

(2008) 08 P&H CK 0148
In the Punjab And Haryana At Chandigarh

Bhup Singh and Another	Vs	APPELLANT
State of Haryana		RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 151, 80

Citation : (2008) 152 PLR 425 : (2008) 4 RCR(Civil) 750

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—The plaintiffs are in second appeal.

2. The case of the plaintiffs, in brief, is that suit land measuring 100 Kanals situated at Village Farrukh Nagar was given to their father Attar Singh in the year 1966 under the "Grow More Food Programme". He was given the option to purchase that land after reclamation @ Rs. 120/- per acre by making the payment in installments. Out of 100 Kanals, land measuring 47 Kanals was "Bhor" and 53 Kanals was "Banjar Qadim", but with the dint of their labour and hard work, the predecessor-in-interest of the plaintiffs reclaimed the land and the same was recorded in the jamabandi for the year 1981-82 as 54 Kanals Chahi. Original allottee Attar Singh had died and after his death, the plaintiffs are in actual physical possession of the aforesaid land. The plaintiffs and their father had always been ready and willing to pay the sale consideration and for that purpose, requested the officers of the respondent several times to permit them to deposit requisite amount but they showed their inability to take the sale price on the ground that the names of the plaintiffs were not entered in the revenue record.

3. In the present suit for mandatory injunction, the plaintiffs have prayed for direction to the defendant-respondent/State of Haryana to allow them to deposit sale consideration in respect of 100 Kanals of land situated in Village Farrukh

Nagar, Tehsil and District Gurgaon @ Rs. 120/- per acre and to execute a proper and regular conveyance deed in their favour. It is highlighted by the plaintiffs that they had filed a Civil Suit No. 1106 of 1980 in the Court of Senior Sub Judge, Gurgaon seeking a decree for permanent injunction restraining the State from auctioning the land in question and dispossessing them. This suit was decreed on 27.05.1982 after hot contest by State in which it was ordered that not only the plaintiffs are in possession of the suit land under the scheme but also they are ready and willing to perform their part of contract under the said scheme but they can not be termed as owners as they could not have been able to pay the amount of sale consideration. However, it was decided that they have preferential right to get the ownership rights from the State.

4. In the written statement it was alleged that Civil Suit No. 1106 of 1980 was instituted only to the extent that the State be restrained from auctioning the land in question and from dispossessing the plaintiffs except in due course of law but they have not been declared owners as such. Therefore, the decision of the earlier suit can not be taken to their disadvantage. It was further alleged that land in question was a part of inferior evacuee land which was purchased by the State Govt. from the Central Govt. in the year 1960 and was leased out to Harijans as well as members of Backward class and Ex service men for a period of 10 years according to the instructions of the Punjab Govt. dated 29.8.1961 and 23.1.1964. The allotment of 70 plots of the land was approved by the Deputy Commissioner on 20.9.1962 but name of the father of the plaintiffs did not figure in the list approved by Deputy Commissioner, Gurgaon on 20.9.1962, therefore, their possession is unauthorized. It was further mentioned that the application of the father of the plaintiffs for permanent transfer of the suit land was rejected by the Additional Settlement Officer (Sale). The revision petition filed by the father of the plaintiffs before Chief Settlement Commissioner, Haryana was also rejected. It was denied that the plaintiffs have reclaimed the suit land by spending huge amount. The defendants had also raised objections about the jurisdiction of the Court and sought dismissal of the suit on the ground of res judicata and had claimed that the suit is barred under Order 2 Rule 2 CPC.

5. The plaintiffs filed replication denying the averments made in the written statement and reiterated the stand taken in the plaint.

6. On the basis of the pleadings of the parties, the trial Court framed the following issues:

(i) Whether plaintiffs are entitled to deposit the amount of sale consideration at the rate of Rs. 120/- per acre with the defendant? OPP

(ii) If issue No. 1 is proved, whether defendant is bound to get the sale deed registered in favour of the plaintiffs? OPP

(iii) Whether the civil Court has no jurisdiction to try the present suit? OPP

(iv) Whether the suit is barred by principles of res judicata? OPD

(v) Whether the suit is barred under the provisions of Order 2 Rule 2 CPC? OPD
(vi) Relief.

