

(2014) 05 P&H CK 0101
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 2728 of 2012 (O&M)

Jaswant Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 34, 36
Transfer of Property Act, 1882 — Section 41

Citation : (2014) 176 PLR 410

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : S.M. Sharma, Advocates for the Appellant

Judgement

Rameshwar Singh Malik, J.—Present appeal, at the instance of plaintiff, is directed against the judgment of reversal passed by the learned first appellate court, whereby first appeal of the defendants was allowed, dismissing the suit of the plaintiff for declaration. Brief facts of the case, as recorded by the learned first appellate Court, are that the plaintiff filed a suit alongwith his brothers Randhir Singh and Shiv Karan but the names of the other two persons were deleted as they had not come forward to sign plaint and pursue the matter. In any case, one of them was competent to file the suit. It was alleged that the plaintiff and his brothers purchased the suit property from its previous owners Balbir Singh and his sister Jeeto and mutation was duly entered in their names. They remained in possession of the suit property as owners without any obstacle and objection from any quarter. Their names were also entered in the revenue record.

2. However, when the plaintiffs wanted to mortgage the suit property for raising loan from the bank, they were surprised to know on obtaining copy of jamabandi that there was an entry in the remarks column regarding some report No. 501 dated 26.2.1997 and two more reports No. 228 of 6.9.2002 and No. 1 dated

1.9.2001. The first report was regarding some stay order issued by defendant No. 2. The plaintiff made inquiries and it was found that the allotment in favour of the original owner stood cancelled and defendant No. 2 was preparing to take steps for sale of the property through auction. The allotment was cancelled by the defendants without the knowledge of the plaintiff and co-owners which they could not have done as the purchasers were the affected parties. Since the defendants failed to accede to the request of the plaintiffs not to implement that order, the present suit was filed. The plaintiff wanted that he and his brothers should be declared to be the owners in possession of the suit property.

3. The defendants filed a joint written statement alleging that initially, the suit property was allotted to Mangal Singh (stated by the plaintiff to be his predecessor) vide order dated 6.12.1994. However, the said allotment was cancelled by the Commissioner and Secretary to Government of Haryana, Rehabilitation Department, Chandigarh, vide orders dated 27.5.2002. Accordingly, an entry, regarding the same was made in the revenue record vide report No. 22 of 6.9.2002. After passing of the said order, Central Government became owner of the property and proceedings regarding obtaining possession were being taken. It was pleaded that the Court had no jurisdiction in the matter and suit was also not maintainable.

4. It was denied that the plaintiff had purchased the suit property after verifying the title of his vendor. It was also denied that it was necessary for the defendants to have heard the plaintiff before cancelling the allotment.

5. On completion of pleadings of the parties, following issues were framed by the learned trial Court:--

"1. Whether the plaintiffs are owners in possession of the suit property on the basis of the registered sale deed No. 1356 dated 8.7.1996 and mutation No. 429? OPP

2. Whether the plaintiffs are entitled to decree for permanent injunction as prayed for on the grounds mentioned in the plaint? OPP

3. Whether the suit is not maintainable in the present form? OPD

4. Whether the jurisdiction of the Civil Court is barred to try this case in view of section 34 & 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and Administration of Evacuee Property Act 1950? OPD.

5. Whether the suit is not property valued for the purpose of court fee and jurisdiction? OPD

6. Relief."

6. To substantiate their respective stands taken, both the parties led their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has proved his case. Accordingly, the suit of

the plaintiff was decreed vide judgment and decree dated 26.7.2010. Feeling aggrieved defendants filed their first appeal, which came to be allowed by the learned District Judge, Ambala, vide impugned judgment and decree dated 4.2.2012. Hence this appeal.

7. Learned counsel for the appellant submits flat appellant was a bona fide purchaser. He purchased the suit land for due consideration from Balbir Singh and Jito who were the legal heirs of Mangal Singh-original allottee. The learned trial court rightly decreed the suit. However, the learned first appellate court misdirected itself while passing the impugned judgment and decree and the same were not sustainable in law. He relies upon the following judgments:--

1. Soda Singh v. Union of India etc., 1975 CLJ (15) 520
2. Achaar Singh and others v. The State of Punjab and others, 1979 PLJ 279
3. Bhagwan Dass v. The State of Haryana and others, 1982 (4) AILLR 677;
4. M/s. Electric Construction & Equipment Co. Ltd. Sonapat v. The Union of India and others, 1982 (4) AILLR 324.
5. Devinder Singh v. Commissioner & Secretary to Government Haryana Rehabilitation Department, 1993(1) RRR 515; and
6. Doaba Nirmal Mandal (Regd.) and Another Vs. Financial Commissioner Revenue and Secretary to Government Punjab and Another, ."

Finally, learned counsel for the appellant prays for setting aside the impugned judgment and decree, by allowing the present appeal.

8. Having heard the learned counsel for the appellant at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that in the given fact situation of the present case, no interference is warranted at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of Code of Civil Procedure ("CPC for short), because no question of law much less substantial question of law has been found involved in the instant case. To say so, reasons are more than one, which are being recorded hereinafter.

