
(2010) 08 P&H CK 0438

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2900 of 2010

Attar Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Haryana Ceiling on Land Holdings Act, 1972 — Section 12(3), 26

Citation : (2010) 08 P&H CK 0438

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—As the Courts below duly recapitulated and described the factual matrix of pleadings and evidence brought on record by the parties in detail, therefore, there appears to be no necessity to again reproduce and repeat the same in this Regular Second Appeal. However, the facts, that need a necessary mention for deciding the present appeal and emanating from the record, are that Attar Singh son of Hukam Singh was the big landlord. His land was declared surplus on 5.1.1960 by the competent authority under the Punjab Security of Land Tenures Act, 1953 (for brevity "the Punjab Act"). The same stood vested in the State of Haryana, in view of Section 12(3) after the commencement of the Haryana Ceiling on Land Holdings Act, 1972 (for short "the Haryana Act"). The mutation No. 430 was accordingly sanctioned in favour of the State of Haryana. The competent authority had allotted some portion of the suit land to one Sulhar son of Heta, while the remaining portion was allotted to defendant Nos. 5 and 6 and mutations of allotment were duly sanctioned in favour of the allottees in this relevant connection.

2. Attar Singh, Jaggi, Baljit sons of Ramji Lal and Bhagwant son of Rattan, appellant-plaintiffs (hereinafter to be referred as "the plaintiffs") challenged the surplus proceedings and filed the present suit for a decree of declaration to the

effect that they are owners and in possession and mutation Nos. 430, 667 and 668 are wrong, illegal and not binding on their rights, with a consequential relief of permanent injunction restraining the State of Haryana and others respondent-defendants (hereinafter to be referred as "the defendants") from interfering in their possession over the land in dispute.

3. Concisely, the case set up by the plaintiffs, in brief in so far as relevant, was that they had purchased the suit land, vide registered sale deed No. 393 dated 6.7.1983 and since then they have been coming in possession of the same as owners. The defendants have got no right, title or interest in it. The allotment proceedings of the surplus land were stated to be wrong and illegal. On the basis of aforesaid allegations, the plaintiffs filed the suit against the defendants for a decree of declaration and permanent injunction in the manner depicted herein-above.

4. The defendants contested the suit and filed their respective written statements, inter-alia, pleading certain preliminary objections of, maintainability of suit; locus standi and cause of action of the plaintiffs and limitation etc. The defendants reiterated that the land of the big landlord was declared surplus on 5.1.1960 under the Punjab Act and stood vested in the State of Haryana after the commencement of the Haryana Act. The allotment proceedings and sanction of mutations was legal and binding on the rights of the plaintiffs. The sale deed, if any, after declaration of surplus area, was stated to be null and void. It will not be out of place to mention here that the defendants have stoutly denied all other allegations contained in the plaint and prayed for dismissal of the suit.

5. Controverting the allegations contained in the written statements and reiterating the pleadings of the plaint, the plaintiffs filed the replication. In the wake of pleadings of the parties, the trial Court framed the relevant issues for proper adjudication of the case.

6. The parties to the lis, brought on record, the oral as well as documentary evidence, in order to substantiate their respective pleas.

7. Having completed all the codal formalities and on ultimate analysis of evidence on record, the trial Court dismissed the suit of the plaintiffs, by virtue of impugned judgment and decree dated 24.9.2009.

8. Aggrieved by the judgment and decree of the trial Court, the plaintiffs filed the appeal, which was dismissed as well with costs, by the Ist appellate Court, vide impugned judgment and decree dated 23.2.2010.

9. The appellant-plaintiffs still did not feel satisfied with the impugned judgments and the decrees of the Courts below and filed the present appeal. That is how, I am seized of the matter.

10. Having heard the learned Counsel for the appellant-plaintiffs, having gone through the record with his valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the appeal.

11. Ex facie, the argument of the learned Counsel that since the plaintiffs have purchased the suit land, vide registered sale deed dated 6.7.1983, which was never declared surplus, so, the Courts below fell in error in dismissing their suit, is not only devoid of merit but misplaced as well.