7. Both the parties led oral as well as documentary evidence. The trial Court decided issues No. 1 and 2 together and held that the plaintiffs are entitled to deposit the amount at the rate fixed by the Government under the Scheme and the defendant is bound to give conveyance deed in favour of the plaintiffs. On issue No. 3, the trial Court held that the Civil Court has got the jurisdiction. On issue No. 4, it was held that the plaintiffs are in occupation of the suit land having preferential right and nothing has been shown as to how the suit is barred by res judicata. Thus, the issue was decided against the defendant holding that cause of action in both the suits were different, therefore, the suit is not barred under Order 2, Rule 2 CPC. While deciding issue of relief, the trial Court decreed the suit of the plaintiffs for mandatory injunction directing the defendant to permit the plaintiffs to deposit the sale consideration in respect of the suit land under the Scheme and to execute a proper conveyance deed in their favour.

8. The State preferred first appeal, which has been allowed by the District Judge, Gurgaon vide judgment and decree dated 1.4.1988. It has been argued before the first Appellate Court on behalf of the respondents that the trial Court has erred in holding that the land has been given to Attar Singh father of the plaintiffs in pursuance of a policy and Attar Singh had a right to purchase the same. It was further argued that the observations made in the previous suit have been wrongly applied. The first Appellate Court allowed the appeal of the State in which it was observed that "There is no doubt that the possession of the land was delivered to Attar Singh in May 1966 and report (Ex.P.10) was recorded in the daily diary". However, it was observed that case of the plaintiffs is that 70 persons were allotted land as per lists Exhibits P-12 and P-14 from which name of the father of the plaintiffs was omitted erroneously but the said contention was not accepted by the first Appellate Court on the ground that only 70 persons were allotted the land in which name of the father of the plaintiff's is not mentioned and since the possession was only protected by Sr. Sub Judge in the earlier suit, that can not be made the basis for granting the decree in the present suit for mandatory injunction because the observation made in the earlier suit was advisory and not binding.

9. The plaintiffs preferred second appeal in this Court which was admitted on 30.5.1988 and auction as well as dispossession from the land in dispute was stayed. This interim order was made absolute on 9.8.1988. It is also worthwhile to mention that during the pendency of the appeal, the plaintiffs had filed an application bearing No. 1691-C of 2008 under Order 41 Rule 27 read with Section 151 CPC for placing on record documents Annexures A-1 to A-7. This Court had issued notice on the said application to the respondents on 26.2.2008 and the same was allowed on 14.5.2008 and the documents Annexures A-1 to A-7 were taken on record.

10. Sh. V.K. Jain, Sr. Advocate, counsel for the plaintiffs-appellants has

vehemently argued that the first Appellate Court has erred in reversing the decision of the trial Court on the ground that there is no contract between the parties, the finding of the trial Court is only a piece of advice and no decision was taken regarding the matter in controversy. Counsel for the appellants has submitted that in fact, the finding recorded in the previous decision i.e. Ex.P5 on record operates as res judicata between the parties because the issue of entitlement to the land in question on payment of the price has already been settled between the parties on the basis of evidence led earlier which can not be re-agitated and re-opened in the subsequent suit for mandatory injunction. In this regard, counsel for the appellants has referred to the issues framed in the earlier suit which are as under:

- (i) Whether the plaintiffs are in possession of the land as owners as alleged in para 1 to 5 of the plaint?
- (ii) Whether the plaintiffs" were ready and are still ready and willing to deposit the balance sale price?
- (iii) Whether in the alternative, the plaintiffs have become the owners of the suit land by way of adverse possession?
- (iv) Whether the defendant/State has no right to re-auction the property as alleged in para 8 of the plaint?
- (v) Whether the Civil Court has no jurisdiction to try the suit?
- (vi) Whether the suit is bad for non issue of notice u/s 80 CPC?
- (vii) Relief.

11. In the above issues, issues No. 1, 2 and 4 are relevant. So far as findings on issues No. 1 and 2 are concerned that have been recorded by the Civil Court in paragraphs No. 9, 10, 11 and 13 which are reproduced as under:

9. From the description of the respective evidence of the parties one thing is very clear that the plaintiffs and their predecessor in interest have remained in occupation of the suit land since 1966. Vide Ex.P4, father of the plaintiffs was delivered the possession of the land on 28.5.66. It is also obvious that the name of the father of the plaintiffs was not mentioned in the original list of 70 allottees and subsequent six allottees as described in Ex.D.7. It is this omission in the list of allottees which is the cause of the present trouble for the plaintiffs. It has appeared in the statement of Budh Ram Plaintiff that they and their father made attempts to pay the price of the land but this was not accepted on behalf of the State on the ground mat the file was misplaced and ultimately, the Chief Settlement Officer rejected their requests because Attar Singh was not to be found in the list of allottees. For this omission, the plaintiffs can not be put to loss. It is important to note that they did not enter into the possession of the land of their own accord. They were given the possession of the land by the officials of the State, namely, Khem Chand Qanungo as per copy of entry Ex.P4.

