IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I. RSA-778-1993 (O&M)

JASWANT KAUR (DECEASED)
THROUGH HER LRs AND OTHERS

. . . .APPELLANTS

Vs.

THE CENTRAL GOVT. THROUGH FINANCIAL
COMMISSIONER REVENUE AND OTHERS

. . . . RESPONDENTS

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II. RSA-3179-1998 (O&M)

PUNJAB STATE THROUGH CHIEF SETTLEMENT
COMMISSIONER AND OTHERS

. . . .APPELLANTS

Vs.

JOGINDER SINGH THROUGH HIS LRS.

. . . . RESPONDENTS

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Reserved on: 18.03.2025
Pronounced on: 21.04.2025

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CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

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Argued by:- Mr. Sarthak Gupta, Advocate,
for the appellants (in RSA N: 778-1993)

Mr. R.K. Takkar, DAG, Punjab,
for the appellants (in RSA-3179-1998); and
for the respondents No.2 & 3 (in RSA-778-1993)

Mr. Bhavnik Mehta, Advocate,
for the respondent (in RSA-3179-1998)

<u>DEEPAK GUPTA, J.</u>

This judgment shall dispose of two Regular Second Appeals, titled above, as common questions of fact and law are involved.

2.1 RSA No. 778 of 1993 has been filed by the legal representatives of Ajit Singh *(since deceased),* challenging the concurrent findings recorded by the Courts below, whereby their suit (CS N: 493 of 1986) for declaration was dismissed by the learned Sub Judge First Class, Faridkot vide judgment dated 14.11.1990, and the same was upheld by the learned District Judge, Faridkot in an appeal preferred by them bearing CA N: 3 of 1991, vide judgment dated 26.11.1992.

2.2 On the other hand, the connected Regular Second Appeal No. 3179 of 1998 has been filed by the defendants–Punjab State through the Chief Settlement Commissioner and others, assailing the judgment & decree dated 27.02.1998 passed by the learned Additional District Judge, Faridkot in Civil Appeal No. 14 of 1993 titled *Joginder Singh vs. Punjab State through Chief Settlement Commissioner and others*, whereby the First Appellate Court reversed the findings of the Court below, whereby the suit for declaration filed by the plaintiff–Joginder Singh *(respondent herein)* in respect of the same disputed property had earlier been dismissed by the learned Sub Judge First Class, Faridkot, vide judgment & decree dated 05.01.1993 in civil suit bearing CS N: 1 of 1988.

3.1 The record of the Trial Court has been duly perused. For the sake of clarity and convenience, the parties are referred to as per their status before the Trial Court.

3.2 As common facts are involved, the facts are being noticed from RSA N: 778 of 1993.

4.1 Subject matter of dispute is 40 kanal of land as comprised in Khasra No.4192 (16-0), 4193 (16-0) and 4191 (8-0) situated within the revenue estate of Faridkot as per details given in the plaint *(to be referred as 'suit land').* It emerges from the record that defendant No. 6 Saraj Singh *(respondent No. 6 herein)* son of Sunder Singh, was found entitled to 5 standard acres/units of rural agricultural land in lieu of land abandoned by him in Pakistan. In the year 1950, he was allotted suit land according to this entitlement in village *Behak Gujran*, Tehsil Zira, District Ferozepur. After acquiring permanent rights over the said land, Saraj Singh sold it in favour of Anup Singh and others, through sale deeds dated 28.03.1964 and 09.04.1964.

4.2 Subsequently, in the year 1958, Saraj Singh obtained a duplicate *parcha* claim from the Land Claims Officer, Jullundur, and secured a second allotment—again to the extent of 5 standard acres/units—this time in village Faridkot, during 1959–60. He obtained permanent rights in respect of this second allotment as well, and later sold the land to defendant N: 7 Jaspal Singh *(respondent No. 7 herein)* on 07.08.1963. Jaspal Singh thereafter sold the part of the said land to the extent of 32 Kanals to Ajit Singh, the predecessor in interest of present plaintiffs *(appellants in RSA N: 778-1993 herein)* vide two sale deeds dated 15.03.1968 & 29.07.1969. Jaspal Singh also sold the part of the land purchased from Saraj Singh, to the extent of 8 Kanals to Joginder Singh *(respondent in RSA N: 3179-1998 herein)* vide sale deed dated 05.08.1969.

