
(2014) 08 P&H CK 0126

In the Punjab And Haryana At Chandigarh

Case No : R.S.A. No. 4020 of 2014 (O&M)

Gurbax Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Haryana Ceiling on Land Holdings Act, 1972 — Section 26, 5, 5A
Punjab Security of Land Tenures Act, 1953 — Section 25

Citation : (2015) 1 RCR(Civil) 693

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : R.D. Bawa, Advocates for the Appellant

Judgement

Rameshwar Singh Malik, J.—Having been non suited by both the learned courts below recording concurrent findings, whereby their suit for declaration was dismissed, plaintiffs have approached this Court by way of present regular second appeal. Brief facts of the case are that plaintiffs-appellants filed the suit for declaration with a consequential relief of permanent injunction, challenging the validity of mutation No. 22 dated 21.5.1984 sanctioned by the competent authority. Having been served in the suit, defendants appeared and filed the written statement raising more than one preliminary objections including that of jurisdiction of the civil court. On completion of pleadings of the parties, learned trial court framed the following issues:-

- "1. Whether the plaintiffs and defendant No. 5 are owners in possession of the land detailed in the head note of plaint? OPP
2. Whether the mutation affected after 1983-84 qua the suit land is illegal, null and void? OPP
3. Whether the suit is not maintainable? OPD
4. Whether the jurisdiction of civil court is barred u/s. 25 of Punjab Security of

Land Tenures Act, 1953 and u/s. 26 of the Haryana Ceiling of Land Holdings Act, 1972? OPD

5. Whether the plaintiffs have concealed the true and material facts from the court? OPD

6. Whether the plaintiffs have no cause of action and locus standi to file the suit? OPD

7. Whether the suit is bad for non-joinder for necessary parties? OPD

8. Relief."

2. In order to prove their respective stands taken, both the parties led their documentary as well as oral evidence. After hearing both the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiffs have failed to prove their case. Accordingly, suit was dismissed vide impugned judgment and decree dated 19.01.2010. Dis-satisfied, plaintiffs filed their first appeal which also came to be dismissed by learned Additional District Judge, vide impugned judgment and decree dated 11.03.2014. Hence, this second appeal.

3. Learned counsel for the appellants submits that the learned courts below proceeded on a misconceived approach, while dismissing the suit of the plaintiffs-appellants. Sufficient and cogent evidence was brought on record to decree the suit. However, since learned courts below miserably failed to appreciate the evidence in the correct perspective, impugned judgments and decrees were not sustainable in law. He prays for setting aside the impugned judgments and decrees, by allowing the present appeal.

4. Having heard the learned counsel for the appellants at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, present one is not a fit case warranting interference at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure ("CPC" for short). To say so, reasons are more than one, which are being recorded hereinafter.

5. It is undisputed on record that the order dated 21.5.1984 sanctioning mutation No. 22 was passed by a competent authority, under the relevant provisions of law. It is also not in dispute that plaintiffs-appellants were having specific and effective remedy of statutory appeal against the order of mutation. When a pointed question was put to the learned counsel for the appellants that how the suit was maintainable, for want of jurisdiction of the civil court, he had no answer and rightly so because it was a matter of record. Having said that, this Court feels no hesitation to conclude that the learned courts below have committed no error of law, while passing the respective impugned judgments and the same deserve to be upheld. The suit was hopelessly time barred.

6. Before arriving at a judicious conclusion, the learned first appellate court recorded its cogent findings in para 17 to 22 of the impugned judgment and relevant part thereof reads as under:-

"From the bare perusal of the record, it transpires that one of appellants namely Gurbax Singh has only stepped into witness box as PW 1 and thereafter closed the evidence. No evidence has been led by the respondents. From the pleadings and testimony of PW 1, the appellant No. 1 who is Lrs of S. Shamsher Singh, it transpires that appellants claimed that entire land of Bhareli Jagir comprising of land of Bir Ferozri, Bir Babupur was conquered by the Predecessor in interest of the appellants in the year 1763 and in the year 1809, the ownership rights were conferred upon them.

