
(2018) 03 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal . No. 30 of 2008

Smt. Omwati

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 06-03-2018

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 19, 19(2)
(b), 36, 46?</l>Code Of Civil Procedure, 1908 — Section , 15180

Citation : (2018) 03 P&H CK 0051

Hon'ble Judges : SHAM SUNDER, J

Bench : Single Bench

Advocate : Ashwani Chopra, Aashish Chopra, Sandeep Mann

Final Decision : Dismissed

Judgement

1. This appeal, is directed against the judgement and decree dated 22.09.07, rendered by the Court of Additional District Judge, Gurgaon, vide which, it

accepted the appeal, against the judgement and decree dated 03.05.07, rendered by the Court of Civil Judge (Junior Division), Gurgaon, and dismissed

the suit of the For Subsequent orders see RSA-230-2003 plaintiff (now appellant).

2. The facts, in brief, are that, the plaintiff claimed, herself to be the owner, in possession of 2/5 share of the land, in dispute, which she purchased,

from Ashok Kumar, vide sale deed dated 21.04.89, for a sale consideration of Rs. 1 lac. It was stated that, mutation was sanctioned, in her favour, on

06.06.90. It was further stated that the land, in dispute, was an evacuee property. It was further stated that one Khem Chand, purchased the land, in

dispute, in public auction, held by Tehsildar (Custodian), on 30.06.81, and the possession thereof, was delivered to him, on 12.09.81. It was further

stated that, sale certificate, in respect of the land, in dispute, was also issued, in

favour of Khem Chand, on 02.08.83. It was further stated that Khem Chand, sold 3/5 share of the land, in dispute, in favour of Chandgi Ram, vide sale deed dated 16.08.88, for a consideration of Rs. 1,25,000/-. It was further stated that Khem Chand, also sold 2/5 share of the land, in dispute, in favour of Ashok Kumar, vide sale deed dated 16.08.88, who further sold the same, in favour of the plaintiff. It was further stated that, the plaintiff, being the owner, to the extent of 2/5 share, in the land, in dispute, her name, had been duly incorporated, in the jamabandi. It was further stated that, the Joint Secretary-cum-Settlement Commissioner, Haryana, Chandigarh, cancelled the auction, in favour of Khem Chand, vide order dated 06.06.94. It was further stated that the aforesaid order, was illegal, as no opportunity of being heard, was afforded to the plaintiff, who was the bonafide purchaser of For Subsequent orders see RSA-230-2003 the land, in dispute, for a valuable consideration. Even no notice to Khem Chand and Ashok Kumar was given. It was further stated that the plaintiff, purchased the land, in dispute, from her vendor, after making due inquiries, and, as such, the same, could not be re-auctioned. It was further stated that the Collector or Tehsildar (Sales), were not authorized, to utilize the land, in dispute, or to alienate the same, to any other person, and, as such, they had no right to take possession of the same, from the plaintiff. It was further stated that the plaintiff, had no knowledge about the order dated 06.06.94, and she only came to know about the same, in the third week of July, 1997, when the Evacuee Department, tried to forcibly dispossess her, from the land, in dispute. The defendants, were many a time, asked to treat the order impugned, as illegal, and refrain from interfering, into the peaceful possession of the plaintiff, over the land, in dispute, but to no avail. Ultimately, a suit for declaration and permanent injunction, was filed.

3. The defendants, put in appearance, and filed written statement, wherein, they took up various objections, and contested the suit. It was pleaded that the land, in dispute, being evacuee property, the Civil Court, had no jurisdiction, to try the suit, by virtue of Sections 36 and 46 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and Administration of Evacuee Property Act, 1950. It was further pleaded that the suit, was liable to be dismissed, for non-compliance of the provisions of Section 80 of the Code of Civil