In the face of this document, it can not be said by the State of Haryana that the possession of the plaintiffs over the suit land is un-authorised.

10. Another significant factor to be noticed is that the plaintiffs have spent lot of amount in making the land fit for cultivation. This circumstance is proved from the statement of Budh Ram PW1. it can not be effectively rebutted by the statement of Sh. Ram Rattan Naib Tehsildar (Sales). He is the present incumbent of that post. He had not been to the suit land and therefore, he could not say if the plaintiffs reclaimed the land. Thus, the statement of Budh Ram plaintiff on this aspect of the case has to be accepted on its face value.

11. From the above discussion, it is clear that it is the State of Haryana which handed over possession of the suit land to the plaintiffs and then allowed them to remain in possession of this land for a continuous period of more than a decade, and the plaintiffs also spent lot of amount to make the land fit for cultivation. It appears that the State of Haryana was also conscious of this strength in the plaintiffs' case when the auction of this land proposed for 16.11.1973 was stayed on the application of Bhup Singh plaintiff. As per order copy Ex.D5, the Chief-Settlement Commissioner rejected the application of Attar Singh mainly on the ground that the Deputy Commissioner did not enter his name in the list of lessees of the land. That list and the concerned record was in the possession of the State of Haryana. The plaintiffs occupied the land and made it fit for cultivation. They offered to deposit the price of the land as per application Mark "A". They were delivered the possession of the land by the officials of the State. From all these circumstances, there seems to be no escape from the conclusion that the fault lies somewhere with the defendant for not having entered the name of Attar Singh as the allottees of the land though all other formalities stood practically completed. Attar Singh was a Harijan and the Scheme envisaged the allotment of land to him. It is not the case of the State that Attar Singh or his sons have not complied with the directions and conditions mentioned in the said Scheme.

13. The result of the aforesaid discussion is that in conclude to hold that the plaintiffs are in possession of the suit land under the said scheme and they have all along been ready and willing to perform their part of the obligation under the said Scheme but at the same time the plaintiffs cannot be described as owners. It is so because they have not been able to pay (not because of their fault) any part of the sale price. They have not been delivered the sale deed. The essential requirements of sale do not stand completed. They have only a preferential right to get those ownership rights and the defendant being a welfare state would do well to accord those rights to the plaintiffs. With these observations, both these issues are decided in favour of the plaintiffs to the extent indicated above.

12. From the above findings, in nut shell, it was decided by the competent Civil Court in a lis between the same parties regarding the same land that Attar Singh predecessor-in-interest of the plaintiffs was allotted the land under the scheme and was entitled to purchase the same. It was further argued by the counsel for

the appellants that since the previous suit was filed on a threat of re-auction and there was prayer for deposit of the amount, the present suit has to be filed for mandatory injunction on the basis of the findings recorded earlier. It has been rightly appreciated by the trial Court while deciding issues No. 1 and 2 and has been illegally reversed by the first Appellate Court by misreading the averments made in the plaint Ex.P1. It has been argued by the counsel for the appellants that the appellants had never pleaded that the land was allotted to 70 persons rather it was pleaded that land was allotted to more than 70 persons which means that land was allotted to at least 71 persons or more persons but not 70 persons, therefore, the finding that has been returned by the first Appellate Court, is patently erroneous and is based on misreading of plaint Ex.P1. Counsel for the appellants has pointed out relevant paragraphs in plaint Ex.P.1 which was also reproduced in the grounds of appeal:

That the defendant-State of Haryana had sold the agricultural land to the Harijan Inhabitants of village Farrukh Nagar, Tehsil and District Gurgaon, under "Grow More Food Programme" launched by it in the year 1966. There were about more 70 Harijans inhabitants of Farrukh Nagar to whom various parcels of land in the revenue estate of Farrukh Nagar were sold under this programme and the sale consideration was received from them through instalments. The sale deeds were executed in their favour on payment of the entire sale consideration. The sale consideration was to be paid within a period of 10 years at the rate of Rs. 120/- approximately per acre.

