Jugal Kishore & Another Vs State Of Haryana & Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 25, 2018

Acts Referred: Code Of Civil Procedure, 1908 â€" Section 9, 80, 97(1), 100
Haryana Ceiling On Land Holdings Act, 1972 â€" Section 3, 3(a), 3(f), 8(1), 12(3), 12(4)
Punjab Courts Act, 1918 â€" Section 41
Government Of India Act, 1915 â€" Section 80A, 292

Hon'ble Judges: Amit Rawal, J

Bench: Single Bench

Advocate: Ashok Verma, Palika Monga

Final Decision: Allowed

Judgement

Amit Rawal, J

This order of mine shall dispose of two Regular Second Appeals bearing No.232 of 1989 and 2337 of 1988 as the common questions of law and fact

are involved. The facts are being taken from RSA No.232 of 1989.

Appellant-plaintiffs Jugal Kishore and Satish Kumar instituted Civil Suit No.1198 of 1985 claiming declaration by setting-aside the orders dated

18.12.1980 passed by the Prescribed Authority, confirmed by the Collector vide order dated 23.3.1982, 31.3.1983 of Commissioner and 22.11.1984

rendered by the Financial Commissioner being against the mandatory provisions of Haryana Ceiling on Land Holdings Act, 1972 (for short Ã¢â‚¬Å“1972

ActÃ¢â‚¬) with consequential relief of restraint against the defendants from allotting the land and dispossession, which was dismissed by the trial Court

and affirmed by the Lower Appellate Court. RSA No.232 of 1989 in this regard has been filed.

Another Civil Suit No.264-C of 1986 on similar grounds was filed by Dev Varat claiming owner in possession of land measuring 364 kanals 18 marlas

being Ã‚Â½ share of land measuring 729 kanals 17 marlas (hereinafter called the land in dispute) by challenging the orders of the Collector, Prescribed

Authority and mutation etc., which was dismissed by the trial Court and affirmed by the Lower Appellate Court resulting into RSA No.2337 of 1988.

Appellant-plaintiffs averred that they obtained the share in the land in dispute as per the Civil Court decrees dated 19.4.1972 and of 1970 from Shano

Devi, their sister. In essence, appellant No.1 got 1/3 share of the land measuring 144 kanals 18 marlas vide judgment and decree dated 19.4.1972

(Ex.P3), whereas appellant No.2 vide judgment and decree of 1970. The appointed date was 23.12.1972. On 18.12.1980, the Prescribed Authority

declared land measuring 16 kanals of appellant No.1 and 18 kanals 14 marlas of appellant No.2 to be surplus by treating them to be members of the

family of Ram Chand, their father, a big landowner. Ram Chand challenged the aforementioned order and lost upto all the authorities. However, the

Prescribed Authority did not issue any notice to the appellants for adjudication of matter pertaining to surplus area, for, the appellants were owners of

the land and, therefore, impugned orders are not sustainable.

The decree was passed before the appointed date, i.e., 23.12.1972 and, therefore, 1972 Act would not be applicable.

The aforementioned suit was contested by the defendants by raising numerous preliminary objections vis-a-vis the jurisdiction, suit being bad for non-

joinder as Ram Chand was necessary party. On merits, it was asserted that if any civil court decree was procured on 19.4.1972, then the same had to

be ignored keeping in view the mandatory provisions of sub- section (4) of Section 12 of the Act. Plaintiff No.1 had no concern with the suit land. The

impugned orders were perfectly valid and in accordance with law.

Since the parties were at variance, the trial Court framed the following issues:-

1) Whether the orders dated 18.12.1980 passed by Prescribed Authority dated 23.3.1982 passed by Collector, dated 31.3.1983 passed by

Commissioner and dated 22.11.1984 passed by Financial Commissioner are against law and facts and are liable to be set-aside? OPP

2) Whether the civil court has no jurisdiction to try the present suit? OPD

3) Whether the suit is bad for not giving notice under Section 80 CPC? OPD

4) Whether the plaintiffs are estopped by their act and conduct to file the present suit? OPD

5) Whether the suit is bad for misjoinder of necessary parties? OPD

6) Whether the plaintiffs have not exhausted the remedies available to them? OPD

7) Relief.