For Subsequent orders see RSA-230-2003 Procedure. It was further pleaded that the plaintiff, had no locus-standi to file the suit. It was further pleaded that the plaintiff, had filed a Civil Writ Petition No. 13480 of 1994, which was pending, in the Court, and, as such, the suit, was not maintainable. It was stated that, as per jamabandi, for the year 1990-91, land measuring 40 kanals, situated in village Harsaru, was recorded, in the name of the plaintiff, to the extent of 2/5 share, and, M/s Bhasin International Pvt. Ltd., to the extent of 3/5 share, in the column of ownership. It was further stated that, in the said jamabandi, Chandgi, was recorded, as 'Gair Marusi', in the column of cultivation, and, in the remarks of column thereof, it was mentioned, that the land, in dispute, had become the ownership of Arazi Maturka, vide order dated 06.06.94, passed by the Chief Settlement Commissioner. It was admitted that the land, in dispute, was sold, in restricted auction, on 30.03.81, in favour of Khem Chand, for a consideration of Rs. 17,000/-, and the sale, was confirmed, by the Additional Settlement Officer, on 13.06.81. It was further stated that, after confirmation of the sale, physical possession of the land, in dispute, was delivered, to the auction purchaser. After recovering the entire price, the sale certificate, was issued, in his favour, on 02.08.83. It was further stated that the land, in dispute, was further sold by the auction purchaser, to Chandgi Ram, to the extent of 3/5 share, and Ashok Kumar, to the extent of 2/5 share. It was further stated that Ashok Kumar, further sold the land, in dispute, to the extent of 2/5 share, in favour of the plaintiff, for a consideration of Rs. 1 lac, but, For Subsequent orders see RSA-230-2003 later on, the Joint Secretary (Rehabilitation)-cum-Settlement Commissioner, set aside the sale, in favour of the auction purchaser, vide order dated 06.06.94. It was further stated that the entry, in this regard, was incorporated, in the column of remarks of the jamabandi, for the year 1990-91. It was further stated that before passing the order impugned, the auction purchaser and the subsequent purchasers, were summoned, through registered notices, but, nobody turned up. It was further stated that, thereafter, proclamation for appearance of the auction purchaser and the subsequent purchasers, was made, in the village, and, in this regard, report was entered, in the roznamcha of the Patwari Halqa. It was further stated that, when nobody put in appearance, despite proclamation, the sale, in favour of Khem Chand, was cancelled. It was further stated

that, as per the conditions, laid down, in the sale certificate, the auction purchaser, could not re-sell, transfer or mortgage, the land, in dispute, to any person, till the expiry of 10 years, from the date of purchase thereof. It was further stated that Khem Chand sold the land before the expiry of the period of 10 years. It was further stated that the plaintiff, was not the bonafide purchaser of the land, in dispute. It was further stated that the aforesaid fact, was concealed, by the plaintiff. It was further stated that the order dated 06.06.94, passed by the Joint Secretary-cum-Settlement Commissioner, was legal and valid, and, the plaintiff, had no right, title or interest, in the suit land. The remaining averments, were denied, being wrong.

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4. On the pleadings of the parties, the following issues were struck:-

- (i) Whether the plaintiff is owner in possession of 2/5th share in land fully mentioned in para No. 1 of the plaint and order of Settlement Commissioner dated 06.06.94, cancelling the auction proceedings, in favour of Khem Chand and sale deed of plaintiff and her vendor and declaring the suit property as evacuee property is illegal, null and void? OPP
- (ii) Whether the plaintiff is entitled to relief of perpetual injunction? OPP
- (iii) Whether this Court has no jurisdiction to try the suit? OPD
- (iv) Whether the plaintiff has not exhausted remedy available to her before filing the suit? OPD
- (v) Whether the suit is bad for want of service of notice under Section 80 of the Code of Civil Procedure, upon the defendants? OPD
- (vi) Whether the present suit is not maintainable in the present form? OPD
- (vii) Whether the plaintiff has no locus standi to file the present suit? OPD
- (viii) Relief.

5. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court, decreed the suit of the plaintiff.

6. Feeling aggrieved, an appeal, was preferred by the defendants/respondents, which was accepted, by the Court of Additional District Judge,

Gurgaon, vide judgement and decree dated

For Subsequent orders see RSA-230-2003 22.09.07.

7. Feeling dissatisfied, the instant Regular Second Appeal, has been filed by the plaintiff/appellant.

8. I have heard the Counsel for the parties, and have gone through the evidence and record of the case, carefully.

9. The following substantial questions of law arise, in this appeal, for the determination of this Court:-

(i) Whether the first Appellate Court, on account of misreading and misappreciation of evidence, and law, on the point, recorded perverse findings, that

the order dated 06.06.94, cancelling the allotment, in favour of Khem Chand, was legal and valid?

