

(2011) 09 P&H CK 0143

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3924 of 2008 (O and M)

Shiv Ram alias Seo Ram

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Land Acquisition Act, 1894 — Section 16

Citation : (2011) 09 P&H CK 0143

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—The crux of the facts, culminating in the commencement, relevant for deciding the instant regular second appeal and emanating from the record, is that Shiv Ram son of Kartar Singh Appellant-Plaintiff (for brevity "the Plaintiff") filed the suit for a decree of permanent injunction, restraining the State of Punjab and its Chairman, Punjab Urban Development Authority (in short "PUDA"), Urban Estate, Patiala Respondent-Defendants (for short "the Defendants"), from raising any type of construction and interfering, in any manner, in the peaceful use of passage comprised in khewat/khatoni No. 474/729, khasra Nos. 80/1, (9-16), 80//2 (8-10), khewat/khatoni No. 505/757 khasra No. 135(0-16), situated in the revenue estate of village Shamdo, Tehsil Rajpura, District Patiala, inter-alia pleading that the indicated passage was earmarked by the consolidation authority at the time of consolidation of holdings. It is the only passage to connect the land of owners, including the Plaintiff. It is a short cut passage from village Shamdo to Rajpura, but the Defendants are bent upon to close it by raising construction over it, without any legal right. On the basis of aforesaid allegations, the Plaintiff filed the suit for a decree of permanent injunction against the Defendants, in the manner described hereinbefore.

2. The Defendants contested the suit and filed the written statement, inter-alia raising certain preliminary objections of, maintainability of the suit, limitation, mis-joinder & non-joinder of necessary parties, cause of action and locus standi of the Plaintiff. The case set up by the Defendants, in brief in so far as relevant, was that the passage in question was never earmarked during the course of consolidation proceedings. There is another passage, leading to the land of the owners, including the Plaintiff. It was claimed that the major chunk of land, including the disputed portion, had already been acquired by the State, for setting up an industrial urban estate in the area of village Shamdo, by virtue of award Nos. 184 dated 26.2.1971 and 241 dated 26.3.1972, in view of the provisions of The Land Acquisition Act, 1894 (hereinafter to be referred as "the Act"). After the announcement of the awards, the possession of the land was taken by the State and was delivered to the Estate Officer of the PUDA. They have carved out a scheme known as Rajpura Industrial Urban Estate. It will not be out of place to mention here that the Defendants have stoutly denied all other allegations contained in the plaint and prayed for dismissal of the suit.

3. Controverting the allegations of the written statement and reiterating the pleadings contained in the plaint, the Plaintiff filed the replication. In the wake of pleadings of the parties, the trial Court framed the essential issues for proper adjudication of the case.

4. The parties to the lis, produced on record the oral as well as documentary evidence, in order to substantiate their respective pleaded cases.

5. The trial Court, after taking into consideration the entire evidence on record, dismissed the suit of the Plaintiff, by means of impugned judgment and decree dated 28.11.2005.

6. Aggrieved by the decision of the trial Court, the Plaintiff filed the appeal, which was dismissed as well, by the Ist Appellate Court, by way of impugned judgment and decree dated 25.7.2008.

7. The Appellant-Plaintiff still did not feel satisfied with the impugned judgments and the decrees of the Courts below and preferred the present regular second appeal.

8. After hearing the learned Counsel for the parties, going through the record with their valuable help and after deep consideration over the entire matter, to my mind, there is no merit in the instant appeal in this context.

9. Ex facie, the argument of the learned Counsel that the passage in dispute was earmarked by the consolidation authority and since there is no other passage, leading to the land of the Plaintiff, so the Courts below committed a mistake in dismissing his suit, lacks merit.

10. As is evident from the record that Plaintiff filed the suit for permanent injunction only on the ground that he is using the passage in question since the time of consolidation proceedings and there is no other short cut passage from

village Shamdo to Rajpura. On the contrary, the Defendants claimed that the disputed passage was not earmarked by the consolidation department. There is another passage connecting the land of owners, including the Plaintiff. Moreover, a big chunk of land, including the portion in dispute, was acquired by the State of Punjab, by virtue of award Nos. 184 dated 26.2.1971 and 241 dated 26.3.1972, for the development of Rajpura Industrial Urban Estate. The possession had already been taken and was further delivered to the Estate Officer, PUDA, which has carved out a scheme of Rajpura Industrial Urban Estate.

11. Therefore, once the disputed land has already been acquired, as back as in 1971-1972 and after the announcement of the awards, the possession had already been taken by the State & was further delivered and the PUDA has carved out Rajpura Industrial Urban Estate Scheme. In that eventuality, the land, including the portion in question, stood vested absolutely in the Government free from all encumbrances, as contemplated u/s 16 of the Act and the Defendants are well within their right to use the land for the purpose, for which, it was acquired. Therefore, neither the Plaintiff has any locus standi to file the suit nor the Civil Court has any jurisdiction to entertain any question in respect of acquired land in this relevant connection.

12. Sequelly, the Courts below have rightly negated the claim of the Plaintiff in this relevant connection. Such impugned judgments containing valid reasons cannot possibly be set aside by this Court, while exercising the powers conferred u/s 100 Code of Civil Procedure, unless and until, the same are illegal and perverse. As no such patent illegality or legal infirmity has been pointed out by the learned Counsel for the Appellant-Plaintiff, therefore, the impugned judgments and decrees deserve to be and are hereby maintained, in the obtaining circumstances of the case.

13. No other meaningful argument has been raised by the learned Counsel for the Appellant-Plaintiff to assail the findings in the impugned judgments. All other arguments, relatable to the appreciation of evidence, now sought to be urged on his behalf, in this relevant direction, have already been duly considered and dealt with by the Courts below.

14. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

15. In the light of aforementioned reasons, as there is no merit, therefore, the instant appeal is hereby dismissed as such.