4.3 On 29.11.1966, the Chief Settlement Commissioner cancelled the permanent rights in respect of the land allotted to Saraj Singh in village *Behak Gujran*. The said order was passed *ex-parte* against Anup Singh and others, who were purchasers of the said land from Saraj Singh. Aggrieved, Anup Singh and others approached the Chief Settlement Commissioner seeking setting aside of the ex-parte order dated 29.11.1966, and further prayed for cancellation of the permanent rights of Saraj Singh in respect of the land allotted to him in Faridkot, alleging that the second allotment had been fraudulently secured in 1959–60, whereas the first allotment in *Behak Gujran* was granted in 1950.

4.4 During the course of the above proceedings, Saraj Singh and Jaspal Singh *(the vendee & subsequent vendee of the Faridkot land)* were impleaded as respondents but they chose not to appear. Consequently, the Chief Settlement Commissioner, vide order dated 17.06.1970, allowed the application of Anup Singh and others, and not only set aside the earlier order dated 29.11.1966 but also cancelled the permanent rights of Saraj Singh in respect of the land allotted to him in village Faridkot.

4.5 Ajit Singh and Joginder Singh, subsequent purchasers from Jaspal Singh of the land of village *Behak Gujran* filed a petition under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 *(hereinafter referred to as "the Act")* challenging the order dated 17.06.1970 passed by the Chief Settlement Commissioner. The said petition was contested by Anup Singh and others. The Financial Commissioner (Taxation), Punjab, exercising the powers of the Central Government under Section 33 of the Act, vide order dated 31.05.1972, upheld the order passed by the Chief Settlement Commissioner and dismissed the petition.

4.6 As is borne out from the record, aforesaid vendees Ajit Singh and Joginder Singh also filed writ petition bearing CWP N: 3503 of 1972 against Central government and others, including Saraj Singh & Jaspal Singh, assailing the order dated 17.06.1970 (Ex.D1) of the Chief Settlement Commissioner and that of the Financial Commissioner dated 31.05.1972 (ExD4), but the said petition was dismissed by this High Court on 20.09.1980.

5.1 Now, the plaintiffs, being the successors-in-interest of Ajit Singh, by filing Civil Suit N: 493 of 1986, claim that Ajit Singh had validly purchased the suit land after due verification of revenue records. Specifically, it is contended that Ajit Singh purchased 32 kanals of land comprising Khasra Nos. 4192 (16-0) and 4193 (16-0) through a registered sale deed dated 15.03.1968, and another 8 kanals of land comprising Khasra No. 4191 (8-0) through a registered sale deed dated 29.07.1969, both from Jaspal Singh. Based on these transactions, Ajit Singh is claimed to have become a bona fide purchaser for value, without any notice of any defect in the title of Jaspal Singh. Upon the demise of Ajit Singh, the plaintiffs, as his legal heirs, assert that they inherited ownership and possession of the suit land. However, they allege that subsequent to the cancellation of the allotment made in favour of Saraj Singh by the competent authorities, they were threatened with dispossession by the defendants. It was further alleged that the suit land was intended to be re-auctioned and that defendants No. 4 and 5, namely Manjit Singh and Kaul Singh, were attempting to purchase the same.

5.2 In light of the above circumstances, the plaintiffs instituted the present suit seeking a declaration against the Central Government (through its Financial Commissioner, Revenue), Secretary to Government of Punjab, Department of Rehabilitation (exercising delegated powers of the Central Government), and other relevant authorities. They prayed for a decree declaring them to be the owners in possession of the suit land by virtue of the sale deeds dated 15.03.1968 and 29.07.1969 executed by Jaspal Singh. They further sought a consequential relief in the form of a permanent injunction restraining defendants No. 1 to 3 from auctioning the suit land or from issuing any warrant of possession in favour of defendants No. 4 and 5.

