(2018) 03 P&H CK 0163

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2367, 2370, 2368, 2500 OF 1997(O&M)

Dara Singh APPELLANT

Vs

State Of Haryana And Ors. RESPONDENT

Date of Decision : 21-03-2018

Acts Referred:
Transfer of Property Act, 1882 — Section 41, 46
Displaced Persons (Compensation And Rehabilitation) Act, 1954 — Section 36
Code of Civil Procedure, 1908 — Order 23 Rule 1(4)(b)

Citation : (2018) 03 P&H CK 0163

Hon'ble Judges : Rajbir Sehrawat, J

Bench : Single Bench

Advocate : Ashok Verma, Kirti Singh, Shifali Goyal

Final Decision : Allowed

Judgement

Rajbir Sehrawat, J.

This shall dispose of four Regular Second Appeals i.e. RSA No. 2500 of 1997, Kartar Singh(Deceased) through Lrs vs. State of Haryana and others,

RSA No. 2367 of 1997, Dara Singh(Deceased) through Lrs versus State of Haryana and others, RSANo. 2368 of 1997, Hukam Singh(Deceased)

through Lrs vs. State of Haryana and others and RSA No. 2370 of 1997, Khushal Singh and another vs. State of Haryana and others.

These appeals have been filed by the plaintiffs against the judgment of reversal passed by the lower Appellate Court; whereby the suit for declaration

filed by them was ordered to be dismissed by reversing the judgment and decree passed by the Trial Court.

For convenience, the parties herein would be referred to as the Plaintiffs and Defendants; as they were described in the original suit.

These four appeals are arising from four different suits filed before the Trial Court. The Trial Court decided four suits through four different but

similar judgments. However, the lower Appellate Court decided all the fours appeals emerging from the judgments and decrees of the Trial Court by a

common judgment. Assailing that common judgment, above said four separate appeals have been filed by the plaintiffs of the respective suits.

Although the facts are similar in all the fours cases, however, there is difference of details regarding the properties and other particulars. Hence it

would be appropriate to give brief facts of the individual cases before entering into decision of the appeals.

In RSA No. 2367 of 1997 the appellant/plaintiff filed a suit claiming that he was purchaser of the agricultural land as described in the head note of the

plaint through a registered sale deed dated 30.05.1965 from the vendor Ghanumal. The said Ghanumal was a migrant from Pakistan at the time of

partition. As a displaced person Ghanumal was allotted land measuring 146 kanals 2 marlas on 29.08.1963; situated in village Shakarpura, Tehsil

Tohana now in the District Fatehabad in lieu of the land left behind by him in Pakistan. Regarding this land the proprietory rights were conferred upon

Ghanumal in the year 1964. Therefore, Ghanumal had become absolute owner. Since the vendor Ghanumal had become absolute owner, the plaintiff

purchased from him the land measuring 3 kanals 7Â½ marlas vide registered sale deed dated 30.05.1965; for a sale consideration of Rs. 422/-.

However, later on Tehsildar(sales)-cum-Managing Officer canceled this allotment in favour of Ghanumal etc; to the extent of 32 kanals vide order

dated 14.11.1979; on the ground that excess area had been allotted to Ghanumal by taking the valuation of the allotted land incorrectly. The valuation

of the land actually was 15 Annas whereas it was taken as 10 Annas; resulting into allotment of land more than the entitlement of the allottee.

Accordingly, the allotment in favour of Ghanumal; to the extent of 32 kanals was canceled. On the basis of this cancellation order, the defendants tried

to dispossess the plaintiff. Therefore, the plaintiffs had filed a civil suit on 05.01.1980; challenging the Order dated 14.11.1979. That suit was decreed

on 04.02.1981 and the plaintiffs were declared as the absolute owners in possession of the suit land. However, later on Tehsildar(sales)-cum-

Managing Officer also made a reference to the Chief Settlement Commissioner for cancellation of Proprietary Rights of the said Ghanumal qua above said 32 kanals of land. On this reference the Chief Settlement Commissioner vide order dated 16.01.1985 canceled the Proprietary Rights of

