

(1990) 04 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 679 of 1979

Ravi Dutt Sharma

APPELLANT

Vs

Sohagwanti

RESPONDENT

Date of Decision : 30-04-1990

Acts Referred:

Citation : (1990) 2 CurLJ 393 : (1990) 2 LJR 84 : (1990) PLJ 394 : (1991) 1 RRR 328 : (1991) 1 RRR 40

Hon'ble Judges : A.L.Bahri, J

Advocate : Puneet Jindal, Advocates., Ramesh Kumar, Ashok Bhan, Senior Advocate,, Advocates for appearing Parties

Judgement

A.L. Bahri, J.

1. This appeal is by the defendant Ravi Dutt Sharma in a suit brought by Sohagwanti and others which was dismissed by Sub Judge Ist Class, Amritsar on October 17, 1975 but on appeal decreed by Additional District Judge, Amritsar on February 19, 1979.

2. Sohagwanti and others, plaintiffs, widow and children of Amar Nath, filed the suit for permanent injunction restraining Ravi Dutt Sharma and Om Dutt Sharma from entering into possession of property bearing No. 240/1, situated in Gali Jail Wali, Amritsar. Since during the pendency of the suit, the defendants raised construction on the vacant plot attached to House No. 240/1, the suit was amended for mandatory injunction directing the defendants to remove the said wall. The claim was made as owners in possession by the plaintiffs and the defendants had no legal right to interfere with their possession. The vacant area of the house was never acquired under the Land Acquisition Act or under any Scheme by the Improvement Trust, Amritsar. The Trust, therefore, could not transfer the same to the defendants. While contesting the suit, the defendants denied ownership of the plaintiffs over the vacant site. The said site was alleged to be part of Plot No. 77 which vested in the Improvement Trust and later on transferred to the defendants. The possession of the same was also delivered to

the defendants and they made construction over the said plot. In this manner, the plaintiffs has no right to cause any interference in their possession over the property in dispute. They further alleged that House No. 240/1 had no vacant open site attached to it. The locus standi of the plaintiffs to file the suit was challenged. It was asserted that the plaintiffs had not paid price of the house aforesaid to the Government nor any sale certificate was issued in their favour. It was denied that the plaintiff were legal representatives of Amar Nath. Possession of the plaintiffs over the disputed site was also disputed. The plaintiffs did not object to the raising of the construction and they did not approach the Court with clean hands. The plaintiffs denied the allegations of the defendants in the replication and reiterated their stand as taken up in the plaint. The following issues were tried in the suit :

(1) Whether the vacant site adjacent to house bearing khanashumari No. 240/1 situated in Gali Jailwali, Amritsar, is a part of the said constructed house ? OPP

(2) Whether the vacant site has been acquired by the Improvement Trust, Amritsar, and had since been transferred to the defendants ? OPD

(3) Whether the Improvement Trust, Amritsar is a necessary party ? OPD

(4) Whether the plaintiffs are estopped from bringing the present suit ? OPD

(5) Whether the plaintiffs are in possession of the vacant site adjoining to the constructed property No. 240/1 ? If not, to what effect ?

(6) Relief.

Additional issue :

(7) Whether the plaintiffs are owners of the property in dispute ? If not, to what effect ?

3. Under issue No. 1, the trial Court held that area of the house allotted to Amar Nath was 155 square yards (531/2"x26") and 74" x 26". The site in dispute was held to be not part of House No. 240/1, which measured 201/2" x 18 beyond the line "XY" as shown in the plain, Exhibit P. 1. The remaining vacant site was held to be part of House No. 240/1. Under issue No. 2, it was held that the vacant site in dispute was acquired by the Improvement Trust and transferred to the defendants. Under issue No. 3, the Improvement Trust was held to be a necessary party. Under issue No. 4, it was held that the plaintiffs were not estopped from bringing the suit. Under issue No. 5, the plaintiffs were not held entitled to the injunction prayed for. Their possession over the site in dispute was not proved. Under the additional issue, the plaintiffs were held not to be the owners of the property in dispute. Thus, the suit was dismissed.

