(2011) 11 P&H CK 0124

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 158 of 1983 (O and M) and Regular Second Appeal No. 1037 of 1984 (O and M)

Mange Ram — APPELLANT

Vs

Tek Ram and another
 Maya Ram Vs The State of Haryana and another — RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Haryana Ceiling on Land Holdings Act, 1972 — Section 12(3), 26(1), 26(2), 8(1)

Citation : (2011) 11 P&H CK 0124

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—Both the cases are connected and they raise common questions of law whether the Civil Court has jurisdiction to reopen the matters concluded under the provisions of Haryana Ceiling on Land Holdings Act of 1972.

2. Both the appeals arise out of two suits independently filed, one at the instance of Tek Ram in Civil Suit No.266 of 1980 and another at the instance of Maya Ram in Civil Suit No.26 of 1980 and later renumbered as 662 of 1982. Tek Ram''s suit was dismissed on 07.06.1982 and Maya Ram''s suit was originally decreed holding the order of the Commissioner, Ambala, to be invalid. The appeal by the State of Haryana against the decree in Civil Suit No.662 of 1982 filed by Maya Ram was heard in Civil Appeal No.286 of 1982 and it was allowed holding that the Civil Court had no jurisdiction. The appeal filed by Tek Ram to the Additional District Judge in Civil Appeal No.88 of 1982 was dismissed. Both these appeals are the subject matter of the second appeals. The source of title is the same and the facts narrated are the same.

3. From the reading of the plaint, it is seen that one Brij Bhan was a big landlord and one Sukh Ram was a small landowner. Both these persons were the owners

of the land comprised in Rect. No.27 and Rect. No.29 measuring 96 kanals 7 marlas. The shares of the above two persons were 2/3rd and 1/3rd respectively in the aforesaid land. Both these owners sold the land by means of a sale deed dated 16/17,11.02.1955 to one Rattan Singh and his brother''s son, Jhabddoo. These sales were the subject of challenge in the preemption suits filed by Maya Ram and Jhabddoo. They ended with a compromise providing 5/6th share to Maya Ram and 1/6th share to Jhabddoo on 27.06.1957 and mutation had also been sanctioned. Pursuant to the decree, partition proceedings predicated specific extents, namely, 80 kanals 8 marlas equivalent to 10 standard acre in Rect. No.28 to Maya Ram and Jhabddoo got 16 kanals. In the meanwhile, the Agrarian Collector by his order dated 03.08.1960 declared 2/3rd of the land compromised in Rect. No.28 as surplus area ordering an extent measuring 16 kanals 13 marlas equivalent to 1 standard acre and 13 1/4 units falling within surplus, without any option or intimation given to Maya Ram. The contention was that the original landowner Brij Bhan merely had 2/3rd share in the land availing to him an extent measuring 80 kanals 8 marlas and the remaining 1/3rd share belonged to Sukh Ram, the small landowner. While giving benefit of 10 standard acres to Maya Ram under Government instructions, the competent authority should have based his calculation on the land measuring 53 kanals 12 marlas and should have left out of consideration the land measuring 26 kanals 16 marlas that was claimed by Maya Ram from Sukh Ram, who was a small landowner. Since Maya Ram''s holdings itself did not exceed to 10 standard acres, no part of the extent held in his hand, could have been declared as surplus.

4. The basis of contention for the plaintiff seeking for exclusion of the property held by him was also that u/s 8(1) of the Haryana Ceiling on Land Holdings Act of 1972 excluded all transfers of land before 30.07.1958. Since Maya Ram''s acquisition was prior to the date he was entitled to obtain exemption. The vesting of the property provided u/s 12(3) of the Haryana Ceiling on Land Holdings Act of 1972 did not make possible any vesting in favour of the State for properties alienated before 30.07.1958. The suit was filed at a time when the 2nd defendant as an allottee from the Government sought to disturb the plaintiff''s possession.

5. The principal contest by the State was on the ground that the case was not maintainable. The plaintiffs had actually challenged the order passed by the SDO (Civil), Rohtak, but their claims were rejected. They had preferred appeals to the Collector and then still later to the Commissioner, who had concurrently upheld the decisions. The appeal before the Collector was dismissed on 15.03.1978 and the suit had been filed on 29.01.1980. The suit was barred u/s 26(2) of the Haryana Ceiling on Land Holdings Act of 1972. It is also contended that Brij Bhan''s holding which was declared as surplus had been the subject of allotment to one Hira and others in the year 1962 itself and later the allotment was cancelled and fresh allotment was made to Ram Kishan, the father of 2nd defendant on 03.11.1977. All the Civil Court proceedings relating to preemption or partition cannot be of any avail.

6. The only substantial point that would require to be considered is whether a civil suit is maintainable when there is a specific bar under the Act for considering the issues for which a specific mechanism is provided under the Act. Section 26(2) reads as under:

26(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.

7. The issue of jurisdiction has been considered by the Hon''ble Supreme Court in Azad and Others Vs. Dharampal and Others, . Applying Section 26(1)(b) of the Haryana Ceiling on Land Holdings Act of 1972, the Hon''ble Supreme Court held that the suit challenging the order of authorities under the Act was not maintainable in view of the statutory bar. This Court had also held in Balbir Chand and others v. State of Haryana and others 2008 (1) RCR (Civil) 417, that Civil Court has no jurisdiction to annul the orders passed by the competent authorities under the Haryana Ceiling on Land Holdings Act of 1972. Yet another decision that affirms the same principle is Mohinder Singh v. State of Haryana and others 2008 (1) PLR 96, that held that a decree passed by a Civil Court annulling an order passed by the authorities under the Haryana Ceiling on Land Holdings Act of 1972 would be one without jurisdiction and a nullity. A similar proposition was also found expressed by a decision of the Hon''ble Supreme Court in Devinder Singh and Others Vs. State of Haryana and Another, . Khushal v. Nathu Ram 2000 (1) RCR (Civil) 165 also lays down a similar view. In the face of all these decisions, the reliance placed by the counsel for the petitioner in State of Punjab v. Babu Singh, Head Constable 1996 (1) PLR 482 is meaningless. The said judgment was challenging an order of punishment where the Court was merely considering the issue of limitation for declaratory action but did not consider any statutory bar.

8. It is not as if the plaintiff had not resorted to an action to challenge the declaration of surplus. He had exhausted all the remedies under the Act and if the order of the Financial Commissioner itself was to be challenged, it could have been done only under a jurisdiction of the High Court to examine whether the procedure prescribed under the Act had been followed or not. It cannot be reopened by means of a suit when a law specifically barred it. Section 9 of the CPC itself provides for adjudication of all matters of civil nature, except in so far as matters where Court''s jurisdiction is specifically barred by law. The bar contained under the Land Ceiling Act is to ensure that the judicial intervention are not brought where authorities under the Ceiling Act itself are given quasi-judicial powers to adjudicate on the contentions raised by parties. If a party exhausts the power under the Act, there is no further jurisdiction that vests with any Civil Court to reopen the issue. The suits were clearly barred in law and rightly dismissed by the lower appellate court below. Both the appeals are, consequently, dismissed. No costs.