Ghanumal to the extent of 32 kanals. Again the plaintiffs were threatened with dispossession on the basis of that orders. The plaintiffs challenged that

order also by way of revision petition before the Financial Commissioner, Rehabilitation Department, Government of Haryana. However, that revision

petition was also dismissed vide order dated 31.03.1987. Challenging the order of cancellation of Proprietary Right dated 16.01.1985 and also the

revisional order dated 31.03.1987; the plaintiffs had filed another civil suit. However, by appearing before the Court; Dharam Parkash, the clerk of the

department and Satpal, the Additional District Attorney appearing on behalf of the defendants admitted the existing decree in favour of plaintiffs and

the plaintiffs as owners in possession. On the basis of the statement made by the witness of the department, the plaintiffs had withdrawn their suit on

06.02.1992. However, on 09.02.1992 the Tehsildar(Sales), Hisar; issued proclamation for auction of the suit land. To challenge that action of the

Tehsildar the present suit was filed by the plaintiffs.

After hearing the parties and appreciating the evidence led by the parties, the Trial Court decreed the suit filed by the plaintiff. It was held by the Trial

Court that the plaintiff has claimed to be a bonafide purchaser of the suit land. Admittedly from 1964 till 1979 the vendor of the plaintiff was the

absolute owner of the suit property. The plaintiff purchased the suit property for a consideration after verifying the revenue record. Hence the plaintiff

is proved to be a bonafide purchaser; from the then legally declared owner of the suit property. Hence he is entitled to the benefit of protection

granted under Section 41 of the Transfer of Property Act. The Trial Court further held that the Chief Settlement Commissioner himself has recorded

that the benefit of Section 41 of the Transfer of Property Act can be claimed by the plaintiff in a Civil Court only. Therefore, on this point the suit of

the plaintiff is not even barred by res-judicata, as claimed by the defendants. Hence the suit filed by the plaintiffs is very much maintainable and he is

entitled to protection of his title under Section 41 of the Transfer of Property Act. Dealing with the plea of the defendant to the effect that the suit

filed by the plaintiff is barred under Order 23 Rule 1(4)(b) of CPC, the Trial Court held that the suit is not barred under the above said provision. The

Trial Court held that the defendants have not placed on record the necessary pleading and material to prove the earlier proceedings. Still further; as

per the Order dated 06.02.1992; the earlier suit filed by the plaintiff was withdrawn in view of the statement made by the Government pleader and the

clerk of the department only. Therefore, nothing can be read against the plaintiff in that Order. Accordingly, the suit filed by the plaintiff was decreed.

The Order dated 16.01.1985 and Order dated 31.03.1987 passed by defendants No. 3 & 4 were set aside. The plaintiff was held to be owner in

possession of the suit property. Further, the defendants were restrained from interfering in possession of the plaintiff.

RSA No. 2370 of 1997 the appellant/plaintiff filed a suit claiming that he was a purchaser of agricultural land measuring 18 kanals 12 marlas described

in the head note of the plaint through a registered sale deed on 02.06.1965. This land was purchased by him from above said Ghanumal out of the

above mentioned land measuring 146 kanals 2 marlas, situated in village Shakarpura, Tehsil Tohana for a consideration of Rs. 2,322/-. The other

details of cancellation of allotment on the basis of difference of valuation, making a reference to the Chief Settlement Commissioner and cancellation

of the prorpietory rights by Chief Settlement Commissioner and other facts are the same as involved in RSA No. 2367 of 1997. In this case also the

Trial Court had decreed the suit in favour of the plaintiff holding him to be a bona fide purchaser and rejecting all the plea raised by the defendants.

In RSA No. 2368 of 1997 the appellant/plaintiff Hukam Singh had filed a suit claiming that he was a purchaser of an area measuring 15 kanals 12

marlas mentioned in the head note of the suit vide registered sale deed dated 27.07.1965 for a sale consideration of Rs. 1,950/-. It was pleaded by him

that he had purchased the land from Chhabil Dass s/o Daulat Ram. The said Chhabil Dass was a displaced person from Pakistan. As a displaced

person Chhabil Dass was allotted an area of 76 kanals 13 marlas in village Shakarpura, Tehsil Tohana on 29.08.1963. It was pleaded by him that the