5.3 Raising similar contentions, Joginder Singh filed Civil Suit N: 1 of 1988.

6.1 Referring to suit as filed by Jaswant Kaur & Others, the suit was not contested by defendants No. 4 and 5. However, defendants No. 1 to 3 filed a written statement contesting the maintainability of the suit. It was averred that the suit land forms part of a "package deal property" and, therefore, the Civil Court lacked jurisdiction to entertain the matter in view of Section 16 of the Package Deal Properties (Disposal) Act, 1976. The defendants further objected that the suit was not maintainable as the plaintiffs had an efficacious alternative remedy under the provisions of the aforesaid Act. It was also contended that the suit was barred by limitation.

6.2 The contesting defendants further submitted that the allotment made in favour of Saraj Singh had already been cancelled in the year 1970, and that possession of the suit land was taken by the State authorities as per *roznamcha* reports No. 17 and 20 both dated 17.09.1970.

It was submitted that Ajit Singh and Joginder Singh had earlier preferred an appeal against the cancellation order, which came to be dismissed by the Financial Commissioner, Taxation, Punjab, Chandigarh on 31.05.1972. The defendants elaborated that Saraj Singh was a bogus allottee and, accordingly, the allotment of land, including the suit land to him, was cancelled in July 1970. Since the land in question was evacuee property, it was contended that the same vested in the Punjab State under the provisions of the Package Deal Properties (Disposal) Act, 1976.

6.3 The defendants categorically stated that they were not bound by the transactions entered into between Saraj Singh and Jaspal Singh or between Jaspal Singh and Ajit Singh/Joginder Singh. It was further submitted that, as per the *jamabandi* for the year 1979–80, the Central Government is recorded as the owner of the land in Khasra Nos. 4192 and 4193, with Ajit Singh reflected as a "Gair Maurusi" *(unauthorised occupant).* Additionally, one Babu Ram is recorded as "Gair Maurusi" in Column No. 5 of the cultivation register for Khasra No. 4191. On the strength of these submissions, the contesting defendants prayed for dismissal of the suit.

7. The trial Court framed the necessary issues and recorded evidence from both sides.

8. The learned Trial Court, while adjudicating the matter concluded that the predecessor in interest of the plaintiffs, namely, Ajit Singh, was a bona fide purchaser for value and without notice regarding any defect in the title of the suit land. However, the issue pertaining to the jurisdiction of the Civil Court, was decided against the plaintiffs. The Court held that the jurisdiction of the Civil Court was barred in light of the provisions of the Punjab Package Deal Properties (Disposal) Act, 1976. The Trial Court concluded that the plaintiffs were not entitled to the relief of permanent injunction, as the suit land constituted evacuee property, and therefore, defendants could not be restrained from auctioning the same. The Trial Court also held the suit to be barred by limitation. Based on these findings,

the Trial Court dismissed the suit of the plaintiffs vide judgment dated 14.11.1990.

9. Aggrieved by the dismissal, the plaintiffs preferred an appeal before the learned District Judge, Faridkot. The First Appellate Court, while reversing the Trial Court's finding on Issue No. 3, held that the jurisdiction of the Civil Court was not barred under the Punjab Package Deal Properties (Disposal) Act, 1976 or the Displaced Persons (Compensation and Rehabilitation) Act, 1954, since the plaintiffs had not sought to challenge any specific order passed by the Rehabilitation Authorities. However, the First Appellate Court held that although the plaintiffs may, in principle, be entitled to the benefit of Section 41 of the Transfer of Property Act, the protection under this provision was not available to them in the present case owing to the bar contained under Section 52 of the Transfer of Property Act. The Court observed that Ajit Singh had purchased the property in question during the pendency of proceedings before the Rehabilitation Authorities, and as such, the doctrine of lis pendens applied. The First Appellate Court also reversed the Trial Court's finding on the issue of limitation, holding that the suit was within time. Despite these reversals, the appeal was ultimately dismissed by the learned District Judge, Faridkot, vide judgment dated 26.11.1992.

