
(1988) 10 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1559 of 1986

Balwant Singh and others

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 27-10-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule 1(4)
Land Acquisition Act, 1894 — Section 18, 30, 53

Citation : AIR 1990 P&H 26

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : Brij Mohan Lal, for the Appellant; H.S. Kamboj and H.S. Brar, for the Respondent

Judgement

1. This appeal is directed against the award made by the District Court, Bhatinda, in a reference under S. 30 of the Land Acquisition Act. The following facts which are otherwise firmly established by evidence on record, are not in dispute.

2. Certain property which initially belonged to one Puran Singh son of Anokh Singh of village Bhuchio Kalan, Tehsil and district Bhatinda, was acquired by the State Government. Vide his award dated March 30, 1981, the Land Acquisition Collector determined its market value at Rs. 9683.24. Before this amount could, however, be paid to any one, Smt. Jangir Kaur-respondent 2 put in a claim petition before the Collector seeking the payment of this amount on the basis of a will dated July 22, 1977 alleged to have been executed in her favour by Puran Singh deceased. As a counter blast to the same, the present appellants laid claim to the said amount on the basis of the revenue entries recorded in their favour as a result of the following happenings : --

Puran Singh appointed Kartar Singh one of his nephews as an attorney on January 24, 1975. Kartar Singh probably sensing that Puran Singh was out to will away his property in favour of Smt. Jangir Kaur, executed two sale deeds dated

April 7, 1977 in favour of his own sons and wife, on the basis of the authority vested in him by Puran Singh, vide the said document i.e. general power of attorney, dated January 24, 1975. As a matter of fact, Puran Singh had cancelled this authority in favour of Kartar Singh on August 25, 1975, through a registered deed of which Kartar Singh was duly made aware of. The Court has also recorded a finding that on the date of the execution of the above noted sale deeds, Kartar Singh was fully conscious or aware of the fact that the said authority in his favour to deal with or transfer the property of Puran Singh was not subsisting. It is on the basis of these sale deeds that Kartar Singh's sons and wife i.e. the present appellants came to be recorded as owners of the property in dispute.

3. On August 8, 1978, Puran Singh filed a suit challenging the validity of the sale deeds dated April 7, 1977, executed by Kartar Singh on the basis of the authority vested in him on January 24, 1975, alleging therein that by the date of the execution of those sale deeds, the said authority in his favour had been cancelled vide deed dated August 25, 1975, and at the time of the execution of the sale deeds, Kartar Singh was fully aware of this factual position. In a nutshell, the stand of Puran Singh was that the said two sale deeds were void ab initio and vested no title in the sons and wife of Kartar Singh. Before this suit, however, could be disposed of on merits, Puran Singh got it dismissed by making a statement. The trial Court passed the following order in this regard:

"in view of the statement of the plaintiff and the counsel for the plaintiff, the suit is dismissed as withdrawn. File be consigned.

Sd/- July 24, 1979."

The whole case of the appellants before me as was before the lower Court also is that as a result of the dismissal of the suit, referred to above, the title of the appellants i. e. sons and wife of Kartar Singh had been perfected or in other words, the challenge launched by Puran Singh deceased stood negatived. The plea is that as a result of the dismissal of that suit, respondent 2 Smt. Jangir Kaur was debarred from putting forth any claim to the amount in question in view of the provisions of O. 23, R. 1, C.P.C. which are applicable as such to these proceedings under the Land Acquisition Act, in view of S. 53 of the Act. Though the Court rightly declined to accept this legal proposition yet for wholly incorrect reasons; it committed a twin mistake. It held that though the provisions of O. 23, R. 1 are attracted to the facts of this case yet it was Puran Singh alone not Jangir Kaur who was debarred from putting forth the second claim to the property or the money in question in view of sub-rule (4) of this Rule.

This, to me, appears to be a wholly mistaken notion of the law. Respondent 2 being a legatee from Puran Singh could not have a different status or right qua the suit property vis-a-vis the appellants, She simply stepped into the shoes of Puran Singh on the basis of the will dated July 22, 1977, validity of which is not under challenge in any manner. So, if the provisions of O. 23 R.1, CPC are otherwise applicable to the facts of this case then respondent 2 Smt. Jangir Kaur

stands debarred from claiming the money in question. However, having given my thoughtful consideration to the entire matter, I am of the opinion that the said provisions do not come to operate in this case. The effect of withdrawing the suit is to be ascertained from the language of the rule itself and the relevant part of it reads as under : --

"(4) Where the plaintiff-- (a) abandons any suit or part of claim under sub-rule (1), or (b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit respect of such subject-matter or such part of the clam"

From a bare reading it is abundantly clear that a person is debarred from instituting a fresh suit after the withdrawal of his earlier suit. In other words, the plaintiff is precluded from instituting a fresh suit in respect of the same subject-matter. What the rule bars is the remedy and not the right or title of the party to a particular property. Further it is quite debatable if the subject-matter of the two litigations, i.e. the one initiated by Puran Singh during his lifetime and the present one -- is the same. Mere identity of some of the issues in the two litigations, to my mind, does not bring about an identity of the subject-matters of these two litigations. It is then sought to be argued by Mr. Brij Mohan Lal, learned counsel for the appellants that since a reference under S, 18 or 30 of the Land Acquisition Act is to be tried as a suit, the claimant is to be taken as akin to a plaintiff and, therefore, in the instant case, Smt. Jangir Kaur has to be taken to be the plaintiff and she cannot be allowed to sustain her claim to the money in question. This submission of the learned counsel does not impress me at all. The claim of Smt. Jangir Kaur respondent 2 for the payment of money in question to her is against the Collector or the Government who has acquired her property and not against the present appellants. All that she has claimed is that the Collector should pay the amount of the compensation to her or in other words she is the only rightful claimant of the amount in question. It was the Collector, who, as already indicated above, thought it proper to make a reference to the Court under S. 30 of the Act in order to know to whom the amount in question is payable. The Collector was entitled to make this reference even suo motu i.e. in the absence of any claim from respondent 2. As has been pointed out earlier, O. 23, R. 1 only debars the plaintiff i.e. Smt. Jangir Kaur-respondent 2, in the instant case to come to the Court to claim the amount from the appellants had the payment been made to them by the acquiring authorities. The order i.e. Exhibit R-6 did not affect in any way the right of Smt. Jangir Kaur respondent 2.

4. I am, therefore, satisfied that the impugned award of the lower Court is sustainable though for different reasons and the appeal is totally devoid of merit. The same is thus dismissed with costs.

5. Appeal dismissed