
(2013) 07 P&H CK 0094

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 15840 of 1989 (O and M)

Amarjit and Others

APPELLANT

Vs

Additional District Judge and Others

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Evacuee Interest (Separation) Act, 1951 — Section 14, 6

Citation : (2013) 07 P&H CK 0094

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Viney Saini, for Mr. G.S. Nagra, for the Appellant; V. Ramswaroop, A.A.G., Punjab for Respondents No. 1 and 2, Mr. M.L. Sarin and Ms. Hemani Sarin, Advocate for Respondents No. 3 and 4., for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—Challenge in the present petition is to the order dated 28.7.1989, passed by Additional District Judge, exercising the

powers of the Appellate Authority u/s 14 of the Evacuee Interest (Separation) Act, 1951 (for short, "the Act"). Briefly, the facts, as have been

noticed in the impugned order, are that Chuhar Singh, predecessor-in-interest of the petitioners, vide his application dated 12.6.1974 applied for

redemption of land mortgaged with Muslims before partition. The land was originally mortgaged by one Hazara Singh. After his death, Sain was

recorded as owner by way of inheritance. On the death of Sain, Chuhar Singh succeeded. On the death of Chuhar Singh, the petitioners were the

successors. The application for redemption of mortgaged land filed by Chuhar Singh was rejected by the competent officer holding that the land

stood vested in Custodian and was allotted to one Bhima on 17.2.1979 and even

possession thereof was delivered on 27.7.1979. In appeal against the aforesaid order, the matter was remanded back. The competent officer, vide order dated 2.4.1985, accepted the prayer for redemption of mortgaged land and directed the successor-in-interest of the mortgagor to deposit Rs. 1,470/- plus Rs. 10/- as cost for redemption of land. In the aforesaid order, the allottee of the land, namely, Bhima remained ex-parte. Joginder Singh and Mohinder Singh, who had purchased the land in question from Bhima, filed application for setting aside of the ex-parte order, which was accepted. The matter was remanded back. Vide order dated 22.12.1986, the competent officer held that the land had rightly been vested in the Custodian and was allotted to Bhima and the claim for redemption stood rejected. Joginder Singh and Mohinder Singh were held to be bonafide purchasers. It is the aforesaid order, which was challenged by the petitioners in the appeal, wherein the same has been upheld.

2. Learned counsel for the petitioners submitted that the petitioners have been non-suited on a wrong premise. The application for redemption filed by the predecessor-in-interest of the petitioners was well within time. Once they had the right to get the property redeemed on payment of mortgage money, they could not be non-suited. The land could not be vested in the Custodian and declared as evacuee property and consequential allotment in favour of Bhima was illegal.

3. On the other hand, learned counsel for respondents No. 3 and 4, vendees of the original allottee-Bhima, submitted that the land was originally mortgaged by the predecessor-in-interest of the petitioners before partition. The same was not got redeemed after partition. The amendment was carried out in the Act vide Evacuee Interest (Separation) Amendment Act, 1960. In terms of the amendment, an application for determination of rights under the Act could be filed within one year of the enforcement of the amendment, i.e., 15.10.1960, namely, the application could be filed by the predecessor-in-interest of the petitioners by 15.10.1961 for determination of their rights. Thereafter no application could possibly be entertained. In the present case, admittedly, the application was filed by the predecessor-in-interest of the petitioners on 12.6.1974.

4. Learned counsel further submitted that the land in question stood vested in the Custodian and allotted to Bhima on 17.2.1979. Even the

possession was also delivered on 27.7.1979. Respondents No. 3 and 4 are bonafide purchasers of land from Bhima. The order vesting the

property in the Custodian and the allotment thereof in favour of Bhima, was well within the knowledge of the petitioners and their predecessor-in-

interest, but was not challenged at any time, hence the issue cannot be raised at this stage. The claim of the petitioners is totally misconceived.

5. Heard learned counsel for the parties and perused the paper book.

6. The facts of the case, as have been noticed above from the impugned order (Annexure P-8) are not in dispute. The only issue under

consideration is as to whether the petitioners had any right to get the property redeemed at the stage when the application was filed by their

predecessor-in-interest on 12.6.1974. The property had been mortgaged on 29.7.1944 and 22.6.1946. The facts that the property stood vested

in the Custodian and allotted to one Bhima on 17.2.1979 and even possession thereof was delivered to him on 27.7.1979, are not in dispute. If

not earlier, it is evident from the order dated 17.3.1980, passed by the competent officer in the application for redemption of mortgaged land filed

by the petitioners that vesting of the property in the Custodian and allotment thereof in favour of Bhima was well within their knowledge. However,

no steps were taken by the petitioners or their predecessor-in-interest to challenge the aforesaid two orders in any proceedings, as nothing has

been pointed out by learned counsel for the petitioners from record.

7. Once vesting of the property in the Custodian and allotment thereof in favour of Bhima was not impugned by the petitioners or their

predecessor-in-interest at any stage, the same cannot be permitted to be impugned in collateral proceedings seeking redemption of mortgage,

especially keeping in view the amendment made in Section 6 of the Act, whereby period of one year was provided after the amendment was

carried out on 15.10.1960, for the purpose. For the reasons mentioned above, I do not find any merit in the present petition. Accordingly, the

same is dismissed.