

(2008) 07 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1780 of 1987

State of Punjab

APPELLANT

Vs

Partap Singh

RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:

Citation : (2009) 5 RCR(Civil) 159

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Advocate : Mr. Mehardeep Singh, Assistant Advocate General Punjab. Mr. Anish Setia, Advocate., Advocates for appearing Parties

Judgement

Kanwaljit Singh Ahluwalia, J.—This order shall dispose off RSA No. 1780 of 1987 filed by State of Punjab against the judgment and decree passed by learned Additional District Judge, Jalandhar, whereby the suit for permanent injunction restraining the defendants from auctioning/ selling the land and from dispossessing the plaintiff forcibly, was decreed in its entirety. This judgment shall also dispose off RSA No. 1582 of 1986 preferred by State against the judgment and decree passed by Additional District Judge on 28.02.1984, whereby suit filed by one Ajit Singh (transferee) from plaintiff Partap Singh in RSA No. 1780 of 1987 on the basis of agreement to sell dated 08.06.1981 was decreed. Similarly, RSA No. 765 of 1988 and RSA No. 1551 of 1994 arise out of the suit for injunction on the basis of agreement to sell allegedly executed by Partap Singh in favour of the plaintiff in the aforesaid cases.

2. After hearing learned counsel for the parties, following substantial questions of law were formulated :

1. Whether the defendants can be permitted to lead additional evidence in second appeal ?

2. Whether the plaintiff can seek injunction in respect of auction of the land in dispute in the face of the order dated 20.08.1974 and 18.12.1981 ?

3. Whether the plaintiff Partap Singh or his prospective vendees are entitled to

injunction on the basis of conveyance deed dated 15.04.1981.

3. Brief facts, out of which the aforesaid appeals arise, are that on 16.05.1969, the land in dispute was ordered to be transferred in favour of one Partap Singh on the basis of his being in possession of the evacuee property and being a displaced person from the area now forming part of Pakistan. However, the said allotment of the land was in dispute. The said allotment was cancelled on 20th August, 1974 on the basis of suomotu reference initiated by Settlement Officer (Sales) vide his note dated 18.02.1971. Even though, the said order was passed, but a conveyance deed of the aforesaid land was executed in favour of plaintiff Partap Singh on 15.04.1981. Even though, the allotment was cancelled, still an order was passed by Additional Settlement Officer cum Settlement Commissioner dated 30th January, 1981 and by Assistant Settlement Officer cum Managing Officer on 09.03.1981 for execution of conveyance deed in favour of plaintiff Partap Singh and on the basis of said orders, the conveyance deed was executed on 15.04.1981.

4. After the conveyance deed was executed, another order was passed on 17.12.1981 by Chief Settlement Commissioner, Jalandhar in the presence of counsel for the plaintiff Partap Singh, whereby the order dated 30.01.1981, 09.03.1981 and conveyance deed dated 15th April, 1981 were set aside and it was ordered that the possession of the land should be taken from the respondent i.e. Partap Singh forthwith and the same should be disposed off in accordance with rules.

5. The present suit for permanent injunction was filed on 16th July, 1982 without disclosing the factum of the earlier order dated 17.12.1981 or that of 20.08.1974. It was alleged that the land has been allotted to plaintiff on 16th May, 1969 and Rs. 14,800/ as price has been deposited, therefore, the plaintiff has invoked the jurisdiction of the Court of Additional Senior Sub Judge, Jalandhar on the basis of his ownership challenging the right of the respondents in conducting auction of the same.

6. Controverting the said stand, the State in its written statement took up a plea and pleaded that the order dated 16.05.1969 has been set aside by the Chief Settlement Commissioner vide his order dated 20.08.1974 on a suomotu reference under Section 24 of Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the Act). It was also pleaded that as soon as the order passed by the Managing Officer came to the notice of the Chief Settlement Commissioner, the same were set aside vide order dated 17.12.1981 on a reference under Section 24 of the Act. Apart from the said fact, preliminary objections were raised in respect of bar of jurisdiction of the Civil Court under Section 27 and 36 of the Act and that plaintiff has other efficacious remedy provided under the Act. In replication, plaintiff asserted that there is no order dated 20.08.1974 passed by the Chief Settlement Commissioner and the alleged order dated 20.08.1974 has never been communicated to the plaintiff. In respect of subsequent order dated 17.12.1981, it was asserted that Chief

Settlement Commissioner could not and cannot pass any order detrimental to the order of the plaintiff after the plaintiff has deposited a sum of Rs. 14800/-. The said order was said to be illegal and without jurisdiction.