13. Counsel for the appellants has further submitted that the finding recorded in the earlier suit between the same parties in respect of the same subject matter was definitely operate as res judicata in the subsequent suit and can not be re-agitated and decided. Counsel for the appellants relied upon decision of the Hon"ble Supreme in the cases of Hope Plantations Ltd. v. Taluk Land Board, Peermade 1999 (1) R.C.R. 235, Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, , Vithal Yeshwant Jathar Vs. Shikandarkhan Makhtumkhan Sardesai, , Gangappa Gurupadappa Gugwad Gulbarga Vs. Rachawwa Gugwad and Others, and Lonankutty Vs. Thomman and Another, .

14. Counsel for the appellants had maintained that independent of the findings recorded in the previous suit, the appellants have proved on record that Attar Singh was given possession of the land in dispute vide Rapat Roznamcha dated 28.5.1966 wherein he has been recorded as Gair Marusi in the jamabandi for the year 1966-67. He was also recorded in possession as Gair Marusi under the provincial Govt. in the jamabandi for the year 1981-82 and his possession has been proved from Khasra Girdawari for the year 1966-67 as Gair Marusi. Again his possession has been found as Gair Marusi under the provincial Govt. from 29.10.1982 to 22.10.1984 which means that the plaintiffs had legal possession. The respondent also proved on record copy of the application submitted by the appellants Bhup Singh and Budh Ram to purchase the land in dispute. The said application was duly entered in the official record on 15.12.1981 and since the

appellants have brought on record Ex.A7 by virtue of application No. 1691-C of 2008 which is a copy passed by Joint Secretary, Rehabilitation-cum-Settlement Commissioner, Haryana, Chandigarh in which it is mentioned that last date to submit the application was 28.2.1982 which has been further extended in terms of latest instructions to 30.6.1983. The application for purchase Ex.D2 which has been produced by the State of Haryana, has been addressed to Tehsildar (Sales), and relates to inferior evacuee land whereas order Annexure A-7 also relates to transfer of inferior evacuee land at Farrukh Nagar. Counsel for the appellants has also referred to similarly situated case which has been brought on record by way of CM No. 1691-C as documents Annexures A-1 to A-6.

15. In view of the above arguments, following substantial questions of law have emerged:

(i) As to whether the plaintiffs are entitled to relief claimed, specially in view of findings recorded by the Civil Court in the earlier litigation between the parties?

(ii) Whether the judgment dated 27.5.1982 passed by the Civil Court in Civil Suit No. 1106 of 1980 would operate as res judicata and the findings recorded therein are binding upon the Government?

(iii) Whether the plaintiffs had been ready and willing to deposit the amount and the fault lies with the respondents in not permitting the plaintiffs to deposit the price of the land.

16. On the other hand, counsel for the State Sh. Kulvir Narwal, Addl. AG Haryana has argued that land was never leased out to the plaintiffs as their names were not mentioned in the list of allottees. It was further argued that at the time of filing the suit for permanent injunction, the plaintiffs have omitted to seek the relief which has been sought in the present suit though it was available. Therefore, the suit is barred by Order 2 Rule 2 CPC and in the end it was argued that finding recorded in the earlier suit has no bearing on the present case as the earlier suit was merely a suit for permanent injunction.

17. I have heard counsel for both the parties and have perused the record.

18. It is an admitted fact that in the previous Civil Suit No. 1106 of 1980, issues No. 1 and 2 were categoric as to whether the plaintiffs are in possession of the land as owners and were ready and are still willing to deposit the balance price in which it was held that possession of the land in question was handed over to the plaintiffs by Khem Chand, Kanungo as per copy of the entry Ex.P1, therefore, their possession was not unauthorized and that fault lies somewhere with the defendant for not having entered the name of Attar Singh, original allottee of the land though all other formalities stood practically completed. It was concluded that the plaintiffs are in possession of the suit land under the Scheme and they have been all along ready and willing to perform their part of the obligation but they could not be described as owners only for the reason that they have not been able to pay (not because of their fault) any part of the sale price. Once this

finding has come which has not been challenged by way of appeal then it has become final between the parties and cannot be now re-agitated in the present suit on the ground that plaintiffs name was not mentioned in the list of allottees or that earlier suit was only for injunction. In the case of Hope Plantations Ltd. (supra), the Hon''ble Supreme Court has discussed the doctrine of estoppel as well as res judicata on the aspects of the cause of action, estoppel and issue estoppel. The Hon''ble Supreme Court has pleased to hold as under:

It is settled law that principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the CPC contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

19. Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving different cause of action to which the same issue is relevant one of the parties seeks to re-open that issue when the bar is complete to re-litigation. Similarly in the case of Satyadhyan Ghosal and Ors. (supra), it was held by the Hon''ble Supreme Court that the principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter whether on a question of fact or a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. In the case of Vithal Yeshwant Jathar (supra) the Hon''ble Supreme Court has held that where

the final decision in any matter at issue between the parties is based by a Court on its decisions on more than one point, each of which by itself would be sufficient for the ultimate decision, the decision on each of these points operates as *res judicata* between the parties. In the case of Gangappa Guru-padappa Gugwad (*supra*), it is held by the Hon"ble Supreme Court that if final decision in any matter at issue between the parties is based by a Court on its decisions on more than one point each of which by itself would be the ultimate decision the decision on each of these points operates as *res judicata* between the parties. In the case of Lonankutty (*supra*), the Hon"ble Supreme Court has held that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties and has been heard and finally decided.

20. Besides the above, counsel for the appellants has also brought on record almost identical litigation in case titled as Shiv Charan v. State of Haryana (Annexure A-1). In this case, a suit for permanent injunction with consequential relief of mandatory injunction was filed by Shiv Charan etc. on the ground that the State of Haryana had sold the agricultural land to Harijans of Farrukh Nagar, Tehsil and District Gurgaon under the "Grow more Food Programme" (Scheme) launched by the State Government in the year 1966, there were about more than 70 Harijans to whom various parcels of the lands in the revenue estate of Farrukh Nagar were allotted and sale consideration was to be paid within a period of 10 years @ Rs. 120/- per acre approximately. Shiv Charan etc. had to file a Civil Suit No. 592 of 9.11.87 decided on 4.5.1994 wherein the respondent-State was restrained from dispossessing them and also from auctioning the suit land. Shiv Charan had made an application for deposit of the sale price but Tehsildar did not consider the same, therefore, Civil Suit No. 773 dated 19.9.1996 was filed relying upon the earlier decision in the suit for injunction decided by Sh. Deepak Gupta, Sub Judge 1st Class on 4.5.1994 as Ex.P14. In the case of Shiv Charan, the dispute was that land was not re-claimed and was Banjar but relying upon earlier decision of Sh. Deepak Gupta, Sub Judge, 1st Class, the suit for mandatory injunction was decreed on 3.11.1997. It was further challenged by the State of Haryana by way of Civil Appeal No. 132 of 1997 in which it was observed by the first Appellate Court that "As seen above, the rights of the plaintiffs were recognized by the Court of Sub Judge 1st Class, vide judgment dated 4.5.94 passed in Civil Suit No. 592 (copy Ex.P14) wherein a decree for prohibitory injunction was granted restraining the defendant from dispossessing the plaintiffs and from putting the suit land to auction." The first appeal was dismissed on 5.2.1998. Thereafter, the State of Haryana filed R.S.A. No. 2319 of 1999 which was dismissed by the High Court on 4.10.1999 observing that "The previous judgment dated 4.5.94 operates as *res judicata*. Accordingly, the suit of the plaintiff-respondent has been rightly decreed by the courts below. Dismissed." The State of Haryana thereafter, filed SLP (Civil) Rs. 14523 of 2000 before the Hon"ble Supreme Court, which too was dismissed on 6.9.2000.

21. From the aforesaid facts, it is apparent that the principle of issue estoppel

was applied in the case of Shiv Charan as the finding recorded in the former suit which had become final between the parties, was applied as res judicata by the Hon"ble High Court and on the basis of the findings of the former suit, subsequent suit of Shiv Charan was decreed. In my opinion, in the present suit, the position is almost similar if not identical, therefore, questions of law No. 1 and 2 raised by the counsel for the appellants arise in the present appeal for adjudication and are decided in favour of the appellant to the effect that the findings recorded in the former Civil Suit No. 1 106 of 1980 between the same parties on issues No. 1 and 2 recorded in para Nos. 9, 10, 14 and 23 of that judgment operates as res judicata and can not be re-agitated and re-decided in the subsequent suit, therefore, the Court below has erred in law in deciding an issue which has already been decided and had become final between the parties.

So far as the argument of counsel for the respondent is concerned that land was never leased to the plaintiffs as their name was not mentioned in the list of allottees, that issue cannot be raised in the present case in view of the findings recorded by the competent Court of jurisdiction in the former Civil Suit in para No. 13.

22. In view of the discussion made here-in-above, the present appeal is allowed with costs and the judgment and decree of the lower Appellate Court is set aside and that of the trial Court is restored.