the plaintiffs approached this Court by way of the present appeal.

11. Learned counsel for the appellants inter-alia contended that the



plaintiffs were in continuous possession of the suit land and there were orders by the competent authorities in favour of the plaintiffs. However, rightful claim of the plaintiffs was denied on the ground that their possession was not hostile and no declaration of ownership could be granted on the basis of adverse possession. Reliance in support of his contentions has been placed on *Ravinder Kaur Grewal & Ors. Vs. Manjit Kaur & Ors: 2019(4) R.C.R.(Civil) 1* a judgment of Hon'ble Supreme Court wherein it is held that a person who has perfected title by way of adverse possession, can file suit for obtaining injunction protecting possession and for recovery of possession and for recovery of possession in case of dispossession.

12. I have heard learned counsel for the appellant and perused the case file.

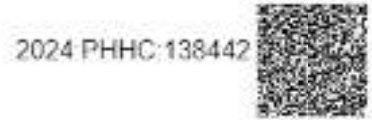
13. There is no dispute that plaintiffs are landless Harijans and are in established possession of the suit property. Both the Courts below have given concurrent findings that plaintiffs are in possession of the suit property. The plaintiffs have sought declaration that allotment of land made to defendant Nos. 1 to 5 is illegal on the ground that plaintiffs challenged the order of allotment of suit land to defendants and their appeal was accepted by the Settlement Commissioner and order of allotment of suit land to defendants by Tehsildar-cum-Sales Rehabilitation Department was set aside. The plaintiff concealed the fact that defendants challenged the order of Settlement Commissioner by filing revision petition before the Chief Settlement Commissioner. The said revision petition was allowed and order of Settlement Commissioner was set aside and order passed by Tehsildar-



cum-Sales Rehabilitation Department was upheld. The plaintiffs filed petition before Financial Commissioner and vide order dated 17.11.1987, said petition was dismissed. Thus order of allotment of suit land in favour of defendants under the Displaced Persons (Compensation and Rehabilitation) 1954 attained finality and said allotment cannot be challenged in the Civil Court unless said orders were obtained by fraud. Section 36 of said Act bars the jurisdiction of civil Court. There is no plea of fraud. So no declaration about allotment of land to defendants can be given.

14. The plaintiffs have also sought declaration on the basis of order dated 19.08.1997 Ex.P9 passed on the application of plaintiffs whereby directions were given to Tehsildar Revenue-cum-Sales to look into the matter and decide the application seeking allotment by the plaintiffs. No evidence is brought on the file that any allotment of any land is made in favour of the plaintiffs. Plaintiffs are not entitled to any declaration on the basis of order Ex.P-9.

15. The plaintiffs have also sought declaration that they are owners in possession of suit property on the basis of continuous possession. A long and continuous possession cannot turn into ownership. The plaintiffs have not claimed that they have become owner of suit property by way of adverse possession. The lower Appellate Court wrongly considered that claim to ownership on the basis of continuous possession would amount to claiming possession on the basis of adverse possession. The Court cannot travel beyond pleadings. There is no plea of the plaintiffs that such possession was hostile to the true owner of the suit property. I draw support from case *Sri*



Uttam Chand(D) through LRs and Nathu Ram (D) through LRs and Others; Civil Appeal No. 190 of 2020 decided on *January 15,2020* by Hon’ble Supreme Court of India. The authority *Ravinder Kaur Grewal and Others* cited (supra) by the plaintiffs is not of any help to the plaintiffs.

16. In the light of above discussion, there is no illegality or perversity in the impugned judgments passed by both the Courts below so as to warrant interference by this Court. There is neither any misreading of evidence nor misappropriation of evidence. No question of law, much less any substantial question of law, arises in the present regular second appeal which is accordingly dismissed in liminie.

03.05.2024
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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.