12. As is evident from the record that Attar Singh son of Hukam Singh was a big landowner and his land was declared surplus on 5.1.1960 under the Punjab Act and stood vested in the State of Haryana, in view of Section 12(3) after the commencement of the Haryana Act. The big landlord had challenged the declaration of his surplus area in Civil Suit No. 285 of 1990 (Ex.DA) titled as "Attar Singh v. State of Haryana", which was contested by the State by filing the written statement (Ex.DB). The suit was decreed, vide judgment and decree dated 17.4.1992 (Ex.P23 and Ex.P24) (Ex.DC and Ex.DD) respectively. Mahender etc. the legal representatives of big landowner Attar Singh, filed the execution petition (Ex.DE), in which, the State of Haryana-defendant filed the objections (Ex.DF) to the effect that the original big landlord had filed Civil Writ Petition No. 8850 of 1994 in the High Court for directing the State of Haryana to sanction the mutation in their favour on the basis of judgment and decree (Ex.P23 and Ex.P24). The writ petition was dismissed and it was held that the judgment and decree (Ex.P23 and Ex.P24) have to be ignored being against the provisions of surplus laws. Consequently, the execution petition was dismissed, vide order dated 29.8.1998 (Ex.DG).

13. Not only that, Mahender etc., the LR's of big landlord, filed Civil Revision No. 6405 of 2005 against the State of Haryana, in which, it was held that the indicated land was duly declared surplus and it was not challenged in an appropriate Forum. The same was challenged before the Civil Court but its decree having been passed without jurisdiction is a nullity and was ignored. The order declaring the land as surplus on 5.1.1960 had become final and the land vested in the State of Haryana under the Haryana Act free from all encumbrances. This judgment is reported as Mahender Singh v. State of Haryana 2008 (1) P.L.R. 96. That means, the order of surplus land became final and any dispute with respect to the surplus area was to be dealt with and decided only by the authorities under the surplus laws, in view of law laid down by Hon'ble Apex Court in case Devinder Singh and Others Vs. State of Haryana and Another, and this Court in cases Megh Raj v. Manphool 2008 (2) HRR 226 and Jaswant Kaur v. State of Haryana 1977 P.L.J. 230.

14. Meaning thereby, once the order dated 5.1.1960 declaring the land surplus had become final, then any subsequent sale-deed or decree of Civil Court is a nullity and has to be ignored in this relevant direction. Moreover, the jurisdiction of the Civil Court is explicitly barred u/s 26 of the Haryana Act. In this manner, the Courts below have rightly negated the claim of the plaintiffs in this relevant direction. Therefore, the contrary arguments of the learned Counsel for the appellants "stricte sensu, deserve to be and are hereby repelled under the present set of circumstances.

15. No other meaningful argument has been raised by the learned Counsel for the appellant-plaintiffs to assail the findings of the Courts below in this context. All other arguments, relatable to the appreciation of evidence, now sought to be urged on their behalf, in this relevant behalf, have already been duly considered and dealt with by the Courts below.

16. Moreover, the trial Court as well as the first Appellate Court has taken into consideration and appreciated the entire relevant evidence brought on record by the parties in the right perspective. Having scanned the admissible evidence in relation to the pleadings of the parties, the Courts below have recorded the well-articulated and well-reasoned concurrent findings of fact that suit of the plaintiffs was not maintainable and no relief can be granted to them. Such pure concurrent findings of fact based on the evidence, cannot possibly be interfered with by this Court, while exercising the powers conferred u/s 100 CPC, unless and until, the same are illegal and perverse. No such patent illegality or legal infirmity has been pointed out by the learned Counsel for the appellant-plaintiffs, so as to take a contrary view, than that of well reasoned decision already arrived at by the Courts below, in this regard.

17. In other words, the entire matter revolves around the re-appreciation and re-appraisal of the evidence on record, which is not legally permissible and is beyond the scope of second appeal. Since no question of law, muchless substantial, is involved in the second appeal, in view of law laid down by Hon''ble Supreme Court in case Kashmir Singh Vs. Harnam Singh and Another, so, no interference is warranted, in the impugned judgments/decrees of the Courts below as contemplated u/s 100 CPC, in the obtaining circumstances of the present case.

18. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the appellant-plaintiffs.

19. In the light of the aforementioned reasons, as there is no merit, therefore, the instant appeal is hereby dismissed.