

(1999) 10 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 951 of 1997

Kali Ram and Others

APPELLANT

Vs

Miss Asha Chaudhary alias Asha Kumari and Others

RESPONDENT

Date of Decision : 06-10-1999

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 26

Citation : (2000) 124 PLR 241

Hon'ble Judges : A.S. Garg, J

Bench : Single Bench

Advocate : C.L. Ghai and Dinesh Ghai, Kiran Bala Jain, D.A.G, for the Appellant;
Ajay Tewari, for private, for the Respondent

Final Decision : Allowed

Judgement

A.S. Garg, J.—This order shall dispose of R.S.A. No. 951 of 1997 and 3129 of 1997 arising out of the common judgment and decree passed by the learned lower appellate Court. This is a Regular Second Appeal, which refers to the question of the effectiveness of a sale deed alleged to have been executed in favour of the respondent-plaintiff with respect to an agricultural land of a big landowner and the repercussion there of? Kanwar Bishan Sarup owned agricultural land in village Bahalgarh, Tehsil and District Sonapat, Haryana. He was declared a big land owner after full scrutiny and consideration of his permissible area of the agricultural land in his possession by the Collector vide order dated 30.6.1960. This order was remitted to the Collector for a review. A reminder was also issued by the Commissioner, Ambala Division, Ambala and ultimately the order dated 30.6.1960 was confirmed vide order dated 19.8.1969.

2. However, the agricultural land measuring 63 kanals 2 marlas belonging to said Kanwar Bishan Sarup was purchased by the respondent-plaintiffs Asha Chaudhary alias Asha Kumari and Radhika Chaudhary vide sale deed dated 23/27.4.1966. They partitioned the property between themselves vide mutation No. 668 dated 10.4.1984 whereby land measuring 24 kanals comprised in

Khewat No. 56 Khatauni No. 100, 101 and 102, Rectangle No. 23 Killa Nos. 22(8-0) and 23(8-0) and Rectangle No. 28 Killa No. 12(8-0) had fallen to the share of Asha Chaudhary respondent-plaintiff. Out of this land the dispute relates to land measuring 8 kanals comprised in Rectangle No. 23 and Killa No. 23. Out of this land appellant-defendant No. 2 entered into possession of land measuring 4 kanals 9 marlas and the predecessor-in-interest of appellant-defendant No. 3 and 4 entered into possession of the remaining land measuring 3 kanals 11 marlas in connivance with the State of Haryana vide Rapat Roznamcha dated 6.7.1977 and 20.6.1977.

3. Since the land of the said landowner was declared as surplus vide order dated 30.6.1960 Ex.P.1 automatically the same vested in the State of Haryana. Aggrieved with this order the respondent-plaintiffs brought two different civil suits challenging the order by virtue of which the land of said landowner was declared surplus and also claimed that the land had illegally been delivered to appellant-defendant Nos. 2 to 4 and, therefore, the State of Haryana was impleaded as a party. Various grounds were taken up by the respondent-plaintiff that the Banjar Qadeem land of the owner was not excluded while taking into consideration the surplus area; that they were not heard before order of declaration of surplus was announced; that the order of review confirming the land to be surplus was made beyond limitation and that certain area was left with the landowner presuming that it was reserved area of land lord and so on so forth:

4. The appellant-defendants in their written statement pleaded that the respondent-plaintiffs were heard at the time when the matter was reviewed and the applications filed by the respondent-plaintiffs were dismissed for want of evidence and the orders dated 20.7.1982 and 7.3.1984 Ex.D.12 and D.13 were passed by the Collector. It was also pleaded that as the respondents only filed review applications against these orders and did not come in appeal or revision, therefore, the order Ex.D.12 and D.13 have become final and that thereafter the surplus proceedings could not be challenged. It was also asserted that the respondent-plaintiffs were duly heard and the Banjar Qadeem land had also been utilized and was made cultivable, therefore, the civil court had no jurisdiction to entertain and decide such matters. Various other objections were taken up with the prayer that the suits required to be dismissed. Both the suits were consolidated by the learned trial Court and the following issues were set out:-

1. Whether the proceedings conducted by the Surplus Authorities are non est, illegal, incomplete, void, without jurisdiction, inoperative and not binding on the rights of the plaintiff as alleged in para No. 4 of the plaint?
2. Whether the plaintiff is entitled to take the possession back from the defendants as alleged? OPP
3. Whether the mutations No. 812 and 814 are wrong, illegal, without jurisdiction and not binding on the rights of the plaintiff as alleged? OPP

4. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
5. Whether the plaintiff has no locus standi to file the present suit? OPD
6. Whether the civil Court has no jurisdiction to try the present suit? OPD
7. Whether the suit is not maintainable in the present form? OPD
8. Whether the suit is liable to be stayed u/s 10 C.P.C. as alleged? OPD
9. Whether the suit is bad for mis-joinder of causes of action as alleged and non-joinder of necessary parties. If so to what effect? OPD
10. Whether the plaintiff is estopped from filing the present suit by her own act and conduct?
11. Relief.

