

2024:PHHC:005560
**108 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-6408-2017 (O&M)
Date of decision: 15.01.2024

Sant Lal (since deceased) and represented by his Lrs and others

....Appellant

Versus

Som Parkash and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Gaurav Mohunta and
Mr. Gaurav Gogna, Advocates for the appellant

ANIL KSHETARPAL, J (Oral)

CM-16603-C-2017

1. Allowed as prayed for, subject to all the just exceptions.

The legal representatives of the deceased appellant no.1- Sant Lal, as mentioned in para 2 of the application, are permitted to be brought on record, for the purpose of prosecuting the present appeal.

2. Amended memo of parties is taken on record.

Main case

3. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh are 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 vs. Chandrika and others, (2016) 6 SCC 157.

4. In this Regular Second Appeal, the plaintiff prays for setting aside the concurrent judgments passed by the courts below while dismissing his suit for the grant of decree of declaration to the effect that they are the joint owners in possession of the property and the orders dated 24.03.1961 and 18.05.1961, passed by the competent authority, while declaring the land as surplus area, being beyond the ceiling limit and also for setting aside various other orders. The suit was filed on 26.07.2005. Both the courts have found that not only the suit filed by the plaintiff is beyond the prescribed time period but even the jurisdiction of the civil court is barred.

5. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

6. Originally Sh.Jagadhar Mal was the owner of the property. After his death, Sh.Krishan Chand, his son became the owner of the said property. During his lifetime, proceedings under the Punjab Security of Land Tenures Act, 1953 were started to determine the land beyond ceiling limit in his hands. On 24.03.1961, the Collector found that Sh.Krishan Chand was a big landowner and his land holding was more than the prescribed upper ceiling limit. On 18.05.1961, the Collector Agrarian modified the order and extended the tenants area located within the municipal area Kanjnu.

4. On the application submitted by the tenants in possession of the land at Village Kanjnu, they were allowed to purchase the land after a long drawn litigation on 28.12.1976. Once again, the litigation at the hands of the big landowners continued before the revenue authorities which culminated into final order passed by the Financial Commissioner, Haryana on 26.02.1980. Thereafter, the plaintiffs filed a civil suit on 14.07.1997 in the civil court at Chandigarh. The civil suit remained pending for a period of 7 years, however, the plaintiffs withdrew the said suit after 7 years with liberty to file a fresh one. Thereafter, the present suit was filed in the year 2005. Alongwith the appeal, an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 has also been filed to produce in additional evidence copies of jamabandi for the year 1954-55, 1962-63 khasra Girdawari for the years 1956-60 mutation entry, order passed by the Collector on 31.05.1973, and the Financial Commissioner's order passed on 07.01.1997. In all these documents, an effort is made to impress upon the court to interfere with the various orders/proceedings which were finalized under the Punjab Security of Land Tenure Act, 1953 and subsequently, under the Haryana Ceiling on Land Holdings Act, 1972. Both the courts have held that neither the civil court has the jurisdiction nor the suit filed by the plaintiffs is within the prescribed period of limitation. It has been concluded that the plaintiffs had knowledge of the proceedings including the order declaring the land surplus and

permitting the tenants in possession to purchase the land. Moreover, filing of suit at Chandigarh was also not bonafide exercise. Furthermore, the Financial Commissioner finally decided the matter on 26.12.1980. For a period of 17 years, the plaintiffs did not take any steps.

5. Keeping in view the aforesaid facts and discussion if the documents produced before the court in additional evidence are taken into account, even then the appeal lacks substance and merit.

6. Hence, dismissed accordingly.

7. All the pending miscellaneous applications, if any, are also disposed of.

15.01.2024
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No