7. In evidence, the defendant produced order dated 17.12.1981 as Ex.DX, whereby the order issuing the conveyance deed etc. were set aside. On the basis of evidence led, the learned trial Court decreed the suit partly holding that the plaintiff cannot be said to be owner after the conveyance deed for transfer of property had been cancelled vide Ex. DX. But since plaintiff Partap Singh was found to be in possession of the suit land, therefore, the suit was decreed restraining the defendants from dispossessing the plaintiff forcibly and illegally except in due course of law. The relief claiming restraint order against the defendant from selling/ auctioning the land was dismissed. However, in appeal the learned First Appellate Court found that the order dated 20.08.1974 cancelling the allotment has not been produced. Therefore, even though the attested copies of the said order were on file, the said order could not be gone into and thus in the absence of such order the cancellation of the land cannot be said to be obtained by false representation or fraud or by concealment of facts. It was also found that subsequently, the plaintiff has been found entitled to transfer of the land vide order dated 09.03.1981 and thereafter, conveyance deed has been executed. It was also found that the order dated 09.03.1981 could not be set aside without there being any fresh reference under Section 24 of the Act.

8. Before coming to the merits of the case, it may be noticed that the defendant filed CM No. 1819C of 1989 to produce additional evidence in appeal. It has been pointed out that in the main suit, the stand of the defendant was that Partap Singh was not entitled to the transfer of the land as his claim to that effect stood finally rejected by the Chief Settlement Commissioner on 20.08.1974 but the record was missing as such, neither the copy of the said order nor the original record could be produced in evidence. Now the record has been traced out. It was also pointed out that the reference filed by the State and Appeal filed by Partap Singh were considered together and common interim ordersheet for both cases was maintained. It was pointed out from the interim orders that the appeal of the respondent Partap Singh was rejected on 20.08.1974 and the reference of the State was accepted. On the basis of said averment, the State sought to produce the following documents :

1. Copy of common interim order sheet.
2. Order dated 20.8.74 passed by Chief Settlement Commissioner in appeal No. A3 of 1972 in appeal filed by Sh. Partap Singh respondent.
3. True copy (unsigned)/attested copy of order dated 20.8.1974 in reference filed by the State in case No. M2/1971/CSC State v. Partap Singh.

9. The said application was ordered to be heard along with the main case vide order dated 11th May, 1989. But no reply has been filed to controvert all references made in the said application.

10. A perusal of certified copies of the interim orders produced, shows the presence of the counsel for the plaintiff Partap Singh before the Chief Settlement Commissioner on various dates since year 1971. On 20.08.1971, the interim order has been recorded in the presence of Mr. P.S. Arora, Advocate for the plaintiff Partap Singh. The order is "Arguments heard. Appeal rejected. Orders passed separately."

11. Vide a separate order passed in Appeal No. 3 of 1972 filed by Partap Singh, the concluding part reads as under :

"2. The learned counsel for the appellant has been heard. In a connecting case captioned as State v. Partap Singh, decided by me on 20.8.1974, I have held that the appellant Partap Singh s/o Ganga Singh is not entitled for the transfer of the said land as lessee under Chapter VA of the Displaced Persons (C&R) Rules, 1955. As such, the present appeal becomes infructuous and is, therefore, rejected. A copy of my order dated 20.8.1974 passed in the case State v. Partap Singh be placed on the file."

12. The order reflects the decision of another case, i.e. State versus Partap Singh. The said order dated 20.08.1974 running into seven pages, has been appended with the application. There is a note "an unsigned true copy attested". It appears that since the signatures of Chief Settlement Commissioner were not available on the order available on record, a plea was raised by the plaintiff in the replication that no such order was passed by the Chief Settlement Commissioner. It is the said reasoning, which has been accepted by the learned Additional District Judge in holding that there is no order of 20.08.1974 in respect of cancellation of allotment of plaintiff Partap Singh.