plaintiff was a purchaser for consideration after having verified the details from the revenue record. However; in this case also the allotment and

property rights of Chhabil Dass were sought to be cancelled. Therefore, all the proceedings undertaken in this case are also the same as were

undertaken in the case involved in RSA No. 2367 of 1997. In this case also the suit filed by the plaintiff was decreed by holding that the vendor of the plaintiff was owner on the date when the plaintiff had purchased the land. The cancellation if any happened subsequent to the purchased by the

plaintiff. Hence the plaintiff is entitled to the protection of Section 41 of the Transfer of Property Act. Accordingly, the suit was decreed. Defendants

were restraint from interfering in the possession of the plaintiff while holding the title of the plaintiff.

In RSA No. 2500 of 1997 the suit was filed by Kartar Singh claiming that he was purchaser of an area measuring 10 kanals 12 marlas described in

the suit land through a registered sale deed dated 27.07.1965 from the above said Chhabil Dass out of the land allotted to him as a displaced migrant.

This land was purchased by him for a consideration of Rs.1,325/-. In this case also, the allotment and the property rights of Chhabil Dass were sought

to be cancelled by the authorities. The land in possession of the plaintiff was sought to be auctioned. Hence he filed the suit. Besides these distinct

facts all other proceedings in this case were also the same as happened in the suit involved in RSA No. 2367 of 1997. In this case also the Trial Court

had decreed the suit filed by the plaintiff holding him to be the bonafide purchaser and restraining the defendants from interfering in possession of the

plaintiff.

Aggrieved against the judgments and decrees passed in the above said four civil suits passed by the Trial Courts, the defendants had filed four

separate appeals. Lower Appellate Court accepted all the four appeals filed by the defendants. While allowing all the four appeals vide a common

judgment; the lower Appellate Court held that since the allotment in favour of the vendors of the plaintiffs itself has been cancelled, therefore, the

plaintiffs can not be deemed to be having any title over the suit land; purchased by them respectively. The lower Appellate Court further held that the

plaintiffs have not challenged in the present suit the valuation of the land as determined by the defendants; on the basis of which the entitlement of

their vendors have been decreased. So far as the earlier decree dated 04.02.1981 is concerned, the lower Appellate Court held that in that case the

question of title was not decided. More over the copy of the same has not been produced on record by the plaintiffs.

The lower Appellate Court further held that merely because the Chief Settlement Commissioner has written in his order that the benefit of Section 41 of the Transfer of Property Act can be claimed only before the Civil Court, is not sufficient to hold that plaintiffs are entitled to the benefit of Section

41 of the Transfer of Property Act. The lower Appellate Court still further held that sufficient material has not been placed on record by the plaintiffs

to set aside the impugned orders dated 16.01.1985 and 31.03.1987. The lower Appellate Court further held that since the property in question was

allotted to the vendors of the plaintiffs as evacuee property, Section 46 of the Administration of Evacuee Property Act bars the jurisdiction of the Civil

Court. Therefore, in these cases the jurisdiction of the Civil Court was barred. Same is also barred under Section 36 of the Displaced

Person(Compensation & Rehabilitation) Act. The lower Appellate Court also held that the present suits filed by the plaintiffs are also barred under the

provisions of Order 23 Rule 1(4)(b) of CPC. The cancellation Order dated 14.11.1979; passed by the Tehsildar(sales)-cum-Managing Officer

regarding the allotment of the alleged excess area of the land, was challenged in Civil Suit which was decided on 04.02.1981. Thereafter, the plaintiff

again instituted suit for declaration challenging the Order dated 21.03.1987 and the Order dated 16.01.1985, passed by the Chief Settlement

Commissioner. This suit was contested by the defendants but it was withdrawn on 10.02.1992 on the statement of Dharampal, clerk. But a perusal of

the statement of the plaintiff shows that the plaintiff has not sought permission of the Court to file fresh suit on the same cause of action. Hence the

present suit instituted by the plaintiff was barred.

For the same reason, the lower Appellate Court held the suit filed by the plaintiffs hit by res-judicata as well. While dealing with the limitation, the

lower Appellate Court held that the present suits were instituted by the plaintiffs on 01.06.1992 impugning the Orders dated 31.03.1987 and

16.01.1985. Hence the suits filed by the plaintiffs were hopelessly time barred. Accordingly, all the appeals filed by the defendants were accepted.