4. In appeal, the Additional District Judge affirmed the findings of the trial Court on issue No. 1. Finding of the trial Court on issue No. 2 was reversed. It was held that the vacant site forming part of House No. 240/1 was not acquired by the Improvement Trust and thus was not validly allotted to the defendants. It

remained the property of the Central Government which was offered to Amar Nath for sale who had deposited a sum of Rs. 3990/ out of Rs. 6072/. Findings of the trial Court on Issue Nos. 3 and 4 were affirmed. Under issue No. 5, Amar Nath and thereafter the plaintiffs were held to be in possession of the disputed House No. 240/1. The finding of the trial Court that the defendants were in possession of the vacant site adjoining property No. 240/1 was wrong and reversed. Under additional issue, the finding of the trial Court was affirmed. Since it was held that the disputed vacant site formed part of House No. 240/1, which was evacuee property allotted to Amar Nath deceased and later on offered to him for sale and further holding that the same had not been acquired by the Improvement Trust or transferred to the defendants while decreeding the suit held that the plaintiffs were entitled for the removal of the wall as it was raised during pendency of the suit. The decree for permanent injunction restraining the defendants from interfering in possession of the plaintiffs over House No. 240/1 except otherwise in due course of law was passed. Aggrieved thereby, the defendant Ravi Dutt Sharma is in this Court, in appeal.

5. Amar Nath was allottee of House No. 240/1. He was offered to purchase the House by the Managing Officer. In acceptance of the said offer, major portion of the price was paid. No sale certificate or conveyance deed, as required under the Displaced Persons (Compensation and Rehabilitation) Act (hereinafter called "the Act") had been issued in favour of Amar Nath or his legal heirs Sohagwanti and others, the present plaintiffs. Thus it was rightly held by the lower appellate court that the plaintiffs Suhagwanti and others had not become owners of the said house. However, the fact remains that being allottees they were already in possession of the house and they continued to possess it though they have not paid the entire sale price. Their possession is not unauthorised or illegal but they have a right in the house. That right may be of user being allottees till it matures in the right of ownership.

6. When the Managing Officer transferred different properties including the house in disputed by writing a letter to the Improvement Trust, the rights of the occupants of the houses were protected (Exhibit DW 1/1). One of the rights as already stated above, is to remain in possession of the house in dispute as allottees. No authority competent under the said Act passed any order of either cancellation of the allotment of the house in dispute or cancellation of the order of the transfer on payment of price under section 19 of the Act. If any such order had been passed for nonpayment of part of the price of the house, the allottee/allottees had the right to appeal against such an order or approach the higher authorities in revision. Such statutory rights could not be extinguished merely by alleged transfer of the property to the Improvement Trust. Even the Improvement Trust has not passed any order of cancellation of the allotment or the agreement to sell. Rather, there is no evidence at all that the Improvement Trust actually took possession of the properties from such allottees including the plaintiff in the present case.

7. The lower appellate Court on evidence came to the conclusion that area of House No. 240/1, which was earlier allotted to Amar Nath and now is in possession of Suhagwnati and others, legal heirs of Amar Nath, is 155 square yards. Their dimensions being 26" x 53 1/2 although the claim of the plaintiffs was that the area was more i.e. 26" x 74". This finding is not disputed in appeal on behalf on the respondentsplaintiffs.

8. It is also not disputed that during pendency of the suit where the defendant raised construction on the vacant plot is out of area 26"x 53 1/2" of the House No. 240/1. However, contention of Shri Ashok Bhan, Senior Advocate, appearing on behalf of the appellant is that the same is part of plot No. 77 which was carved out and allotted to the appellant by the Improvement Trust, possession of which was delivered to him by the Trust and the plaintiffs suit regarding the same is not to be decreed. Although some oral evidence was read, however, no evidence could be pointed out that the plaintiffs/allottees were ever dispossessed from the property in dispute by the Improvement Trust or that anybody on behalf of the Trust delivered possession of the vacant sit in dispute to the appellant. No documentary evidence in this respect was preferred or produced on the record. The appellant Ravi Dutt Sharma claims to be in possession of the disputed site adjoining to which he has raised some construction also. In this manner, the appellant could not deprive the plaintiffs of their right in the property which was allotted to their predecessor Amar Nath. The lower appellate Court thus rightly decreed the suit.