The trial Court, on the basis of the evidence led by the parties to the lis, dismissed the suit by treating the appointed date to be 24.1.1971 and held that

it did not have the jurisdiction. The appeal laid before the Lower Appellate Court also met with the same fate.

Mr.Ashok Verma, learned counsel appearing on behalf of the appellants in RSA No.232 of 1989, in support of the memorandum of appeal and the

grounds, raised the following submissions:-

a) The impugned judgments and decrees are not sustainable in the eyes of law and the same are cryptic, arbitrary and suffer from perversity;

b) On perusal of the Civil Court decree dated 19.4.1972, it reveals that on the basis of the ownership declared in favour of appellant No.1, mutation

bearing No.1140 was sanctioned in his favour on 27.8.1973;

c) Appellant No.2 became the owner of land measuring 144 kanals 18 marlas being 1/3rd share of 434 kanals 14 marlas owned by Shano Devi in the

year 1970. Ram Chand, father of the appellants, remained the owner of remaining 1/3rd share. Mutual partition of the joint khata was effected on

28.4.1976. Mutation No.1334 in this regard was sanctioned. Appellant No.1 and appellant No.2 became exclusive owners of the property

aforementioned, therefore, the authorities did not have any jurisdiction to ignore the ownership of the appellants by treating the entire land in the

ownership of Ram Chand;

d) The appellants did not receive any notice at any stage of the proceedings culminated into order dated 18.12.1980, thus, case of surplus area was

decided in their absence, in utter violation and blatant disregard of the mandatory provisions of the Act, for, they were interested and had seriously

been prejudiced;

e) The appointed day had erroneously been construed as 24.1.1971, whereas it was 23.12.1972 in view of the judgment rendered by this Court in

Sampuran Singh Versus State of Haryana & Ors, 1994 (1) SCR 176 and Ram Swarup Versus S.N.Maira, 1991(1) PLJ 11 followed by this Court vide

decision dated 21.3.2017 rendered in CWP No.20444 of 2013. Even if the decree was held to be not bonafide, it was protected by Section 8(1) of

1972 Act as the decree was suffered before the appointed day;

f) It was incumbent upon the Prescribed Authority to issue notice to the appellants, who were recorded owners in the revenue record;

g) All proceedings were vitiated in law and position of law and the judgments, referred to above, have not been taken into consideration by the Courts

below.

Ms.Palika Monga, learned Deputy Advocate General, Haryana representing the State-respondents rebutted the arguments of Mr.Verma by submitting

that the appointed date of 24.1.1971 had rightly been taken into consideration. The concurrent findings of fact and law cannot be interfered with unless

and until there is gross illegality. Family has been defined under Section 3(f) of 1972 Act, which would mean husband, wife and their minor children or

any two or more of them and adult, as per Section 3(a), would not be a minor. The married minor daughter shall not be treated as a child, therefore,

the orders of the Prescribed Authority in treating the land measuring 16 kanals and 18 kanals 14 marlas at the hands of the appellants surplus is wholly

justified and, thus, urged this Court for dismissal of the appeals.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of

Mr.Ashok Verma.

On plain and simple reading of the provisions of 1972 Act, it is apparent that the appointed date of the aforementioned order is not 24.1.1971 but

23.12.1972. For the sake of brevity, relevant clauses of Section 3 reads as under:-

3. Definitions.- In this Act, unless the context otherwise requires,-

(a) ""adult"" means a person who is not a minor ;

xxx xxxx xxxx

(c) Ã¢â‚¬Å“appointed day"" means the twenty-fourth day of January, I971 ;

xxx xxx xxx

'(f) ""family"" means husband, wife and their minor children or any two or more of them.

Explanation 1- A married minor daughter shall not be treated as a child, Explanation--Child shall include-

(i) Child of the husband from his deceased or divorced wife and living with him ;

(ii) child of the wife from her deceased or divorced husband and living with her ;

(iii) illegitimate child of the husband or the wife and living with them or either of them

xx xx xxxÃ¢â‚¬â€‹

The question of applicability of 1972 Act by treating it to be appointed date as January 1971 came to be pondered upon in the judgments cited supra.