13. Having heard the learned counsel for the parties on the question of admission of additional evidence, I am of the opinion that the defendant has made out a case for permission to lead additional evidence in second appeal. The averment made in the application that the record was not available, has not been controverted. The order dated 20.08.1974 was the basis of order passed by Chief Settlement Commissioner later on 17.12.1981 (Ex.DX). The passing of said order has not been disbelieved in the reply, though it is alleged that the said order is illegal and without jurisdiction. The fact remains that the order (Ex.DX) was passed in pursuance of plaintiff Partap Singh and on a reference under Section 24 of the Act. The said order has been passed after holding that the plaintiff has got the land transferred in his name by concealing the facts and that the order dated 20.08.1974 has been passed in his presence. It will be relevant to reproduce the relevant extract from the said order for ready reference :

"This is a suo moto reference made by the Superintendent (Legal) Rehabilitation Department, Jullundur, under Section 24 of the Displaced Persons (C&R) Act, 1954 against the orders dated 30.1.1981 passed by the Addl. S.O. (S)cumSettlement Commissioner and 9.3.1981 passed by the Assistant Settlement Officer (Sales)cumManaging Officer, and order dated 15.4.1981

passed by the Tehsildar (Sales) Hqrs.cumManaging Officer, Jullundur. The grounds of reference are set out in the body of reference dated 12.8.1981.

2.

3. I have heard the learned counsel for the respondent and have also gone through the record. I am afraid, the learned counsel for the respondent has not been able to rebut the assertions made in the reference. In this case, I find that the respondent got the land transferred in his name by concealment of facts. When his case had been decided by the Chief Settlement Commissioner vide order dated 20.8.1974 and he was very much aware of this decision as it had been passed in his presence it was a great mischief on his part to conceal this major information before the Assistant Settlement Officer (Sales)cum Managing Officer, Jullundur and get the land transferred in his name. The order of the Chief Settlement Commissioner dated 20.8.1974, having not been challenged by the respondent in any higher Court, has got the finality and all subsequent orders passed by the Addl. S.O.(S)cumSettlement Commissioner, Assistant Settlement Officer (Sales)cumManaging Officer and Tehsildar (Sales) Hqrs.cumManaging Officer, are nullity in the eyes of law. Accordingly, I accept the reference, set aside the orders dated 30.1.1981 passed by the Addl. S.O. (S)cumSettlement Commissioner, dated 9.3.1981 passed by the Asstt. Settlement Commissioner (Sales)cumM.O. and dated 15.4.1981 passed by the Tehsildar (S) Hqrs.cumM.O. and direct that the possession of the land should be taken from the respondent forthwith and the same should be disposed of according to rules. The case is sent back to the Superintendent (Legal) for further necessary action."

14. Still further, the order passed in appeal filed by Partap Singh shows that a separate order was passed by the Chief Settlement Commissioner on the same date. The presence of counsel for the plaintiff is recorded in the appeal filed by him as well as for the respondent in a reference decided vide a separate order, therefore, mere absence of signatures on the detailed reasons recorded in reference under Section 24 of the Act can at best be treated as an irregularity, not effecting the merits or efficacies of the orders. Consequently, the application is allowed and interim orders are ordered to be marked as Ex.CXI, order dated 20.08.1974 being appeal filed by Partap Singh is Ex.CXII and the order dated 20.08.1974 in reference under Section 24 of the Act is ordered to be marked as Ex.CXIII.

15. Thus, the first substantial question of law is decided accordingly.

16. One of the objections raised by the plaintiff in respect of maintainability of application of additional evidence is that the same is not maintainable under Order 18 Rule 17A and that the same is maintainable only under Order 41 Rule 27. No doubt that the additional evidence in second appeal is permissible within the parameters laid down under Order 41 Rule 27. It is equally well settled that mentioning of a wrong provision in the application is not relevant for determining the jurisdiction of the Court in permitting additional evidence. From the facts on

record, I am of the opinion that the State has made out a case for permitting additional evidence. The authenticity of the orders cannot be disputed by the surrounding circumstances as mentioned above available on the record. Delay in producing such documents, which is attributed to loss of record, cannot be a ground for not permitting the defendants to produce such documents in additional evidence.