9. It was argued on behalf of the appellant that the Managing Officer, while acting under the provisions of Displaced Persons (Compensation and Rehabilitation) Act could and in fact transferred the evacuee properties as per list attached with the letter, Exhibit DW 1/1, and the Improvement Trust also paid fixed price of those properties, as per details in Exhibit DW 1/2, by cheque and has thus become owner of such properties. Being owner of the properties, the Improvement Trust could further transfer it by carving out plots and the appellant is, therefore, entitled to take possession of the entire area of plot No. 77 allotted to him, dimensions being 18" x 40", and thus the disputed portion of the vacant site over which he had raised construction of the walls which is within that area is now owned and possessed by him and against the true owner, no injunction can be granted. There is no merit in this contention. The question for determination is as to whether the Managing Officer had the power or jurisdiction to transfer property in dispute, i.e. House No. 240/1 and vacant site attached thereto, to the Improvement Trust. Section 20 of the Act reads as under :

"20. Power to transfer property out of the compensation pool (1) Subject to any rules that may be under this Act, the Managing Officer or managing corporation may transfer any property out of the compensation pool

(a) by sale of such property to a displaced person or any association of displaced persons whether incorporated or not, or to any other person, whether the property is sold by public auction or otherwise;

(b) by lease of any such property to a displaced person or an association of displaced person, whether incorporated or not, or to any other person;

(c) by allotment of any such property to a displaced person or an association of displaced persons whether incorporated or not, or to any other persons, on such valuation as the Settlement Commissioner may determine;

(d) in the case of a share of an evacuee in a company, by transfer of such share to a displaced person or any association of displaced persons, whether incorporated or not, or to any other person, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 or in the memorandum of articles of association of such company;

(e) in such other manner as may be prescribed."

(1A) for the purpose of transferring any property out of the compensation pool under subsection (1), it shall be lawful for the Managing Officer or the managing corporation to transfer the same to displaced person jointly with any other person or an association of displaced persons or otherwise.

(2) Every Managing Officer or managing corporation selling any immovable property by public auction under subsection (1) shall be deemed to be a Revenue Officer within the meaning of subsection (4) of section 89 of the Indian Registration Act, 1908.

(3) Where the ownership of any property has passed to the buyer before the payment of the whole of the purchase money, the amount of the purchase money, or any part thereof remaining unpaid and any interest on such amount or part shall, notwithstanding anything to the contrary contained in any other law, be a first charge upon the property in the hands of the buyer or any transferee from such buyer and may, on a certificate issued by the Chief Settlement Commissioner, be recovered in the same manner as an arrear of land revenue."

10. Transfer of property out of the compensation pool by the Managing Officer by allotment or otherwise to the displaced persons was either to compensate them in lieu of their properties left in Pakistan or to rehabilitate them, which were the purposes of the Act. As such, transfer of property by the Managing Officer to the Improvement Trust is not covered by section 20(1), (a), (b), (c), or (d) of the Act. As far as clause (e) of section 20(1) of the Act is concerned, nothing was brought on the file or otherwise shown that it was prescribed for transfer of property of compensation pool by Managing Officer to Improvement Trust. That being the position, order of the Managing Officer, Exhibit DW 1/1, transferring the house in dispute to the Improvement Trust is without jurisdiction and void and is to be ignored. The appellant, thereform cannot claim any right, title or interest in the vacant site attached to House No. 240/1. It may be noticed that vide letter, Exhibit DW 1/2, the Improvement Trust did not pay the price of the houses being transferred but the Trust paid the amount which was outstanding balances of those houses. Against House No. 240/1, the outstanding balance was

Rs. 3469.00. As stated above, total price of the house was Rs. 6072.00 as shown in Exhibit PW 3/6 (offer of sale). Furthermore, the appellant has failed to prove his possession over the said site at the time of filing of the suit. Amar Nath was in possession thereof and after his death, his legal heirs, the plaintiffs.

11. For the reasons recorded above, this appeal fails and is dismissed. The judgment and decree of the lower appellate Court granting the injunction, are affirmed. The parties are left to bear their own costs.