(ii) Whether the first Appellate Court, recorded perverse findings, on account of misreading and misappreciation of evidence, and law, on the point,

that Omwati, plaintiff/appellant, was not a bonafide purchaser for valuable consideration, in good faith, and without notice of any defect, in the title of

her vendor Ashok Kumar?

(iii) Whether the first Appellate Court, recorded perverse findings, on account of misreading and misappreciation of evidence that, on account of

suppression of material facts, by the plaintiff/appellant, she was not entitled to any relief, and, as such, her claim, was liable to be dismissed?

10. The Counsel for the appellant, submitted that the land, in dispute, was auctioned, in favour of Khem Chand. He further submitted that Khem

Chand, sold the land, in dispute, in favour of Ashok Kumar.

He further submitted that Ashok Kumar, sold the land, in dispute, in For Subsequent orders see RSA-230-2003 favour of the plaintiff/appellant. He

further submitted that the sale, in favour of Ashok Kumar, and the plaintiff/appellant, was much prior, to the date of cancellation of the

auction/allotment, in favour of Khem Chand, on 06.06.94. He further submitted that, no notice, before cancellation of the auction/allotment, in favour

of Khem Chand, was either issued, to him, or to Ashok Kumar, or, to the plaintiff/appellant, and, as such, they were condemned unheard. He further

submitted that the cancellation order, thus, being violative of the principles of natural justice, and, was liable to be set aside. He further submitted that

the first Appellate Court, was wrong, in holding that, there was proper service of notice upon Khem Chand, and the subsequent vendees, and, as such,

the order of cancellation, was legal and valid. He further submitted that the plaintiff/appellant, was the bonafide purchaser for valuable consideration,

in good faith, and without notice of any defect, in the title of Khem Chand, in the property, in dispute. He further submitted that, there was no concealment of material facts, by the plaintiff, at the time of filing the suit. He further submitted that the earlier Writ Petition, which was filed, was dismissed as withdrawn, qua the appellant. He further submitted that the mere fact, that the suit, was pending, at that time, did not, in any way, mean that, the Writ Petition, could not be filed or that there was suppression of material facts. He further submitted that the first Appellate Court, on account of misreading and misappreciation of evidence, and law, on the point, wrongly reversed the judgement and decree of the trial Court. He For Subsequent orders see RSA-230-2003 further submitted that the judgement and decree of the first Appellate Court, being illegal, are liable to be set aside.

11. On the other hand, the Counsel for the respondents, submitted that the first Appellate Court, was right, in coming to the conclusion, that Khem Chand, purchased the property, in an auction, and there was a condition, in the sale certificate, that he could not sell the same, within 10 years, from the date of execution of the sale certificate, but, he violated that condition, as a result whereof, the auction/allotment, in his favour, was cancelled, vide order dated

6. 06.94, after giving due notice, to him, and the subsequent vendees. He further submitted that, as such, Khem Chand, and the subsequent vendees, were not condemned unheard. He further submitted that the plaintiff/appellant, could not be said to be the bonafide purchaser, as she did not see the title deed of her vendor, or of Khem Chand, so as to ascertain, as to what were the terms and conditions contained therein. He further submitted that, even the first Appellate Court, was right, in holding, that there was concealment of material facts. He further submitted that the judgement and decree of the first Appellate Court, being legal and valid, are liable to be upheld.

12. After giving my thoughtful consideration, to the rival contentions, advanced by the Counsel for the parties, in my considered opinion, the appeal is liable to be accepted, for the reasons to be recorded, hereinafter. It is, no doubt, true that this Court, in the Regular Second Appeal, cannot interfere with the findings of fact, recorded by

For Subsequent orders see RSA-230-2003 the first Appellate Court, until and

unless, it comes to the conclusion, that the same, are the result of misreading or misappreciation of evidence, and law, on the point. In the instant case, as would be depicted hereinafter, there was complete misreading

and misappreciation of evidence, and law, on the point, and, as such, the findings of the first Appellate Court, are not sustainable, in the eye of law.

