

2024:PHHC:013997

121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4075-2011(O&M)

Vs.

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3. In order to comprehend the issue involved in these two cases, the relevant facts in brief are required to be noticed. The plaintiff (Gian Singh)

filed a suit claiming that his grandfather Labh Singh @ Labhu being the mortgagee, was in possession of the property, whereas, at the time of partition of the country, the mortgagor permanently migrated to Pakistan. Thus, the property was declared as evacuee property. However, the mortgage was never redeemed. Ultimately, the Central Government allotted the suit land to Munsha Singh in the year 1965, who in turn, sold the property in favour of Rattan Singh vide registered sale deed dated 22.04.1965, which was registered on 11.05.1965. After the sale of the property, Rattan Singh became absolute owner of the same. However, the Central Government auctioned the property in a restricted auction in favour of Jagan Nath on 17.11.1981. When the competent authority came to know these facts, it refused to confirm the auction. Ultimately, the Chief Sales Commissioner cancelled the auction. However, Jagan Nath filed revision petition before the Financial Commissioner, which was accepted on 29.08.2000. The plaintiff claims that all right, title or interest vested in the property were transferred in favour of Munsha Singh in the year, 1965 and thereafter, the property was neither evacuee property nor it could be sold under Section 16 of the Punjab Package Deal Properties (Disposal) Amendment Act, 1979.

4. While contesting the case, the defendant claimed that the suit is not maintainable because on 04.01.1985, a previous suit was filed by Sohan Singh for grant of declaration was dismissed and in appeal, the same was confirmed on 16.01.1988. It was also claimed that Civil Court has no jurisdiction.

5. The trial Court dismissed the suit, however, the First Appellate

Court on re-appreciation of evidence came to the conclusion that Munsha Singh was allotted suit land prior in point of time and thereafter, the Central Government had no jurisdiction to either sell the same or deal with in any manner. The Court also held that judgment in the previous suit filed by Sohan Singh would not operate as *res judicata* because the aforesaid suit was filed on 30.03.1983, whereas the Financial Commissioner passed the order on 18.01.2000 and Gian Singh filed the suit in September 2000.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

7. Learned counsel representing the appellant submits that the present suit is hit by doctrine of *res judicata* because Sohan Singh and Gian Singh are heirs of Rattan Singh. He submits that the suit filed by Sohan Singh has already been dismissed, therefore, the second suit is not maintainable. He further submits that as per Section 16 of the Punjab Package Deal Property (Disposal) Act 1976, the jurisdiction of Civil Court is barred because every order passed by any officer or authority under the Act shall be final and the Civil Court shall have no jurisdiction. He further submits that original sale deed executed by Munsha Singh in favour of Rattan Singh has not been produced and has not been proved even by leading secondary evidence as its loss was not proved. He further submits that even the attesting witnesses were not examined.

8. On the other hand, learned counsel representing the respondent No.1 submits that cause of action for filing the present suit arose on 18.01.2000, when the Financial Commissioner passed the order. He submits

that Gian Singh was not party to the previous suit filed by Sohan Singh. He was also not party to the order passed by the Financial Commissioner. Though, Rattan Singh was impleaded as respondent, however, he was shown to be dead but his LRs were not brought on record. He further submits that Central Government or any authority constituted under 1976 Act has no jurisdiction, particularly when the suit property had already been transferred in favour of Munsha Singh. He submits that certified copy of the registered sale deed was produced and proved by examining official from the office of Sub-Registrar.

9. This Court has considered the submissions while analyzing the arguments learned counsel representing the parties. The requisitioned Trial Court record has also been perused. It is evident that on the objection taken in the written statement by the appellant, the Trial Court framed issue No. 6, however, the appellant never pressed the same before the Trial Court. In the First Appellate Court, this objection was revived. The First Appellate Court examined the same and found that the previous judgment passed in the suit filed by Sohan Singh will not operate as *res judicata*. At the cost of repetition, it would be noticed that the cause of action for filing this suit arose on 18.01.2000, whereas, Sohan Singh filed the suit in the year 1983. Hence, neither the issue which substantially arose in this suit was subject matter of adjudication in the previous suit nor the plaintiff Gian Singh is claiming property from Sohan Singh. In any case, once the suit is based on a subsequent cause of action, the plea of *res judicata* is not made out.

10 The next submission of learned counsel representing the appellant with respect to the Civil Courts lack jurisdiction is also without substance

because the Central Government or the Punjab Government had no authority to deal with or sell the property as the evacuee property, which had already been allotted in favour of Munsha Singh. After the allotment in favour of Munsha Singh, the Central and the State Government were left with no right, title or interest in the property. Hence, the entire proceedings before the authorities/officers constituted under 1976 Act were without jurisdiction. The jurisdiction of the Civil Court to decide civil dispute is plenary. Once it has come on record that the various orders passed by the authorities under 1976 Act were without jurisdiction, the bar to the jurisdiction of Civil Court under Section 16 of the Punjab Package Deal Property (Disposal) Act 1976, would not be applicable.

11. The last submission of learned counsel representing the appellant also lack substance. The registered sale deed is prepared in duplicate. Both the copies are signed by the parties. One is retained in the office of Sub-Registrar, whereas, the second one is handed over to the parties. Thus, both the copies of the registered sale deed are primary evidence. The plaintiff has produced a certified copy of the sale deed and proved the same after summoning the officials from the office of sub-Registrar. Moreover, the sale deed is not required to be attested by two attesting witnesses.

12. Keeping in view the aforesaid discussions, both the appeals lack merit and the same are dismissed accordingly.

31.01.2024

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Whether speaking/reasoned :
Whether Reportable :

(ANIL KSHETARPAL)
JUDGE

Yes	No
Yes	No