The judgment and decree passed by the Trial Court in favour of the plaintiffs were set aside.

Challenging this order passed by the lower Appellate Court, the present four appeal have been filed.

While admitting the appeal, the following substantial question of law was framed on 02.04.1998:-

â??The substantial question of law that arises in this appeal is that when larger extent of land measuring 146 kanals 2 marlas was allotted to the

vendor of the appellant and on cancellation of a part of the land to the extent of 32 kanals can the Rehabilitation Department take possession of the

land sold by the allottee to the appellant when the vendor is sitting holding more than 32 kanals of land.

Admit.â??

While arguing the case learned counsel for the appellants has argued that when the appellants purchased this land from their vendor; at that point of

time he was very much owner of the suit land through properly acquired title. The appellants have purchased the suit land for a consideration and

through a registered sale deed. The record also shows that the appellants had made reasonable enquiries regarding title of their vendors, which

otherwise is also not disputed. Hence the appellants are the bonafide purchasers for consideration. The Trial Court had rightly held the appellant to be

so and had granted to the appellants the protection as contemplated under Section 41 of the Transfer of Property Act. The lower Appellate Court has

wrongly reversed the finding recorded by the Trial Court; qua the appellants being bonafide purchasers. It is further submitted by learned counsel that

while reversing this finding the lower Appellate Court has not even given any reason as to how the appellants were not the bonafide purchaser.

Learned counsel has relied upon the judgment of the Division Bench of this Court rendered in 1986 PLJ 656 titled as State of Haryana and others vs.

Savitri Devi and others which is almost on the similar facts. Learned counsel has further relied upon the judgment of this Court reported in 1978 PLJ

47 Rattan Singh and another vs. Chief Settlement Commissioner, Haryana and others, which again, is on the similar facts.

Learned counsel for the appellant has further contended that the lower Appellate Court has gone wrong in law in holding that the Civil Court had no

jurisdiction to entertain the suit. His submission is that the plea of bonafide purchaser could be decided only by the Civil Court and even the Chief

Settlement Commissioner had so recorded in the order impugned before the Civil Court. Learned counsel for the appellant has further relied upon the

Full Bench Judgment of this Court rendered in 1986 PLJ 161 State of Haryana and others vs. Vinod Kumar and others to contend that otherwise, also; if the statutory authorities have passed the orders in violation of the provisions of the statute or the principles of natural justice, jurisdiction of the

Civil Court is not barred. It is his submission that in the present case there is nothing on record to show that the appellants were ever actually served

with the notice of cancellation of allotment to their vendors.

Hence the suit was rightly filed before the Civil Court in the present case. Learned counsel has further relied upon the judgment of this Court reported

in 1982 CLJ(C&Cr) 153 titled as Savitri Devi vs. Tilak Ram etc. to contend that the Appellate Court can not build a new case on its own in favour of

or against a party; where that point is not subject matter of the suit. Learned counsel has submitted that the lower Appellate Court has travelled

beyond the issues decided in the civil suit and has tried to create a new case of the respondents.

In the end the learned counsel for the appellants has contended that the lower Appellate Court has gone wrong in law in reversing the finding of the

Trial Court and holding that the suit of the appellants was barred by res-judicata and was also barred by Order 23 Rule 1(4)(b) of CPC. It is his

contention that the findings recorded by the lower Appellate Court are without any basis and the same are liable to be reversed.

On the other hand, learned counsel for the respondents has submitted that since the allotment to the vendors of the appellants itself have been

cancelled by the competent authority, therefore, the vendors of the appellants shall be deemed to have never had the title of the suit property.

Therefore, the appellant can not be deemed to have acquired any title over the suit property through the sale deed executed by their vendors.

Learned counsel for the respondent has further submitted that the suit of the appellants was barred by the res-judicata since the appellants had filed

and withdrawn the earlier suit. For the same reason, the suit filed by the appellant was also barred under the provisions of Order 23 Rule 1(4) (b) of

CPC; because the earlier suit was withdrawn without permission of the Court to file a fresh suit. Hence the lower Appellate Court has rightly held the

suit filed by the appellants to be barred. It has rightly reversed the judgment and decree passed by the Trial Court.

