
(2009) 03 P&H CK 0174

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3674 of 2007

State of Haryana Etc.

APPELLANT

Vs

Avtar Singh

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 117

Citation : (2010) 5 RCR(Civil) 221

Hon'ble Judges : Rakesh Kumar Garg, J

Judgement

Rakesh Kumar Garg, J.

1 This is "defendants" second appeal challenging the judgment and decrees of the Courts below whereby suit of the plaintiff respondent has been decreed as owner in possession of the suit property and the defendants have been restrained from interfering in the possession of the plaintiff and have also restrained them from dispossessing the plaintiff from the suit property.

2 As per the averments made in the plaint, the house in question was transferred by the Government of India vide office letter dated 30.6.1958 for a sum of Rs. 214/ to the plaintiffrespondent. It is the case of the plaintiffrespondent that he made the requisite payment. Rather an excess amount of Rs. 46/ was paid by him. It was further claimed that even after the payment of the entire sale consideration, the sale certificate was not issued. Eventually, an application dated 4.3.1994 was made by the plaintiff to the Tehsildar (Sales) Ambala for allotment of the title deed of the suit property but no action was taken on the said application. Another application dated 11.3.1994 was forwarded to the Settlement Officer (Records) Jaisalmer House, New Delhi but to no effect. It was further stated that in the month of December, 2001, notice dated 19.12.2001 was issued by the appellant defendant No. 3 to the plaintiff for purchasing the suit property on Government rate. The plaintiff approached defendant No. 3 who gave him a letter dated 31.1.2002 to the effect that the allotment of the suit

property in his favour had been cancelled vide order dated 11.4.1969. It was further alleged that the said order was passed in a very casual manner without any enquiry from the record whether the amount of sale consideration was paid or not. It was further stated that the plaintiff filed an application before the D.R.O.cum Settlement Officer (Sales) Yamuna Nagar which was dismissed vide order dated 19.12.2002 on the ground that order dated 11.4.1969 was passed long time back. It was alleged in the suit that the plaintiff was owner and in actual physical possession of the suit property which was purchased by him for a valuable sale consideration and the defendants had no right, title or authority to dispossess him from the suit property and the impugned orders dated 11.4.1969 and 19.12.2002 were illegal, null and void. The plaintiff requested the defendants to acknowledge him as an absolute owner in possession of the suit land and to desist from their illegal activities but to no avail. Hence, the suit.

3 Upon notice, the defendants appeared but failed to file any written statement and resultantly, the defence of the defendants was struck off vide order dated 17.4.2003. An application for recalling of the said order was dismissed on 21.2.2006. The parties were granted equitable number of opportunities to bring on record all the evidence within their knowledge by the trial Court. The claim of the plaintiffrespondent found favour with the trial Judge, who decreed the suit.

4 The appeal filed by defendants No. 2 and 3 challenging the judgment and decree of the trial Court was also dismissed by the District Judge, Yamuna Nagar, vide impugned judgment and decree dated 19.4.2007. While dismissing the appeal, the Lower Appellate Court recorded a finding of fact that Avtar Singh had deposited the amount as stipulated and had become owner of the property on the day on which he deposited the fifth instalment in the year 1962 by virtue of the terms and conditions of the allotment order (Ex.P1). It was also recorded that the impugned order dated 11.4.1969 passed by the Managing Officer (P), Jalandhar was arbitrary, illegal and not binding on the rights of the plaintiff as no notice was served upon the allottee before arriving at the conclusion that the outstanding instalments have not been paid and therefore, the said order was non est which could always be ignored.

5 Still not satisfied, the defendants have filed this appeal in this Court challenging the judgment and decrees of the Courts below.

6 Learned counsel for the appellants has vehemently argued that jurisdiction of the Civil Court is barred under Section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and therefore, the suit was not maintainable and thus, liable to be dismissed.

7 However, on the other hand, learned counsel for the respondent has vehemently argued that firstly, no such plea was taken by the appellants in the Courts below with regard to the jurisdiction of the Civil Court and moreover, the order was passed in violation of the principles of natural justice and the same could be challenged by way of a Civil Suit and it cannot be held that the

jurisdiction in the present case was barred.

8 I have heard learned counsel for the parties.

9 The contentions raised by the learned counsel for the appellants are misconceived. In the case of *State of Punjab v. Chhaju Singh*, 1986 RRR 208, on the similar facts, it was held that where allotment is cancelled without complying the principles of natural justice i.e. without giving notice and is in violation of the express provisions of Rule 117 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, the same can be challenged by way of suit in the Civil Court. The Hon"ble Supreme Court of India in the case of *Bachhaj Nahar v. Nilima Mandal and another*, 2009(1) RCR(Civil) 855:2009(1) RAJ 574 : JT 2008(13) SC 255 has authoritatively laid down that the question of law or facts which was not before the Courts below cannot be raised for the first time in the regular second appeal. There is no dispute to the fact that the question of jurisdiction was not raised by the appellants before the Courts below.

10 For the reasons recorded above, I find no merit int his appeal.

No substantial question of law arises.

Dismissed.