
(1988) 05 P&H CK 0082
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1591 of 1987

Roop Singh and others	Vs	APPELLANT
State of Haryana and another		RESPONDENT

Date of Decision : 19-05-1988

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 12

Citation : (1988) 05 P&H CK 0082

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : N.K. Kapur, for the Appellant; K.K. Gupta for A.G. Haryana, for the Respondent

Judgement

G.R. Majithia, J.—The facts as unfolded in the plaint are that Sh. Daulat Singh was a big land-owner His surplus area vested in the State of Haryana u/s 12 of the Haryana Ceiling on Land-holding Act, 1972. The Plaintiffs became owners of one half share of land measuring 740 Kanals 17 Marlas by virtue of a Civil Court decree dated 20th January, 1970, and mutation was SANCTIONED in their favour on that basis and they have been in possession of the land decreed since then.

2. S.D.O. (Civil) Exercising Powers of the Prescribed Authority-cum-Allotment Authority. Sirsa, allotted surplus land vide order 10th August. 1976, to the allottees under the provisions of Haryana Utilisation of Surplus & Other Areas Scheme, 1976. This order was challenged by the Plaintiffs inter alia on the grounds that they were not afforded any opportunity of hearing before passing the order and that they were small land-owners and were not in possession of any other land except the one decreed in their favour.

3. The learned Sub Judge who was seized of the case allowed the application filed by the Plaintiffs under Order 39 Rule 1 & 2, Code of Civil Procedure, inter alia holding that they were in possession and that they had become owners of the disputed land on 10th January, 1970, much before the appointed day.

4. The order of the learned Sub Judge was challenged in appeal before the District Judge who accepted the appeal and set aside the order of the learned Sub Judge allowing the application under Order 3 , Rules 1 & 2, Code of Civil Procedure.

5. The order of the learned District Judge dismissing the application under Order 39, Rules 1 & 2, Code of Civil Procedure, has been assailed in the present revision petition.

6. It is well settled that the appellate court is slow in interfering with the discretionary order passed by the trial court. An interference with the discretionary order of the trial court can be made only when the order is perverse or otherwise unjust. There is no evidence on record to suggest that the impugned order allotting surplus land to the allottees as passed after hearing the Respondents or their predecessors-in-interest. No material has been brought on the file to prove that the order declaring surplus area was passed in the presence of the Plaintiffs. The learned Sub Judge, on the basis of the material produced before him, arrived at the following conclusion:

There is no document on the record which might go to show that the possession of the land measuring 183 Kanals 13 Marlas might have been got delivered to the allottees. It is also evident from the documents placed on the record that the Plaintiffs became owners much before the appointed day, i.e., 24th January, 1971. Admittedly, no notice was given to the Plaintiffs before the land was declared surplus. The Plaintiffs have claimed themselves small land-owners and it is not pleaded by the Defendant-State that they might be big land owners.

7. The above finding recorded by the learned Sub Judge was not set aside by the learned appellate court in appeal. The Respondent-State did not bring any material on record to prove on which date the land was declared surplus in the hands of Sh. Daulat Singh and whether any opportunity was afforded to him or the present Petitioners/Plaintiff before allotting the land to the alleged allottees

8. The possession is still with the Plaintiffs. The allottees have not entered into possession. The allotment order was merely a paper transaction, and in this situation the suit could not be rendered bad for non-joinder of necessary parties. Consequently, I set aside the order of the learned District Judge dated 27th March, 1987, and restore that of the learned trial court dated 28th February, 1986, but leaving the parties to bear their own costs.

In view of the peculiar facts of the case, I direct the learned Sub Judge to dispose of the case expeditiously.