17. The plaintiff has approached the Civil Court on the basis of his conveyance deed executed in pursuance of an order of allotment passed on 16th May, 1969. The said order has been set aside on 20.08.1974. Still further, after the execution of the conveyance deed, another order has been passed by Chief Settlement Commissioner on reference under Section 24 of the Act setting aside the orders passed by the authorities under the Act in respect of execution of the conveyance deed. The said orders have not been disputed by the plaintiff before the competent Court of law. The same have not been disputed even before the Civil Court though the jurisdiction of the Civil Court to examine the said orders in itself is disputed. Therefore, the plaintiff cannot seek any injunction in respect of his title which stands negated by virtue of the orders passed by the authorities under the Act, which has attained finality. In fact, the plaintiff has concealed material facts. His appeal was dismissed by the Chief Settlement Commissioner on 20.08.1974. But he has not disclosed such fact in the suit filed. Plaintiff has also not disclosed the possession of the disputed land in reference under Section 24 of the Act setting aside the order of the authorities under the Act in respect of conveyance deed. The plaintiff has filed the suit in July, 1982 though the aforesaid orders were passed in his presence. It has been categorically recorded in the order (Ex.DX) that the plaintiff has concealed the fact of earlier order dated 20.08.1974 while obtaining orders from the authorities in respect of his conveyance deed in his favour. Such plaintiff is not entitled to any indulgence either in law or in equity. It may be noticed that the allotment stood cancelled vide order dated 20.08.1974 for the reasons that the plaintiff was not in possession of the suit land since 01.01.1956 as has been stated by the Chief Settlement Commissioner on the basis of Khasra Girdwari and the report made by Kanungo. The reasoning given by the learned Additional District Judge that there should have been a fresh reference under Section 24 of the Act in respect of orders passed by the Chief Settlement Commissioner pertaining to conveyance deed, is not tenable in law. As a matter of fact, the order (Ex.DX) dated 18.12.1981 is on a reference under Section 24 of the Act. The said order has not been disputed by the plaintiff in accordance with the provisions of the Act and no proceedings have been initiated by the plaintiff against the aforesaid order under the Act. The other reasoning in respect of the order dated 20.08.1974 does not stand to judicial scrutiny after the application filed by the defendant for additional evidence has been allowed. In view of the said fact, the reasoning given by the learned Additional District Judge suffers from patent illegality, which cannot be sustained in law.

18. In view of the aforesaid reasons, in respect of second substantial question of

law, it is held that the plaintiff is not entitled to injunction in respect of auction of the suit land in view of order dated 20.08.1974 and 18.12.1981.

19. Since there is no challenge to the orders dated 20.08.1974 and 18.12.1981, therefore, the plaintiff is not entitled to injunction as undoubtedly, the title in the suit land vests with the State on the strength of order dated 20.08.1974 and 18.12.1981. Therefore, execution of conveyance deed in pursuance of order dated 09.03.1981 will not confer any title in favour of the plaintiff to seek injunction in respect of title of the defendant nor will confer any title in favour of prospective vendees to seek injunction in their favour.

20. In RSA No. 765 of 1988, suit was filed by Mrs. Sharanjit Kaur claiming that Partap Singh, plaintiff in RSA No. 1780 of 1987 was allotted land and a conveyance deed was executed in his favour of 15.04.1981. It was stated that an agreement to sell the land in dispute was executed in favour of Sharanjit Kaur, plaintiff in RSA No. 765 of 1988 for a sale consideration of Rs. 60,000/, out of which Rs. 10,000/ was received as earnest money. The State of Punjab stated that Partap Singh had got the conveyance deed executed fraudulently and the allotment was cancelled. It was also stated therein that any agreement to sell executed by Partap Singh, defendant No. 3 in the suit and plaintiff in RSA No. 1780 of 1987 is not binding upon the defendants, i.e., State of Punjab through Secretary, Department of Rehabilitation/ Revenue, Government of Punjab and Chief Settlement Commissioner Punjab, Model Town, Jalandhar respectively. The said suit of Sharanjit Kaur was decreed. State of Punjab had filed an appeal. The same was also dismissed on 09.06.1987. Aggrieved against the same, State of Punjab had filed RSA No. 765 of 1988. The claim of Sharanjit Kaur is based on agreement to sell executed in her favour by Partap Singh as she has paid Rs. 10,000/ as earnest money.