Having heard the learned counsel for the parties and perused the record with their able assistance, this Court is of the considered opinion that the arguments raised by learned counsel for the appellants deserve to be sustained. Admittedly, the appellants were the purchaser for consideration from

the allottee to whom the land was allotted by the respondent. The purchase is for a consideration duly paid to the vendor. It is also not disputed that

the allotment of the land was made to the allottee on 29.08.1963. The appellants had purchased the suit land, which was only part of land allotted to

their vendor; vide registered sale deed dated 30.05.1965. Thereafter, the appellants have been in continuous possession of the suit land as owner. The

attempt to dislodge the appellants was made only after an attempt was made to cancel the allotment to the vendors of the appellants in the year 1979.

Therefore, it is not disputed even by the respondent that the vendors of the appellants had valid title to the suit property, as reflected in the record

when the appellants had purchased the suit property. The case of the appellants is squarely covered by the judgments relied upon by the learned

counsel for the appellants rendered by Division Bench of this Court in State of Haryana & others vs. Savitri Devi's case(supra), Rattan Singh's

case(supra), Savitri Devi's case and the judgment rendered by Full Bench of this Court in Vinod Kumar's case (supra).., Hence the case is fully

supported by the law already settled by this Court.

Hence the appellants were rightly held to be the bonafide purchaser for a valid consideration by the Trial Court. The lower Appellate Court has not

given any specific reason as to why the appellants could not be treated to be bonafide purchaser and as to why they are not entitled to protection of

Section 41 of the Transfer of Property Act. While over turning the finding recorded by the Trial Court regarding the appellants being bona fide

purchaser of suit property, the lower Appellate Court has referred only to the factum of a recital in the order of the Chief Settlement Commissioner in

which he had said that the protection of being bonafide purchaser can be claimed only through civil court and has held that such a recital in the order

of the statutory authority is a no ground to hold that the appellants are bonafide purchasers. However, the lower Appellate Court has not even

adverted to the discussion on how the appellants are not entitled to the benefit of being a bonafide purchasers and, therefore, the protection of Section

41 of the Transfer of Property Act. Hence this finding recorded by the lower Appellate Court that the appellants are not bonafide purchasers is liable

to be reversed. Accordingly the same is reversed and the finding recorded on this point by the Trial Court is upheld.

The argument raised by learned counsel for the appellants that the appellants have been wrongly non-suited by the lower Appellate Court on the

ground of res-judicata and the suit being barred under Order 23 Rule 1(4)(b) of CPC also deserve to succeed. As per the record, earlier also the

allotment in favour of the vendors of the appellants was partly canceled by the Tehsildar(sales)-cum-Managing Officer. Vide Order dated 14.11.1979

this cancellation was challenged by the appellants and ultimately that suit was decreed vide decree dated 04.02.1981, whereby the Order of

cancellation was set aside being illegal and void. Further the decree was passed that the appellant, who was the plaintiff therein, would be entitled to

get the revenue entries in jamabandi corrected accordingly. Hence the ownership rights in favour of the present appellants, to be entered in jamabandi,

were upheld by the decree dated 04.02.1981. Subsequently on the same ground of under valuation of the land the proprietary rights of the vendors of

the appellants were sought to be canceled vide impugned Order dated 16.01.1985 by the Chief Settlement Commissioner, Haryana. This was

challenged by the appellants before the Financial Commissioner-cum-Secretary to Government, Rehabilitation Department. However the same was

also dismissed vide totally non-speaking Order dated 31.03.1987. Both these orders were challenged by the appellants through a civil suit. In that civil

suit the witness of the department as well as the Government pleader representing the respondent made a statement that the decree dated 04.02.1981,

whereby the rights of the appellants were determined, were binding upon the department. In view of this statement the appellants had withdrawn the

suit on 06.02.1992. However it appears that the statement was made by the witness of the department and the Government pleader, just as an attempt

to trap the appellants in the legal quagmire; because just after few days thereof, the proclamation for auction of the suit land was issued by the

respondents on the strength of the same orders; regarding which the earlier suit was filed by the appellant and in which the witness of the department

and the Government pleader had made the statement regarding the decree determining the right of the appellant being binding upon the department.

