

(2010) 08 P&H CK 0280
In the Punjab And Haryana At Chandigarh

Amrik Kaur and Another

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Citation : (2010) 08 P&H CK 0280

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.

C.M. No. 12322.C of 2009

1. For reasons mentioned in the application which is accompanied by affidavit, delay of 145 days in filing the appeal is condoned.

RSA No. 4058 of 2009

2. This is second appeal by the plaintiffs who have been unsuccessful in both the courts below.

3. Appellant-plaintiff No. 1 is wife of appellant-plaintiff No. 2. Defendant No. 2 Improvement Trust, Amritsar floated a scheme known as "340 Acre Development Scheme" at Amritsar. Plaintiff No. 2 is ex-serviceman. He was not keeping good health. Plaintiff No. 1 being wife of plaintiff No. 2 applied for allotment of plot in the said scheme under quota of ex-servicemen. In draw of lots, plaintiff No. 1 was successful and was allotted plot No. A-186. Defendant No. 2 required plaintiff No. 1 to produce documents of her eligibility. Plaintiff No. 1 submitted that her husband plaintiff No. 2 is ex-serviceman and she submitted application for allotment on his behalf. Defendant No. 2 upheld the allotment of plot but sought approval from defendant No. 1-State of Punjab. However, defendant No. 1 declined the said approval. Accordingly, allotment of plot was cancelled vide order dated 28.5.2004. The plaintiffs by filing suit on aforesaid averments

challenged the said order alleging the same to be illegal and void ab-initio. The plaintiffs also sought allotment of aforesaid plot or any other plot of same category.

4. Defendant No. 2 contested suit and alleged that since plaintiff No. 2 was alive, plaintiff No. 1 as wife of ex-serviceman plaintiff No. 2 was not eligible for allotment of the plot under the aforesaid reserved category. Various other pleas were also raised.

5. Learned Civil Judge (Junior Division), Amritsar vide judgment and decree dated 5.8.2008 dismissed the plaintiffs' suit. First appeal preferred by the plaintiffs has been dismissed by learned District Judge, Amritsar vide judgment and decree dated 9.1.2009. Feeling aggrieved, the plaintiffs have preferred the instant second appeal.

6. I have heard learned Counsel for the appellants and perused the case file.

7. Learned Counsel for the appellants vehemently contended that appellant/plaintiff No. 2 being ex-serviceman, the appellants were eligible for allotment of the plot under the reserved category of ex-servicemen. The contention is completely untenable because application for allotment of plot was made by appellant No. 1 and not by appellant No. 2. Appellant No. 1 was not eligible in the category of ex-servicemen during life time of appellant No. 2. Appellant No. 1 as wife of appellant No. 2 could not claim the benefit of reserved category of ex-servicemen. Consequently, the plaintiffs have been rightly non-suited by the courts below.

8. Learned Counsel for the appellant contended that during the pendency of the instant second appeal, appellant No. 2 has since died. However, this fact would not make appellant No. 1 eligible for allotment of plot under reserved category of ex-servicemen in the year 1998 when applications were invited for the allotment of plots under the reserved category of ex-servicemen because at that time, appellant No. 2 was alive and therefore, appellant No. 1 was not eligible.

9. There is no infirmity in the judgments of the courts below. Concurrent finding of fact recorded by both the courts below is fully justified and does not warrant interference in second appeal. No question of law much less substantial question of law arises for determination in the instant second appeal. The appeal is without any merit and is accordingly dismissed in limine.