
(2003) 07 P&H CK 0165

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2503 of 1982

Deep Chand

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 36

Citation : (2004) 136 PLR 569 : (2003) 4 RCR(Civil) 629

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Vinod Sharma, for the Appellant; Sunil K. Vashist, Asstt. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The instant Regular Second Appeal has been filed by the plaintiff against the judgment and decree passed by both the courts below, vide which his suit for declaration declaring him owner of land in question and further restraining the respondent from dispossessing him from the same, was dismissed.

2. In his suit, the appellant alleged that since 1960 he was in possession of the land in question measuring 57 Bighas 5 Biswas situated in village Bairan. On 10.3.1963, the land in question was allotted to him by Tehsildar (Sales) Bhiwani for a sum of Rs. 2,015/-. 1/4 of the said land amount was paid by the appellant at the time of auction and the remaining 3/4 amount was paid by him on 6.2.1964. Subsequently on enquiry, was found that out of the land sold to the appellant, 17 bighas of land was already allotted to another person and 5 bighas of land was in possession of some other person. Thus, it was found that the appellant was entitled to allotment of only 25 bighas 5 biswas of land. Thereafter, a proposal was sent for partly setting aside the aforesaid allotment in favour of the appellant to the Additional Settlement Officer (Sales). Thereupon, the Additional Settlement Officer (Sales) vide his order dated 9.5.1964 partly set aside the allotment and ordered for refund of Rs. 952/- to the appellant. Though

the aforesaid amount was sent to the appellant but he declined to receive the same. However, the aforesaid order was challenged by the appellant before the Settlement Officer (Sales) by way of appeal. The said appeal was dismissed on 18.4.1968. Thereafter, the appellant filed a revision petition before the Deputy Secretary Rehabilitation-cum-Settlement Officer, Haryana, which was also dismissed on 20.8.1979. Civil Writ Petition filed by the appellant against those orders was also dismissed as instant suit was filed by the appellant on 23.4.1980.

3. The respondents contested the aforesaid suit. It was pleaded that civil court has no jurisdiction to try the suit according to Sections 36 and 46 of the Displaced Persons (C and R) Act, 1954 (hereinafter referred to as "the Act"). It was further pleaded that the suit was not maintainable for want of notice u/s 80 CPC. The respondents also contested the suit on merit as well as on limitation.

4. On the pleadings of the parties, the following issues were framed by the learned trial Court;-

1. Whether the plaintiff is owner and in possession of the land? OPD.
2. Whether the transfer of the suit land was wrongly transferred and was set aside? If so to when and to what effect?
3. Whether the Civil Court has no jurisdiction as alleged in the preliminary objection No. 1 of written statement? OPD
4. Whether the plaintiff has no locus standi to sue? OPD
5. Whether notice u/s 80 CPC before hand was necessary?
6. Relief.

5. On issue No. 1, the learned trial court held that though the appellant was in possession of some part of the suit land but was owner of the same. On issue No. 2, it was held that transfer of the land in question in favour of the appellant was wrongly made and subsequently, it was set aside and the order of setting aside the transfer was challenged by the appellant in appeal as well as in revision but the same were dismissed. Thereafter, he filed Civil Writ Petition in this Court which was also dismissed as withdrawn. So, according to Section 27 of the Act, those orders had attained finality and could not be questioned in civil suit. It was further held that the jurisdiction of the Civil Court was barred.

6. The aforesaid findings of the learned trial Court were affirmed by the learned first appellate Court in appeal filed by the appellant.

7. After hearing the arguments of learned counsel for the parties and perusing the record of the case, I do not find any merit in the instant appeal. Undisputedly, the land in question was transferred to the appellant vide order dated 10.3.1963. It is also not disputed that the appellant deposited the entire amount upto 6.2.1964. The possession of the appellant on the land in question has also not been contested. It is also not disputed that the aforesaid allotment

of the land was cancelled by the Additional Settlement Officer (Sales) vide his order dated 9.5.1964 and the aforesaid order was challenged by the appellant in appeal and revision which were dismissed. It is also not disputed that against the aforesaid orders, the appellant filed Civil Writ Petition, which was dismissed as withdrawn on 8.11.1979.

8. Learned counsel for the appellant has submitted that once the entire sale consideration was deposited by the appellant with the Department then the transfer of the land in question in his favour could not have been cancelled. This contention of learned counsel for the appellant is devoid of merit. Admittedly, no sale certificate was issued and before that the matter was enquired and it was found that by mistake the transfer was wrongly made in favour of the appellant, therefore, the allotment was subsequently cancelled by the Additional Settlement Officer (Sales) vide order dated 9.5.1964. The said cancellation order was confirmed in appeal and revision; and Civil Writ Petition filed against those orders in this Court was dismissed as withdrawn. In this situation, the aforesaid orders become final and now the appellant cannot be allowed to impugn those orders by filing the instant suit. Even otherwise, jurisdiction of the Civil court is barred, as has been held by both the Courts below, I do not find any infirmity or illegality in the impugned judgment and decree passed by both the Courts below.

9. At this stage, learned counsel for the appellant submitted that both the Courts below have found the appellant in possession of the land in question, and the respondents have not disputed the said finding. He further submitted that now the State Government has a policy, according to which it has been decided to allot the land belonging to the Government to persons who are in unauthorised and illegal possession of the same. In view of this policy, he submitted that the claim of the appellant for allotment of the land in question on the basis of his long possession should be considered by the respondents. This prayer of the appellant seems to be reasonable. I hope that the respondents will consider the claim of the appellant for allotment of the land on the basis of his long and unauthorised possession under the policy of State Government, if any, before dispossessing him from the land in question.

10. In view of the aforesaid discussion, I do not find any merit in the instant appeal and the same is hereby dismissed with the aforesaid observations.

No order as to costs.