In paragraph 3 of Ram Swarup's case (supra), it has been held as under:-

Ã¢â‚¬Å“Having considered the rival submissions it appears to us that the High Court was not justified in interfering with the revisional order both on the

ground that the persons affected were not parties as well as on the ground that the provision of Section 12(3) of the Haryana Act has not been

correctly interpreted. From the available records and the orders passed by the authorities it is crystal clear that the Collector declared surplus land in

the hands of the original surplus land holder by his order dated 8.6.60. Thereafter such surplus lands were allotted to different landless persons and

possession thereof was given to them who have been continuously in possession of the same since 1976. By such allotment and delivery of possession

in their favour, rights have been conferred on such allottees and therefore, any order without impleading them as parties could not have been passed

which has the effect of taking away their rights. These appellants allottees were not parties to the writ petition and therefore, the High Court was in

error in snatching away their rights without hearing them and without impleading them as parties in the writ petition. That apart, even on the question

of interpretation of Section 12

(3) of the Haryana Ceiling on Land Holdings Act, 1972, we also find that the High Court has committed an error. The provisions no doubt was brought

on to the statute book in the year 1976 by which time the original surplus holder had died but the legislature having given the said provision the

retrospective effect w.e.f. 23.12.72 and as such the rights of the parties will have to be governed, treating the provisions on the statute book on

23.12.72. The land holder having died much thereafter, in the eye of law the lands in question vested with the State on 23.12.72. Death having

occurred much later in 1976, the legal heirs cannot claim any right on the basis that they are entitled to an individual ceiling unit as the land has not

been utilised. The High Court obviously has not considered the effect of giving retrospectively to the provisions of Section 12(3). In this view of the

matter, the conclusion of the High Court cannot be sustained and we quash the same. This appeal is allowed. The writ petition filed by the heirs of the

original surplus land holder stands dismissed. There will however be no order as to costs.Ã¢â‚¬‹

This Court, while hearing the writ petition, ibid and applying the judgments rendered above, allowed the same by taking the appointed date as

23.12.1972. Both the Courts below have abdicated by treating the appointed date as 24.1.1971. Concededly, the judgments and decrees are of 1970

and 19.4.1972 (Ex.P3), whereby Shano Devi by virtue of the decree, transferred the land to both the appellants, her brothers. The Prescribed

Authority could not treat the entire property to be at the hands of Ram Chand, their father. They were separate owners of the property, therefore,

declaration of the land measuring 16 kanals and 18 kanals 14 marlas at the hands of appellants No.1 and 2 to be surplus vide order dated 18.12.1980

was not sustainable.

There is another aspect of the matter. Appellant-plaintiffs examined PW-2 Natha Singh, a witness from the Record Room of D.C.Office, Sirsa, who,

as per official record, stated that no notice was issued to the recorded owners, i.e., the appellants. It is settled law that where orders have been passed

without adherence to the provisions of natural justice despite availability of the alternative remedy, the jurisdiction of the Civil Court as per Section 9 of

the Civil Procedure Code can always be invoked. The trial Court should not have non-suited the appellants regarding maintainability of the suit and

jurisdiction of the Civil Court, thus, the impugned findings are not sustainable.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio

decidendi culled out by five learned Judges of the Hon'ble Supreme Court in Pankajakshi (dead) through LRs and others Vs. Chandrika and others

AIR 2016 SC 1213, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab

Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be

without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision inK ulwant Kaur and

others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 26 2on applicability of Section 97(1) of CPC is not a correct law, in essence,

the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back. For the sake of brevity, the relevant portion of the judgment of

five learned Judges of the Hon'ble Supreme Court in Pankajakshi's case (supra) reads thus:-

Ã¢â‚¬Å“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been

repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 :

80 Punj LR 1 (FB)] cannot be sustained and is thus overruled."" [at paras 27 - 29]Ã¢â‚¬â€‹

Ã¢â‚¬Å“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab

Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into

force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in

force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the

Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a

law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution

of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law

made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1)

alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent

authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of

the Punjab Courts Act, it would necessarily continue as a law in force.Ã¢â‚¬â€‹

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

Resultantly, the impugned findings of the Courts below are hereby set-aside. Suits of the appellant-plaintiffs are decreed. Decree-sheet be prepared

accordingly. Appeals stand allowed.