The land of village Bir Ferozri and Bir Babupur was part of Bhareli Jagir, however, under the provisions of Govt. Grant Act, 1895, the land was granted to their predecessor-in-interest. Prior to that, in the year 1847, they were bestowed with the status of Jagirdar by the British Govt. However, in the year 1960, the Govt. started proceedings against their land to declare the same as surplus and was infact declared surplus and accordingly mutation was sanctioned in favour of the State. The order to declare the land as surplus was challenged by them. The Hon"ble High Court vide order dated 11.12.1992 set aside the order of surplus and directed the revenue authorities to re-decide the matter on merits. The Collector, Agrarian has already declared the land to be surplus and appeal before the Commissioner, Ambala Division, has also been now dismissed on 13.06.2003 against which the ROR is pending before the Financial Commissioner, Haryana.

In the written arguments, the appellants have assailed the order of Commissioner on various grounds. However, it is pertinent that since the order of declaring the suit land as surplus has been set aside, but subsequently the suit land has been again declared surplus, therefore, no such directions can be passed to the respondent-State to correct the mutation in favour of the appellants.

Moreover, in this case, it is admitted that entire land was owned by S.B.S. Bhagwant Singh who alienated the same in favour of his three sons by way of gift deed which were set aside by Hon"ble High Court vide order dated 24.09.1991 and consequently, all the class-I legal heirs of three sons three daughter and wife of S.B.S. Bhagwant Singh inherited share to the extent of 1/7th share each and this fact has not been disputed as order passed by Hon"ble High Court has become final.

The appellants claimed the ownership of the suit land, detail of which is mentioned in the plaint and duly reflected in the Jamabandi Ex. P1 & Ex. P2, however the suit land has been again declared as surplus. The appeal against the said order is pending before Financial Commissioner, Haryana, therefore, no such direction can be given to Financial Commissioner to cancel or rectify the mutation in favour of the appellants.

Moreover, the land is declared surplus under Haryana Ceiling of Land Holdings Act, 1972. The land which are not subject to this Act are duly defined u/s. 5 and 5A of the Act. The land received by the appellant or his forefathers by way of grant are not exempted from declaring as surplus. Thus, it can be said that provisions of Haryana Ceiling of Land Holding Act, 1972 are not applicable to the suit land. Moreover, as per section 26 of Haryana Ceiling of Land Holdings Act, 1972, the jurisdiction of civil court is barred. The disputes between the appellants and respondents are to be decided by Financial Commissioner, the Collector or prescribed authority, the dispute has been re-adjudicated by the Collector, Agrarian and also by the Commissioner and ROR is pending before the Financial Commissioner, therefore, the suit of appellants is pre-mature and is not maintainable. In the written arguments, the appellants have highlighted the drawback in the order passed by Commissioner on 13.06.2003. However, all these pleas are to be taken before Financial Commissioner and by virtue of Section 26 of Haryana Ceiling of Land Holdings Act, 1972, the civil court cannot look into. Therefore, the court is of the view that trial Court has rightly decided the case. The appellants have no cause of action and locus-standi to file the civil suit. The civil suit was filed by the appellants on 7.4.2003 whereas the Commissioner has decided the issue on 13.06.2003. It appear that present suit was filed with intention to defeat the rights of the State and to delay the proceedings before the revenue authorities and to complicate the same so that they could continuously use and enjoy the suit land."

7. During the course of hearing, learned counsel for the appellants failed to substantiate any of his arguments. He also could not point out any jurisdictional error or patent illegality apparent on the record of the case, in the impugned judgments. Further, no question of law much less substantial question of law has been found involved in the present case, which is sine quo non for interference at the hands of this Court, while exercising its jurisdiction under Section 100 C.P.C. Thus, it is unhesitatingly held that the impugned judgments and decrees passed by the learned courts below deserve to be upheld, for this reason as well.

8. No other argument was raised.

9. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Resultantly, instant appeal stands dismissed, however, with no order as to costs.