Accordingly on 09.02.1992 the proclamation for auction was issued by the respondents. To challenge this action and the orders; which were made

basis for this auction, the suit was filed by the appellants; from which the present proceedings have arisen. As is seen above, the earlier suit was not

finally decided on merits vide decree dated 06.02.1992. It was simply withdrawn on the basis of the statement made by the respondents themselves.

Hence any decree passed in that case would not hit the present suit on the plea of res-judicata. For the first time, on merits the rights of the parties

were determined by the Trial Court in the present suit, vis-a-vis the Orders dated 16.01.1985 and 31.03.1987 passed by the respondents. Hence the

plea of res-judicata is not maintainable against the present appellants. Same is the situation qua the plea of bar of suit under the provision of Order 23

Rule 1(4)(b) of CPC. The appellants had not withdrawn the suit unilaterally or on their own. This suit was withdrawn only after the statement was

made by the respondents/defendants that the rights of the appellants as determined in earlier decree dated 04.02.1981 were binding upon the

department. However, since the respondents again initiated the action of auction of the suit land belonging to the appellants on the basis of the same

orders which were subject matter of the earlier suit, therefore, the appellants were very much entitled to challenge the entire action of the

respondents. No permission in the earlier suit was required for bringing the present suit by the appellants. The respondents can not be permitted to

take advantage of their own doing. Otherwise also, the ingredients of Order 23 Rule 1(4)(b) of CPC are not satisfied in the present case. Therefore,

the provision is not attracted. For the same reason the lower Appellate Court has gone wrong in law in declaring the suit of the appellants to be time

barred as well. Since the proclamation for auction was issued by the respondents on 09.02.1992 only and the suit was filed in June, 1992 itself,

therefore, there is absolutely no delay on the part of the appellants. Accordingly, the findings recorded by the lower Appellate Court on the point of

res-judicata, applicability of Order 23 Rule 1(4)(b) of CPC as well as on the point of limitation are set aside. The findings on these issues recorded by

the Trial Court are upheld.

In view of the findings recorded above, the substantial question of law framed by the Court while admitting the appeal has to be answered in negative

for twin reasons. Firstly, as has been held above, the appellants have been held to be bonafide purchasers and entitled to protection of Section 41 of

the Transfer of Property Act. Therefore, they can not be divested of the property rights of the suit land which was duly purchased by them. Hence,

the respondent department can not take away the possession of the suit land from the appellants. Otherwise, also since the vendors of the appellants

were allotted much more land then the land purchased by the present appellants and even after attempted cancellation of part of allotment more land

than purchased by the appellants was left with their vendors, therefore, if under any circumstances department can legally come to the conclusion that

the holding of the allottee is required to be reduced and possession of the some land is required to be taken back from the allottee then the department,

in any case, has to proceed against the allottee to get back the possession from the holding remaining with the allottee; before turning towards the

subsequent bonafide purchasers. There is no logic, reason or rational proved on record by the respondents as to how the land which was purchased by

the present appellants only has to be taken back by the department; when the allotment to the vendor of the present appellants was much more than

the land purchased by the present appellants and even after attempted cancellation the holding with their vendors is left much more than the land

purchased by the appellants. In view of the fact that there is no rational behind for selecting the land of the present appellants only for taking back on

the ground that the allottee was allotted excess land. The respondent department can not legally take away the suit land from the appellants since it is

duly purchased by the appellants and it was purchased much earlier then the alleged excess allotment was statedly detected by the respondent

department. In that situation it is only the original allottee who is responsible to compensate the department by returning the excess land or to

otherwise compensate the department in accordance with law, it at all he is liable.

No other argument was raised by learned counsel for the parties.

In view of the above, the judgment and decree passed by the lower Appellate Court are found to be unsustainable. The same are set aside. The

judgment and decree passed by the Trial Court are upheld and the same are restored. All the four appeals i.e. RSA No. 2500 of 1997, RSA No. 2367

of 1997, RSA No. 2368 of 1997 and RSA No. 2370 of 1997 are allowed accordingly.

