(2004) 09 P&H CK 0078

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4798 of 2001

Smt. Misro and Others APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 20-09-2004

Acts Referred:
Haryana Ceiling on Land Holdings Act, 1972 — Section 12, 18

Citation : (2004) 138 PLR 801 : (2005) 1 RCR(Civil) 365

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Narender Hooda, for the Appellant; Mamta Singhal Talwar, A.A.G. for Respondent No. 1 and Tara Chand, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The plaintiff is in second appeal aggrieved against the judgment and decree passed by the first Appellate Court wherein the suit for declaration challenging the orders dated 5.8.1996 and 23.10.1996 passed by the Collector Agraian and the order dated 31.8.1996 by the Assistant Collector as illegal null and void was dismissed in appeal by the first Appellate Court holding that the jurisdiction of the Civil Court is barred.

2. The plaintiff-appellant has purchased the land in dispute vide sale deed dated 27.4.1959 from Ganga Sahai and Bhim Singh after 30.7.1958 i.e. the appointed day under the Punjab Security of Land Tenures, Act, 1953, (hereinafter referred to as ''the Act'') for determination of the surplus land of the big land owners. It was the case of the plaintiff that though the sale deed was registered on 27.4.1959 but it was in pursuance of an agreement of sale dated 19.5.1958. Therefore, on registration, the sale deed will relate back to the date of agreement of sale and thus the sale in favour of the plaintiff was before the appointed day under the Act.

3. It was the stand of the defendant before the trial court that the land was

declared surplus under the Act vide order dated 21.2.1959 and thus, the land vested in the State Government w.e.f. 24.1.1971 on the commencement of Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as the Haryana Act). The learned trial court framed a preliminary issue regarding the jurisdiction of the Civil Court. While returning finding on the said issue it was held that the sale deed having been registered on 27.4.1959, it will relate back to the date of agreement of sale, therefore, the sale effected before 30.7.1958 is valid and protected. Since the land does not vest with the State Government, therefore, the jurisdiction of the Civil Court is not barred as contemplated u/s 26 of the Haryana Act.

4. The said order was challenged by the defendant before the first Appellate Court. The first Appellate Court accepted the appeal of the defendant on the ground that the land vests with the State Government by operation of law and therefore, the jurisdiction of the Civil Court is barred. Reliance was placed on a Supreme Court judgment reported as Azad Singh and Ors. v. Dharampal and Ors. 1998 (3) L J R 603. The first Appellate Court also dealt with an objection raised by the plaintiff that the appeal against an order deciding the preliminary issue is not maintainable as the said order could be challenged only by way of a revision petition. The first Appellate Court held that since the jurisdiction of the Civil Court is barred, therefore, even if decree is passed by the Court is nullity and void and that the plaintiff has availed the remedy of appeal under the Haryana Act which was dismissed on 29.4.1999 during the pendency of civil suit; hence the finding of the trial court was set aside and the suit dismissed.

5. Before this Court, the learned counsel for the appellant has vehemently argued that the order passed by the learned trial court while deciding preliminary issue does not amount to decree which alone would make the appeal maintainable before the First Appellate Court. Since the order deciding the preliminary issue is not a decree, the said order could not be challenged by way of appeal before the first Appellate Court. The only remedy was to challenge the same before this Court by way of revision petition. When the matter came up for hearing before this Court on 2.9.2004, notice was issued to the appellant to show cause as to why the order passed by the learned trial Court deciding preliminary issue in his favour be not set aside. Such show cause notice was issued in suo motu exercise of revisional jurisdiction against the order passed by the learned trial court holding that the civil court will have the jurisdiction to entertain and try the suit. The order reads as under:-

"Learned counsel for the appellant has raised the argument that the appeal before the learned first Appellate Court was not maintainable as the order passed by the learned trial court on issue No. 6 treated as a preliminary issue would not amount to a decree which is challenged in appeal before the learned first Appellate Court.

The contention of the appellant is meritorious. However, notice is issued to the appellant to show cause as to why the order passed by the learned trial court deciding the preliminary issue in his favour to the effect that the civil Court has jurisdiction, be not set aside.

Learned counsel for the appellant seeks time to argue the matter. Adjourned to 14.9.2004".

6. Today the learned counsel for the appellant has vehemently argued that the Civil Court will have the jurisdiction to entertain and try the present suit as the surplus area was determined without issuing any show cause notice to the plaintiff who was a necessary party. Since notice to the necessary party was not given, therefore, declaration of surplus area will not affect the rights of the plaintiff. Reliance was placed upon a Full Bench judgment of this Court reported as State of Haryana v. Vinod Kumar (1986) 89 P.L.R. 222 (F.B.)

7. I am unable to agree with the a argument raised by the learned counsel for the appellant. The argument that the registration of sale deed relate back to the date of agreement is not available to the plaintiff in the present case. By virtue of the provisions of the Act, all sales after 30.7.1958 are to be ignored. The date of sale contemplated under the Act is made on which, the sale deed is registered though between the vendor and vendee, the date of sale may be the date of agreement of sale but so far as the rights of the third person such as the State Government is concrned it is the date on which the sale deed is executed which is relevant. Therefore, the provisions of the statute cannot be defeated by virtue of a transaction between vendor and vendee so as to take the land of the big land owner out of surplus pool. By virtue of Section 8 & 12 of the Haryana Act, the land vests with the State w.e.f. the appointed day i.e. 24.1.1971. Mere fact that it was not utilised and remained in possession of the Quondam landlord after the commencement of Haryana Act is inconsequential. It has been so held by the Supreme Court in Smt. Bhagwanti Devi and Another Vs. State of Haryana and Another, , wherein it was held to the following effect:

"No doubt under 1953 Act, there is no specific provision which provided for vesting of the surplus lands, declared thereunder. The Collector had power to take possession of the surplus lands and utilise them under East Punjab Urban Area Utilisation of Lands Act, 1949, by their allotment to the tenants for cultivation. But for ''he exemption granted under Rule 8 of the Rules, the appellants had no right to remain in possession. Having got the benefit of Rule 8 and remained in possession of the surplus land and utilised the same for the surplus cultivation in a modern farm, it is not open to appellants to contend that the land having remained unutilised and continued to be in their possession and enjoyment, Section 12 (3) does not divest them their title. The language of section 12(3) is unequivocal and clear. According to it the surplus lands declared under the Act stand vested in the state. Even otherwise the non-utilisation of surplus land till date of vesting i.e. on December 23, 1972 is not material. The object of the Act and Section 12(3) of 1972 Act was redistribution of surplus land among the landless ryots and agricultural labour and to confer title on them. The Act enabled the owner of the surplus land to recover rent from the lessee and enjoy the income till date of vesting and no more."

8. In view of the above, it is apparent that the land vested with the State Government with the commencement of the Haryana Act as the purchase by the appellant is ineffective qua the rights of the State Government, the bar contained in Section 26 of the Haryana Act would come into operation and thus the civil suit is not maintainable. Therefore, the order passed by the learned trial court on 21.12.2000 is set aside dismissing the suit filed by the plaintiff. Consequential, the present appeal is also dismissed.