21. Facts emerging in RSA No. 1582 of 1986 are that one Ajit Singh instituted a suit seeking permanent injunction against State of Punjab through Secretary, Department of Rehabilitation/ Revenue and Chief Settlement Commissioner Punjab, Model Town, Jalandhar as defendant No. 1 and 2 and Partap Singh as defendant No. 3 praying that the defendants No. 1 and 2 be restrained from auctioning the land and dispossessing the plaintiff Ajit Singh from land measuring about 2 kanal and 10 marlas. It was stated in the plaint that a conveyance deed was executed in favour of Partap Singh on 15.04.1981 and Partap Singh on 08.06.1981 had executed an agreement to sell in favour of plaintiff Ajit Singh. The suit was decreed by the Court of Sub Judge (1st Class), Jalandhar against defendant Nos. 1 and 2, i.e. State of Punjab. State of Punjab had preferred an appeal and the same was disposed off by Additional Sessions Judge, Jalandhar on 07.02.1986. Aggrieved against the same, State of Punjab had preferred RSA No. 1582 of 1986. Ajit Singh claim that on the basis of agreement to sell executed by Partap Singh, he is entitled to the injunction.

22. In RSA No. 1551 of 1994, civil suit was filed by Surinder Singh praying that State of Punjab through Secretary, Department of Rehabilitation/Revenue and

Chief Settlement Commissioner Punjab, Model Town, Jalandhar being defendant No. 1 and 2 be restrained from auctioning the land and from dispossessing the plaintiff Surinder Singh from 10 marlas of land. Partap Singh, plaintiff in RSA No. 1780 of 1987 was impleaded as defendant No. 3. It was stated in the suit that a conveyance deed was executed in favour of Partap Singh on 15.04.1981 and Partap Singh executed an agreement to sell on 18.04.1981 and had agreed to sell the land measuring 10 marlas out of the land allotted to him for a total consideration of Rs. 40,000/. It was further stated that a sum of Rs. 5,000/ was paid as earnest money and possession was delivered to Surinder Singh. The suit preferred by Surinder Singh was dismissed by Sub Judge (2nd Class), Jalandhar holding that he has equal efficacious remedy to file for specific performance against Partap Singh. Appeal preferred by Surinder Singh was dismissed by Additional District Judge, Jalandhar on 30.08.1993. Surinder Singh had filed RSA No. 1551 of 1994. He also claim his possession on the basis of agreement to sell executed by Partap Singh, plaintiff in RSA No. 1780 of 1987.

23. The arguments that the plaintiffs in RSA No. 1582 of 1986, RSA No. 765 of 1988 and RSA No. 1551 of 1994 are bona fide purchasers is devoid of any merit for the simple reasons that there is no sale deed executed in their favour. The plaintiffs have approached the Civil Court on the basis of agreement to sell. The agreement to sell by itself does not create any right in favour of the plaintiffs in terms of Section 54 of Transfer of Property Act.

24. Since the Vendors of such plaintiffs have no title, they cannot claim better title than the one already available to them. Strength of bona fide purchasers is not available to the said purchasers. The said plaintiffs cannot seek to protect their possession under Section 53A of Transfer of Property Act inter alia for the reason that their vendor has no right in the suit land, which he should convey in favour of the said plaintiffs. In fact, the conduct of vendor is one of concealment of facts and perpetuated by the fraud and thus, the remedy of the plaintiff in the aforesaid appeals, i.e. RSA No. 1582 of 1986, RSA No. 765 of 1988 and RSA No. 1551 of 1994, if any, is against Partap Singh alone and not against the true owners.

In view of the above, RSA No. 1780 of 1987, RSA No. 1582 of 1986 and RSA No. 765 of 1988 are allowed and RSA No. 1551 of 1994 is dismissed.