

(2007) 08 P&H CK 0028

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Collector of The District
Kapurthala and Another

APPELLANT

Vs

Kidar Nath and Another

RESPONDENT

Date of Decision: Aug. 24, 2007

Citation: (2007) 4 PLR 549

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.

This order shall dispose of four Regular Second Appeals bearing R.S.A. Nos. 3156 of 2004, 332 of 2005, 333 of 2005 and 334 of 2005 as common question of fact and law is involved in these appeals.

2. In the present case, the suit land along with other land, which was the Nazool land, was allotted/sold to one Channan Singh vide sale certificate dated 1.4.1969 (Ex. P3). The sale certificate Ex. P3 was issued to Chanan Singh after making the entire payment. Subsequently, the mutation was sanctioned in his favour. In the aforesaid sale certificate, no condition of restraints for alienating the suit land for a particular period was imposed. At the time of issuance of the said certificate. Rule 11 of the Nazool Land (Transfer) Rules, 1956 (for short "the Rules") was applicable and that Rule did not contain any such condition prohibiting the allottee from transferring the land for a particular period.

3. Subsequently, on 30.6.1971, Chanan Singh sold the suit land to one Gopal Dass for a consideration, and from Gopal Dass the plaintiffs purchased the suit land vide registered sale deeds dated 8.1.1974 for a consideration. On execution of the sale deeds, they took possession of the suit land. On the basis of those sale deeds, the mutation of ownership was also sanctioned in favour of the plaintiffs. Thereafter, all

the plaintiffs were recorded as owners in possession of the suit land throughout in the revenue record. The plaintiffs also raised some construction on the suit land.

4. After 23 years of the aforesaid sale made in favour of the plaintiffs, defendant No. 1 - Collector, District Kaputhala issued notice dated 5.2.1997 to the plaintiffs to show as to why their names may not be removed from the revenue record showing their possession on the suit land as owners with a view to resume the possession of the suit land. Feeling aggrieved against the said notice, the instant four suits were filed.

5. The plaintiffs filed the instant suits for declaration to the effect that they are owners in possession of the suit land on the basis of the sale deeds executed by Gopal Dass in their favour and the defendants be restrained from taking forcible possession of the same.

6. The defendants contested the suits on the ground that Chanan Singh was having no right to sell the suit land to any person. The suit land could have been transferred only by way of inheritance. It was further pleaded that the Government had issued a notification dated 18.3.1991 (Ex. D1) providing that the Nazool land, which was transferred to the Harijans etc., could not be alienated or mortgaged to any person and the same can only be transferred or acquired by inheritance. The defendants have also relied upon the notification dated 28.10.1970 vide which Rules 7(1) and 11(1) of the Rules were amended. The amended Rules provide that no-cooperative society or the individual member of Scheduled Caste, as the case may be, shall, except with the express permission in writing of the State Government, alienate, whether permanently or temporarily, the Nazool land allotted to them or him for a period of ten years without the prior permission in writing from the State Government.

7. Both the courts below after taking into consideration the evidence led by both the parties and after coming to the conclusion that the aforesaid amendment as well as the notification dated 18.3.1991 (Ex. D1) are not applicable on the allotment made to Chanan Singh, have decreed the suit of the plaintiffs. It has been held that the said allotment was made prior to the issuance of the notification of amendment. It has been held that from the sale certificate dated 1.4.1969 (Ex. P3) it transpires that the land was transferred absolutely with all rights, title and interest in the said Nazool land because the entire amount of the sale price had been made by Chanan Singh. Even the copy of mutation (Ex. P4) also shows that no restriction was placed on the right of Chanan Singh for transferring the suit land. It was further held that as per Rule 7 of the Rules, there was bar of alienation on the allottee till the payment of the installments. So, there was no restriction on the rights of Chanan Singh to transfer the land at the time of issuing of the sale certificate (Ex. P.3) because the said sale certificate was issued in the year 1969 after the entire payment of the sale consideration was made by Chanan Singh. So, after issuance of the sale certificate, Chanan Singh became absolute owner of the suit property and he was fully competent to alienate the suit land.

8. In these appeals, learned Counsel for the appellants Ms. Charu Tuli submitted that the notification dated 18.3.1991 (Ex. D1) will not be applicable in case of the plaintiffs. However, she submitted that vide notification dated 28.10.1970 Rules 7(1) and 11(1) of the Rules were amended which clearly provide that no co-operative society or the individual member of Scheduled Caste gets all rights, title and interest in the said Nazool land. She submitted that on 30.6.1971 Chanan Singh sold the land to Gopal Dass and by that time he had not acquired all rights, title and interest in the suit property because by that time he had not paid all the installments of the sale consideration.

9. I do not find any substance in the aforesaid argument of the learned Counsel for the appellants. As per Rule 11(1) of the Rules, the Sale certificate of transfer of ownership in Form "B" is required to be issued to the allottee as soon as he paid the last installment. In the instant case, a categorical finding has been recorded by both the courts below that in this case the sale certificate (Ex. P3) was issued to Chanan Singh prior to the sale effected by him. In this regard, the first Appellate Court has recorded the following effect:

From the sale certificate Ex. P3 it transpires that the land was transferred absolutely with all rights, title and interest in the said nozool land because the entire amount of the sale price had been paid by Chanan Singh. The copy of the mutation Ex. P4 also shows that no restriction was placed on the right of Chanan Singh for transferring of the suit land. As per Rule 7 of the Nazool Land Transfer Rules, 1956, there was bar of alienation on the allottee till the payment of the installments. So there was no restriction on the rights of Channan Singh to transfer the land at the time of issuing of sale certificate Ex. P3 and that sale certificate made him absolutely owner as he had paid all the installments. So he had a right to transfer the property in any manner after the grant of the sale certificate.

10. In my opinion, both the courts below have rightly come to the conclusion that the amended Rules 7(1) and 11(1) of the Rules are not applicable retrospectively in the present case. In this regard, the first Appellate Court has also observed as under:

...So now coming to the case in hand the right and disability can not be created by notification dated 28.10.1970 with the retrospective effect. As already observed Chanan Singh had a right to transfer the property and he transferred the property including the suit land in the year 1970-71 to Gopal Dass and Gopal Dass further sold the suit land to the plaintiffs on 18.1.1974 vide sale deed Ex. P1. As the above said notification would operate prospectively and not retrospectively, so the notice issued by the Collector is not valid. As in the instant case substantial rights of the plaintiffs are valid, so these can not be taken away by these notifications which were issued after the Nazool land was sold to Chanan Singh and the sale certificate was issued to him by making him as absolute owner without imposing any condition upon him and the land was absolutely transferred in favour of Chanan Singh. So

there was no necessity for him to take any permission from the Govt. to sell the land.

11. The counsel for the appellants - State could not point out any illegality in the above said finding recorded by the Appellate Court. In my opinion, no substantial question of law is involved in these appeals. In view of the aforesaid, I do not find any merit in these appeals and the same are hereby dismissed.