9. The entire case of the appellant-plaintiff was dependent on the clear title of his vendors who were not even impleaded as party-defendants in the suit. Plaintiff-appellant claimed to have purchased the suit land from Balbir Singh and Jito, alleged legal heirs of Mangal Singh, who were original allottee of the suit land. It is also a matter of record that the competent authority has cancelled the allotment vide a detailed and self contained order Ex. D1. In fact, Mangal Singh was found to be a bogus allottee. It was also established on record that Jito and Balbir Singh were not found to be the legal heirs of Mangal Singh.

10. Allotment in the name of Mangal Singh was found to be bogus and the same was cancelled by the competent authority. In such a situation, there was no

scope for the learned trial court to come to the conclusion that the plaintiff was a bona fide purchaser. In this regard, cancellation order Ex. D1 does not need any further elaboration. Since Balbir Singh and Jito were not the true owners, they could not have passed a better title in favour of the plaintiff-appellant. Having said that, this Court feels no hesitation to conclude that learned first appellate court committed no error of law, while passing the impugned judgment and the same deserves to be upheld.

11. So far as the judgments relied upon by the learned counsel for the appellant are concerned, there is no dispute about the law laid down therein, however, the same are of no help to the appellant, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judge made law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, .

12. Before arriving at a judicious conclusion, the learned first appellate court rightly appreciated the facts of the case as well as the evidence available on record so as to record cogent findings in paras 9 to 16 of the impugned judgment. The relevant findings recorded in paras 12 to 16 are as under:--

"Govt. Pleader then relied on the judgment passed by our own Hon'ble High Court in LPA No. 184 of 2004, decided on 24.12.2008, in support of his arguments that in cases where allotments are cancelled being bogus and fraudulent, the subsequent purchaser cannot claim to be bona fide purchaser for value and consideration. In such cases, the only remedy available to such purchaser would be to sue the vendor for recovery of sale consideration. The Hon'ble Supreme Court had clearly held that fraud and collusion vitiated all solemn proceedings. Also, no right would accrue to the purchaser of a fraudulent transaction.

In the present case, the authority passing the order (Ex. D-1) gave all the details showing that the allotment in favour of Balbir Singh and Jeeto was based on fraud and Balbir Singh was even arrested in a criminal case on that count. On enquiry, it was found that the land was initially allotted to Mangal Singh and one Iqbal Singh posed to be his attorney, but it was revealed that he was not the actual attorney. It also came to light that Balbir Singh and Jeeto were not the heirs of Mangal Singh, as they were the children of one Dalip Kaur widow of Dalip Singh and had nothing to do with the succession of Mangal Singh. They were not even related to Balbir Singh and Jeeto and had cooked up a story in order to grab the land.

The allotment in the name of Mangal Singh was found to be bogus and was cancelled on 7.8.1957 and information was given regarding cancellation to Mangal Singh. However, Banto D/o. Mangal Singh allegedly took possession of the land but on making thorough enquiry, it was found that there was no

mention anywhere about Banto being the daughter of Mangal Singh. Rather he had not left any legal heir and the land, therefore, reverted to the Govt. It was thereafter that Balbir Singh and Jeeto perpetrated fraud and allotment was made vide orders dated 23.11.1994/5.12.1994.

Balbir Singh and Jeeto being not related to Mangal Singh in any manner and also the original allotment being made on fraud, they themselves acquired no valid title to the land and therefore, could not pass it on to the present respondent and his brothers. It is, therefore, clear from the facts and circumstances of the case that the present respondent i.e. the plaintiff and the persons, who purchased the land alongwith him from Balbir Singh and Jeeto, cannot claim protection under Section 41 of the Transfer of Property Act. The only remedy available to them is to make recovery of the sale price from the vendors. No fraud can be allowed to be perpetuated."

13. Order Ex. D1 passed by the Commissioner and Secretary to Government, Haryana, Rehabilitation Department on 27.6.2002 was, in fact, a self-contained order, wherein each and every relevant aspect of the matter was dealt with in detail and the allotment in favour of Mangal Singh was found to be bogus. Statement of Ramesh Chand-Accountant, who was working in the office of Tehsildar (Sales) has also duly proved the entire case against the plaintiff-appellant. In this view of the matter, it is unhesitatingly held that the allotment was based on fraud and misrepresentation. Under these circumstances, neither any law nor equity was found in favour of the appellant and he cannot be said to be a bona fide purchaser by any stretch of imagination. The impugned judgment and decree rendered by the learned first appellate court has not been found to be suffering from any infirmity and the same deserve to be upheld, for this reason also.

14. During the course of hearing, learned counsel for the appellant failed to point out any jurisdictional error or patent illegality apparent on the record of the case, in the impugned judgment and decree passed by the learned first appellate court. He also failed to put into service any substantive argument, so as to convince this Court to take a different view than the one taken by the learned first appellate court. Further, no question of law much less substantial question of law has been found involved in the present case, which is sine qua non for interference at the hands of this Court, while exercising its jurisdiction under Section 100 CPC. Thus, the impugned judgment and decree passed by the learned first appellate court deserve to be upheld, for this reason as well.

15. No other argument was raised.

16. 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 bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, the impugned judgment and decree passed by the learned first appellate court are

upheld. Resultantly, the instant appeal stands dismissed. Pending applications also stand disposed of. No costs.