5. The learned trial Court after considering the evidence of both the sides decided issue Nos. 1 to 6 and 10 against the plaintiff and in favour of defendants whereas issue Nos. 7 and 9 were decided in favour of the plaintiff and issue No. 8 was declared as redundant. It was observed by the learned trial Court that the respondent-plaintiffs had utterly misused the situation and knowingly purchased the land from big landowner and were to face the consequence. They are supposed to purchase the land with open eyes and they must have consulted the revenue record before they entered into transaction. Consequently, the both the suits were dismissed with special costs.

6. However, the learned lower appellate Court while discussing the judgment of the learned trial Court held that the Banjar Qadeem land should have been excluded; that the landlord's permissible area was wrongly determined and that the respondent-plaintiffs were not given a chance of being heard. The learned lower appellate Court even summoned the record from the revenue Court by virtue of which the land was declared surplus and came to the conclusion that the civil Court has the jurisdiction and in this regard relying upon the authorities of this Court, namely, *Kulbhushan v. Faqiora* L.L.R. (Suppl.) 173, and *State of Haryana v. Vinod Kumar* 1986 P.L.J. 161 very emphatically concluded that the respondent-plaintiffs were not heard and, therefore, reversed the findings arrived at by the learned trial Court, as a result of which the suit of the respondent-plaintiffs was decreed which brought the appellant State of Haryana on the one hand and the private respondent-defendants on the other, in separate appeals which are being resisted by the respondent-plaintiffs.

7. This Court had the occasion to go through the judgment of the Courts below, especially, the judgment of the learned lower appellate Court and it is found therein that the learned lower appellate Court perhaps assumed the role of the revenue Court and proceeded with the case as if it was dealing with the case as Court of appeal on the revenue side and, therefore, came to the conclusion that the Collector as well as the Commissioner and the Financial Commissioner went

wrong in deciding the matter relating to the surplus land. It was also mentioned that the respondent-plaintiffs were not heard and were not granted any opportunity to explain their position. However, the learned lower appellate Court overlooked the fact that the proceedings declaring the land as surplus were taken in the year 1960 and the land had been purchased by the respondent-plaintiffs in the year 1966. Nothing was discussed as regard the conduct of the respondent-plaintiffs as to why did they purchase the land of a big landowner. It is presumed that any such purchaser would look into the revenue record even if the property is purchased through the attorney or otherwise. If such property is purchased it would be at the risk and responsibility of the purchaser. Moreover, there are various self-contradictory findings in the judgment of the learned lower appellate Court. There is a definite averment on the record that the respondent-plaintiffs represented their case on the basis of which orders Ex.D.12 and D.13 dated 20.7.1982 and 7.3.1984 were passed. It is the conceded case of the parties that no appeal or revision was filed against these orders. Only review applications were filed which too were dismissed. So once the respondent-plaintiffs were satisfied that their vendor was a big landowner the Civil court had no authority of any kind to ponder over the matter and to say that as to in what manner the revenue Court decided the surplus case of the landowner. It is quite outside the domain of the civil court to analyse as to how the case came to be a case of surplus land. It is within the jurisdiction of the Collector. The remedies are provided in the Haryana Ceiling on Land Holdings Act, 1972 and any aggrieved person can file a review application/petition. The civil Court cannot work as a Court of appeal or revision in any way. The jurisdiction of the Civil Court is barred u/s 26 of the Act, which may be reproduced hereunder:

"26. Bar of jurisdiction:

(1) No civil Court shall have jurisdiction to -

(a) entertain or proceed with a suit for specific performance of a contract for transfer of land which affects the right of the State Government to the surplus area under this Act; or

(b) settle, decide or deal with any matter which is under this Act required to be settled decided or dealt with by the Financial Commissioner, the Collector or the Prescribed Authority.

(2) No order of the Financial Commissioner, the Commissioner, the Collector or the prescribed authority made under or in pursuance of this Act shall be called in question in any Court."

8. A perusal of the above section shows that it clearly bars the jurisdiction of the Civil Court to settle, decide or deal with any matter which under the Act is required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, the Collector or the Prescribed Authority. In view of this clear cut provision creating a specific jurisdiction in the hierarchy of officers known to the ceiling law, it is idle for the respondent-plaintiffs to contend that it is for the Civil

Court to determine the question whether the land in possession of the respondent-plaintiffs falls within the meaning of the word "land" used in the ceiling law. If this base is knocked out, the other reasons fall like a house of cards.

9. In this view of the matter, without going further in the matter, this Court is of the firm view that in such a situation the aforesaid authorities in Kulbhushan "s case (supra) and Vinod Kumar"s case (supra), relied upon by the learned lower appellate Court are not applicable to the case in hand and it is held that the civil Court has no jurisdiction in the matter in view of the authority in Rawat Gir and Ors. v. The State of Haryana and Ors.1979 P.L.J. 100.

10. In fact in a Regular Second Appeal as well as in a writ jurisdiction, it is the question of law which requires determination and not the question of fact. The question whether a landowner is a big landowner or a small landowner is question of fact and virtually, cannot be gone into in this second appeal. Once, it has come in evidence that the respondent-plaintiffs were heard before the orders Ex.D.12 and D.13 were passed, the ground that they were not heard or that the orders were passed behind their back vanishes.

11. In view of the above discussion, both the appeals are allowed, the judgment and decree passed by the learned lower appellate Court are set aside and those of the learned trial Court are upheld. However, the parties, are left to bear their own costs.