Admittedly, the land, in dispute, was auctioned, in favour of Khem Chand, way back, in the year 1981. The said auction/allotment, was cancelled, by

the defendants/respondents, on the ground, that Khem Chand, in violation of the terms and conditions of the sale certificate, sold the same, in favour of

Ashok Kumar, who further sold the same, in favour of Omwati, plaintiff/appellant. No doubt, the sale, was made, by Khem Chand, within 10 years of

the said auction and the issuance of the sale certificate. But, by the time, the cancellation, had been made, Khem Chand, had already sold the land, in

favour of Ashok Kumar. Ashok Kumar had further sold the same, in favour of the plaintiff/appellant. Under these circumstances, it was imperative,

on the part of the defendants/respondents, to issue show cause notice, to Khem Chand, as also to the subsequent vendees, as to why, the

auction/allotment, and the subsequent sale, be not cancelled. Only after affording an opportunity of hearing, to them, such an order of cancellation,

could be made. It is settled principle of law, that no body, can be condemned unheard. The provisions of Section 19 of the Displaced Persons

(Compensation & Rehabilitation) Act, 1954

For Subsequent orders see RSA-230-2003 (hereinafter to be called as the 'Act' only), read, as under:-

â??Power to vary or cancel lease or allotment of any property acquired under this Act â?" (1) Notwithstanding anything contained in any contract or

any other law for the time being in force but subject to any rules that may be made under this Act, the managing officer or managing corporation may

cancel any allotment or terminate any lease or amend the terms of any lease or allotment under which any evacuee property acquired under this Act

is held or occupied by a person, whether such allotment or lease was granted before or after the commencement of this Act.

(2) Where any person -

(a) has ceased to be entitled to the possession of any evacuee property by reason of any action taken under sub-section (1), or

(b) is otherwise in unauthorized possession of any evacuee property or any other immovable property forming part of the compensation pool, he shall

after he has been given a reasonable opportunity of showing cause against his eviction from such property surrender possession of the property on

demand being made i this behalf by the managing officer or managing corporation or by any other person duly authorized by such officer or corporation.

(3) If any person fails to surrender possession of any property on demand made under sub-section (2), the managing officer or managing corporation

may notwithstanding anything to the contrary contained in any other law for the time being in force, eject such person and take possession of such

property and may for such purchase' use or cause to be used such force as may be necessary.

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(4) Where a managing officer or a managing corporation is satisfied that any person, whether by way of allotment or lease, is, or has at any time been,

in possession of any evacuee property acquired under this Act to which he was not entitled, or which was in excess of that to which he was entitled,

under the law, under which such allotment or lease was made or granted, then, without prejudice to any other action which may be taken against that

person, the managing officer or the managing corporation may, having regard to such principles of assessment or rent as may be specified in this

behalf by the Central Government by order, assess the rent payable in respect of such property and that person shall be liable to pay the rent so

assessed for the period for which the property remain or has remained in his possession.

provided that no such order shall be made without giving to the person concerned a reasonable opportunity of being heard.

Where any person is or has at any time been, in unauthorized possession of any evacuee property acquired under this Act, the managing officer or the

managing corporation may, having regard to such principles of assessment of damages as may be specified in this behalf by the Central Government,

assess the damages on account of the use and occupation of such property and may by order, require that person to pay the damages within such time

and in such installments as may be specified in the order:

Provided that no such order shall be made without giving to the concerned a reasonable opportunity of being heard.â??

13. The provisions of Section 19 of the Act, no doubt, vests the power with the Managing Officer or Managing Corporation, to cancel

For Subsequent orders see RSA-230-2003 any allotment or terminate any lease or amend the terms of any lease or allotment, under which, any

evacuee property acquired under this Act, is held or occupied by a person, whether such allotment or lease, was granted before or after the

commencement of this Act. Section 19(2)(b) of the Act, clearly provides, that such a cancellation, could be made only after affording a reasonable

opportunity of showing cause, against the cancellation of allotment. No doubt, the first Appellate Court, held that, notice was duly sent, to the affected

parties, before cancellation of the sale/allotment. It merely relied upon DW1/12 and DW1/13, photocopies of the notices, which were allegedly sent to

Khem Chand, Smt. Omwati, and Ashok Kumar, and munadi, which was made, at the place, where the land, is situated. It may be stated here, that

these documents, were not duly proved, in accordance with the provisions of law. Devi Dayal Ratra, Naib Tehsildar (Sales), Gurgaon, appeared, as

