
(2016) 01 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 746 of 2010 (O&M)

Anil Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (2017) 1 ICC 595 : (2016) 4 LawHerald 3658

Hon'ble Judges : Mr. Raj Mohan Singh, J.

Bench : Single Bench

Advocate : Mr. Siddharth Sanwaria, DAG, Haryana, for the Respondent; Mr. Arun Nehra, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

Raj Mohan Singh, J.(Oral) - Plaintiffs are in regular second appeal against the concurrent findings recorded in judgments and decrees passed by the Courts below.

2. Plaintiffs filed suit for permanent injunction and declaration restraining the defendants from interfering in possession of the plaintiffs from the suit land comprised in khasra number 19/15 min, 16, 17, 24, 25, 20//4, 5, 11 min, measuring 43 kanals 5 marlas situated in village Ratauli, District Yamunanagar and also sought declaration that plaintiffs are owner in possession. The suit land which was to be auctioned on 27.10.1998 on the averment that the plaintiffs being in possession has not paid any batai or chakota to State Government and therefore, they applied for transfer of land as per a press note of the Government and as per Government order a rent of Rs.15,370/- was deposited in the year 1994.

Thereafter, plaintiffs approached the defendants for transfer of the land and they have intimated that notice will be issued for deposit of Rs. 1/8th of the total price. Plaintiffs further alleged that out of the disputed land khasra number 20//5

was sold to one Anil Kumar vide sale deed dated 4.6.1998 and therefore, suit came to be filed.

3. Defendants contested the suit on all counts besides taking other pleas. It has been submitted that suit land being acquired evacuee property, Civil Court has got no jurisdiction and the same is also barred by res judicata in view of the order dated 25.1.1994 passed by Tehsildar Sales-cum-Managing officer. Defendants claimed that the land was leased out to father of the plaintiffs Jati Ram in the year 1966. In the year 1982, said Jati Ram applied for transfer of land in khasra number 20//5, 6 and 7 measuring 24 kanals and the land was transferred to Jati Ram by the Tehsildar, Sales on 25.1.1994 and sale certificate was also issued on 4.6.1995. Amount of Rs.15,370 was deposited for unauthorized use of occupation in question. Remaining land was not transferred to Jati Ram because he did not fulfil terms and conditions of the instructions of the Government. Khasra No.20//5 which was earlier transferred to the plaintiffs on 25.1.1994 was programmed by mistake to be auctioned on 27.10.1998 but the said khasra number was not auctioned and therefore suit land except khasra no.20//5 was already available for disposal and defendants have every right to dispose of the land by way of auction.

4. Trial court after framing issues dismissed the suit.

The plaintiff remained unsuccessful in the appeal before the lower appellate Court.

5. I have heard learned counsel for the parties.

6. It is an admitted fact that 24 kanals land was transferred to Jati Ram father of the plaintiff by Tehsildar , Sales on 25.1.1994 and sale certificate dated 4.6.1995 was issued to him. Documents viz. Ex.D4 and D5 are relevant to be perused in this context in which it was recited that Jati Ram was found to be in continuous possession over the land. Plaintiffs have also placed on record receipt Ex.P2 vide which amount of Rs.15,370 as assessed, was also deposited by the plaintiff and land was allotted to Jati Ram predecessor-in-interest of the plaintiff. The policy of the Government in terms of disposal of free evacuee land has been appreciated. Revenue record Ex.P5 and P6 reveals that some portion of the land in khasra No.20//5, 6 and 7 was allotted and remaining land in khasra no.19//15 min, 16, 17, 24, 25 and 20//4 was not made cultivable though the said land remained in possession of Jati Ram. Since condition of Government instructions were not fulfilled, therefore, guidelines issued in that context for transfer of inferior evacuee land could not be satisfied except khasra no.20//5 which admittedly could have been allotted to the plaintiff. In view of admission to the extent of khasra no.20//5, claim regarding the other land was rejected. Even the defendants in their written statement have taken categorical stand that due to inadvertence, auction notice incorporating khasra no.20//5 which was already allotted to the predecessor-in-interest of the plaintiff and therefore the same was not proposed to be auctioned. The trial Court ultimately held that in view of the

proved facts on record, plaintiffs have no cause of action to seek restraint against defendants from interfering in the land. The trial Court dismissed the suit without mentioning anything about khasra no.20//5. Lower appellate Court also did not mention about the said omission.

7. At the time of issuance of notice of motion, the following order was passed by this Court on 28.7.2010 :-

"Learned counsel for the appellants contends that the defendants admitted the claim of the plaintiff regarding land of khasra no. 20//5 out of total suit land, but the entire suit has been dismissed by the Courts below.

Learned counsel for the appellants contends that appellants are in possession of the entire suit land and, therefore, they cannot be dispossessed therefrom except in due course of law. It is thus contended that relief to the aforesaid extent should have been granted to the plaintiffs by the Courts below.

Notice of motion to the aforesaid limited extent for 25.10.2010.

Records of the Courts below be requisitioned for the date fixed.

It is expressly made clear that the appeal is not being entertained regarding ownership of the remaining suit land i.e. the suit land excluding land of khasra No. 20//5 because the plaintiffs are not owners thereof even according to their own version."

8. Claim qua khasra no.20//5 was proposed to be tested between the parties and it was made clear that the appeal is not being entertained regarding ownership of remaining land. Notice of motion was issued only to the extent of khasra no.20//5.

9. Since 1966, plaintiff and their predecessor-in-interest were inducted as lessee by the Government and they remained in possession. Press note of 1981 came into being and three acres of land was transferred in pursuance thereto. Remaining land measuring 43 kanals 15 marlas was not transferred on 11.7.1988. A new press note came into being stating that prior to 1985, whosoever was in unauthorised possession of land is entitled to transfer. This policy was different from the one earlier issued. No transfer was made under the policy of 1988. Since the initial induction of the plaintiff and his predecessor was by way of lawful means, therefore, they could have been ejected only in due course of law. Apparently, rent was also paid qua the land in question. Khasra no.20//5 stands rectified as it was inadvertently omitted. Despite recording positive findings qua this khasra numbers, no injunction has been granted by the Courts below.

10. Having considered the findings recorded by the Courts below qua khasra no.20//5, this Court is of the considered view that the appeal can be accepted qua khasra no.20//5 which is admittedly allotted to the plaintiff/predecessor of the plaintiff and necessary deposits were also made and the allotment of such

khasra number satisfied the then instructions of transfer, therefore, it can be safely held that the suit for permanent injunction filed by the plaintiffs in respect of khasra no. 20//5 is decreed holding the same to be owned by the plaintiffs which was inadvertently notified for auction but the error was timely rectified. Despite recording positive findings qua khasra no.20//5, the suit to that extent could not have been dismissed by the courts below. At the time of issuance of notice of motion, the relief was only confined to khasra no.20//5, therefore, no other grounds can be looked into. It is a settled principle of law that if the authorities act in violation of instructions and rules, then civil Court has got all the jurisdiction under Section 9 CPC. Reference can be made to Gurbax Singh s/o Chanda Singh v. The Financial Commissioner & another, 1991 PLJ 190, AIR 1991 SC 435.

11. Having heard learned counsel for the parties to the extent of khasra no.20//5, this Court finds that this appeal is liable to be accepted partly to the extent of khasra no.20//5. With the aforesaid findings, this appeal is partly accepted.