10.1 The plaintiffs, now appellants, have assailed the judgments of the Courts below by way of the present Regular Second Appeal. Learned counsel for the appellants has submitted that the plaintiffs were bona fide purchasers of the suit land and had sought protection under Section 41 of the Transfer of Property Act. It is argued that the jurisdiction of the Civil Court was not barred in the facts of the case. Reliance has been placed on the decision in ***Kali Ram v. Union of India, 1976 RLR 438***.

10.2 It is further submitted that the cancellation of allotment in favour of Saraj Singh—predecessor-in-interest of Jaspal Singh, the vendor of Ajit Singh—was carried out without issuing any notice to Ajit Singh or the present plaintiffs. The appellants contend that the cancellation order was passed in violation of the principles of natural justice and is, therefore, void. It is argued that Ajit Singh had purchased the suit land prior to the cancellation and was not heard by the Chief Settlement Commissioner during the cancellation proceedings. Therefore, the plaintiffs, as successors-in-interest of Ajit Singh, assert that they are bona fide purchasers, and the contrary finding recorded by the First Appellate Court is unsustainable in law.

11. On the other hand, learned State Counsel representing the respondent-State has supported the judgments passed by both the Courts below. It is submitted that the findings recorded are based on a correct appreciation of facts and law, and no interference is warranted in second appeal. Accordingly, prayer is made for dismissal of the present appeal.

12. This Court has considered submissions of both the sides and have appraised the record carefully.

13. The appellants have sought to challenge the order dated 17.06.1970, whereby the allotment in favour of Saraj Singh with respect to land in Village Faridkot was cancelled. The grievance raised is that neither Ajit Singh (the plaintiffs' predecessor-in-interest) nor the plaintiffs themselves were heard prior to the passing of the said cancellation order. It is argued that by that time, Ajit Singh had already purchased the suit land and his name was duly reflected in the revenue records as owner.

14. However, the First Appellate Court has correctly recorded that Jaspal Singh, the vendor of Ajit Singh, came into possession of the land only in August 1963, by way of purchase from Saraj Singh. Subsequently, Ajit Singh purchased the suit land from Jaspal Singh in 1968-1969. Notably, the initial cancellation of the allotment concerning land in Village Behak-Gujran was made by the Rehabilitation Department in 1966, i.e., prior to the execution of the sale deeds in favour of Ajit Singh. The record further reveals that Saraj Singh had sold the land in Village Behak-Gujran to Anoop Singh

and others. Upon cancellation of the allotment in 1966, Anoop Singh and others filed a revision before the Chief Settlement Commissioner. In those proceedings, both Saraj Singh and Jaspal Singh *(the vendor of Ajit Singh)* were impleaded as parties. However, neither of them appeared before the Chief Settlement Commissioner. Consequently, an ex parte order dated 17.06.1970 was passed, whereby the earlier cancellation of the permanent rights dated 29.11.1966 of Faridkot land was set aside, and the allotment in Village Behak-Gujran was cancelled.

15. From the above, it is evident that the predecessor-in-title of Ajit Singh—namely Jaspal Singh—and his vendor Saraj Singh were both parties to the proceedings before the Chief Settlement Commissioner. Therefore, the plaintiffs cannot be permitted to argue that they were not afforded an opportunity of being heard, especially when their predecessors-in-interest were duly impleaded in the proceedings.

16. It is also material to note that Ajit Singh and Joginder Singh, both vendees from Jaspal Singh, had themselves filed a petition under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 before the Financial Commissioner, Taxation, Punjab, who was exercising delegated powers of the Central Government under the said Act. Vide order dated 31.05.1972 (Ex.D4), the petition was dismissed. The Financial Commissioner recorded a finding that the subsequent allotment secured by Saraj Singh in Village Faridkot during 1959-60 was fraudulent and could not be sustained. It was further observed that the Rehabilitation Department was not bound to provide any relief to vendees of such an allottee, particularly if they had been misled or defrauded. The petitioners were granted liberty to approach the Civil Court in case they claimed the benefit of Section 41 of the Transfer of Property Act as bona fide purchasers.