DW1. He tendered his affidavit DA, alongwith both these documents. He did not state even a single word, in his affidavit, as to whose signatures,

these documents bore, and, who was the Patwari, who allegedly made Munadi. Mere placing the documents, on record, or exhibiting the same, did not

prove the execution thereof. These documents, when produced, were objected to, by the opposite Counsel. Even then, no steps, were taken, by the

defendants, to examine the Chowkidar, who allegedly made Munadi, the Patwari, who was sent, to allegedly get the Munadi made or the persons,

through whom, the notices were allegedly sent. Since these documents, were

For Subsequent orders see RSA-230-2003 not proved, in accordance with the provisions of law, it could not be said, that the notices, were sent, to the

aggrieved persons, before the cancellation of allotment/auction, in favour of Khem Chand. The first Appellate Court, was, thus, wrong in holding to the

contrary. The findings of the first Appellate Court, to the effect, that Khem Chand, Ashok Kumar, and Omwati, plaintiff/appellant, were duly issued

notices, before the cancellation of auction/allotment, being illegal, are set aside.

14. The next question, that arises for consideration, is, as to whether, Omwati,

was the bonafide purchaser of the land, in dispute, from Ashok Kumar.

Omwati, purchased the property, in dispute, vide sale deed, dated 01.04.89. P2, is the sale deed dated 16.08.88, which was executed, by Khem Chand, in favour of Chandgi Ram and Ashok Kumar, in respect of the property, in dispute. P4, is the mutation, which clearly shows, that 3/5 share of the property, in dispute, was sold, in favour of Chandgi Ram, and 2/5 share of the property, in dispute, was sold, in favour of Ashok Kumar. The sale deed of Ashok Kumar her vendor was seen, by Omwati, before the purchase of the property, in dispute, from him. He was also in possession of the property, in dispute, as per the revenue record. Since, according to the sale deed P2, Ashok Kumar, was the owner, to the extent of 2/5 share, it could not be said, that Omwati, did not make bonafide inquiries, before purchasing the property, in dispute. There was no condition, mentioned in the revenue record, that Khem Chand, could not sell the property, in

For Subsequent orders see RSA-230-2003 dispute, for a period of 10 years, from the date of execution of auction or the issuance of sale certificate, in his favour. A prudent person, could only inspect the revenue record, and also the title deed of her vendor. After inspecting the title deed of her vendor and the revenue record, if such a person, comes to the conclusion, that the property, was free from all encumbrances, and his/her vendor, was the owner thereof, then it could be said, that the vendee made bonafide inquiries, before the purchase of the property, in dispute. The first Appellate Court, was, thus, wrong in coming to the conclusion, that the plaintiff/appellant, was not the bonafide purchaser, for a valuable consideration, in good faith, and without any notice of defect, in the title of Khem Chand and Ashok Kumar. The findings of the first Appellate Court, in this regard, being perverse, are set aside.

15. The next question, that arises for consideration, is, as to whether, there was suppression of material facts, and, as such, the plaintiff/appellant, was not entitled to the relief prayed for, it may be stated here, that only photocopy of the order dated 27.02.06, in Civil Writ Petition No. 13480 of 1994 with a copy of the notice, without signatures, was placed, on the record. The notice, was issued, to the State of Haryana, through the Joint Secretary.

There is nothing, on the record, as to who were the petitioners, in that Writ Petition. That Writ Petition, on the basis of an application, moved under

Order 23 Rule 1, read with Section 151 of the Code of Civil Procedure, was dismissed as withdrawn, vide order dated 27.02.06. The complete copy of the Writ

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Petition, was not placed, on the record, to come to the conclusion, as to what relief, was sought, by Omwati, therein, if, she was a party to the same.

Even copy of the written statement, filed, in that Writ Petition, was not produced, on the record. On the basis of copy of the order dated 27.02.06, it

could not be said, that there was suppression of material facts. If, it is assumed, that the Writ Petition, was filed, by the plaintiff/appellant, in respect of

the suit property, and, during the pendency thereof, the suit, was filed, it could not be said, that there was suppression of a material fact. It is not that

non-mentioning of each and every fact, with regard to the previous litigation, in the suit, would dis-entitle a litigant to the relief, prayed for, on the

ground of suppression of material facts. The findings of the first Appellate Court, on the basis of inchoate material, placed on record, that the

plaintiff/appellant, suppressed the material facts, while filing the suit, and, as such, was not entitled to any relief, being perverse, are set aside.

16. The substantial questions of law, are answered, in the manner, depicted above.

17. For the reasons recorded above, the appeal, is accepted, with costs. The judgement and decree of the first Appellate Court, are set aside. The suit

of the plaintiff, shall stand decreed.