17. It is further significant to note that aforesaid vendees Ajit Singh and Joginder Singh then filed writ petition bearing CWP N: 3503 of 1972 against Central government and others, including Saraj Singh & Jaspal Singh,

assailing the order dated 17.06.1970 (Ex.D1) of the Chief Settlement Commissioner and that of the Financial Commissioner dated 31.05.1972 (ExD4), but the said petition was dismissed by this High Court on 20.09.1980, copy of which was produced as Mark A, during proceedings before Trial Court. It was observed and held by this court as under:

> "3. The learned counsel for the petitioners has argued that the Chief Settlement Commissioner passed the order (Annexure B) without hearing the petitioners who had purchased the land from Jaspal Singh with the result that it is liable to be set aside on this ground. I see no force in this contention. Saraj Singh, who was allottee of the land as also Jaspal Singh who had purchased the land from him were impleaded as respondents. The petitioners allegedly purchased land from Jaspal Singh in 1963. The petitioners challenged the order of the Chief Settlement Commissioner (Annexure B) on merits in a petition under Section 33 of the Act. The Financial Commissioner Taxation heard the parties and maintained the order of the Chief Settlement Commissioner. Under those circumstances, the petitioners cannot take advantage of the fact that they were not impleaded as parties before the Chief Settlement Commissioner especially when Saraj Singh allottee and Jaspal Singh vendee had been impleaded as respondents.
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> 4. The learned counsel for the petitioners has then argued that under the circumstances, the Chief Settlement Commissioner should have cancelled the permanent rights obtained by Saraj Singh with respect to the land allotted in his name in Behak Gujran and the permanent rights obtained by him of land in village Faridkot were wrongly cancelled. This contention is also without force. The allotment in Village Behak Gujran was made in 1950. This land was sold to Anup Singh and others respondents in 1964. The second allotment in Faridkot was obtained by Saraj Singh in 1959 by fraud. The Rehabilitation authorities rightly cancelled the second allotment of land in village Faridkot obtained by him through fraud.
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> No other point has been argued.

In the result, the writ petition fails and is dismissed with no order as to costs."

18. Despite dismissal of above CWP on 20.09.1980 and although the impugned order was passed by the Financial Commissioner on 31.05.1972, the present suit came to be filed only on 08.10.1986 by the legal representatives of Ajit Singh. By then, the plaintiffs were fully aware of the cancellation of the allotment in favour of Saraj Singh and the dismissal of the statutory petition filed by their predecessor; and even of the writ petition by this High Court. Therefore, even though the First Appellate Court rightly concluded that the plaintiffs could not claim the benefit of Section 41 of the Transfer of Property Act owing to the bar under Section 52, as the sale transactions occurred during the pendency of proceedings before the Chief Settlement Commissioner, it erred in holding the suit to be within limitation.

19. A declaratory suit based on a claim under Section 41 of the Transfer of Property Act could have been brought within three years from the accrual of the cause of action. The cause of action clearly arose on 31.05.1972, when the Financial Commissioner declined to interfere with the cancellation and held the allotment to be fraudulent. Thus, the present suit filed on 08.10.1986 is clearly barred by limitation.

20. In view of the above discussion, no substantial question of law arises for adjudication in RSA No. 778 of 1993 and accordingly, the same is hereby dismissed.

21. In light of the reasoning recorded above in RSA No. 778 of 1993, the findings returned by the learned Additional District Judge in favour of Joginder Singh, cannot be sustained. The judgment dated 27.02.1998 in CA N: 14 of 1993 *(assailed in RSA 3179-1998)* suffers from the same infirmities and overlooks the bar of limitation, jurisdictional questions, and the findings of the Financial Commissioner.

22. Accordingly, RSA No. 3179 of 1998 deserves to be allowed and the judgment and decree dated 27.02.1998 passed by the learned Additional District Judge, Faridkot is hereby set aside, and the judgment of the Trial Court dismissing the suit is restored.

23. Resultantly:

- RSA No. 778 of 1993 is dismissed.
- RSA No. 3179 of 1998 is allowed.

(DEEPAK GUPTA)
JUDGE

21.04.2025
Vivek

Whether speaking/reasoned? *Yes*
Whether reportable? *Yes*