

(2000) 05 P&H CK 0015

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal 1951 of 2000

Mohinder Singh

APPELLANT

Vs

Lachhman Singh

RESPONDENT

Date of Decision: May 15, 2000

Citation: (2000) 3 RCR(Civil) 689

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: R.L. Sharma, for the Appellant;

Final Decision: Dismissed

Judgement

R.L. Anand, J.

This appeal has been filed by the Plaintiff Mo-hinder Singh and it has been directed against the judgment and decree dated 3.2.2000 passed by the Court of Addl. Distt. Judge. Ropar. who affirmed the judgment and decree dated 22.5.1997, passed by the court of Addl. Civil Judge (Sr. Divn.). Ropar. who partly decreed the suit of the Plaintiff for permanent injunction and the Defendant was restrained from interfering and taking forcible possession of the land comprised in Khasra No. 23(8-0), situated in Village Bara Surtapur. fully detailed in the head note of the plaint. With regard to the other prayer of the Plaintiff regarding land measuring 4 kanals 12 marlas. which was allegedly allotted to the Plaintiff, the same was dismissed.

2. The brief facts of the case are as under: -

3. The Plaintiff filed a suit for permanent injunction against Defendant Lachhman Singh, praying that the Defendant be restrained from illegally interfering in any manner and forcibly dis-possessing the Plaintiff from the land comprised in Khasra No. 23(8-0) and the land measuring 4 kanals 1 marla. which according to the Plaintiff was transferred in his favour by the Consolidation Department subsequently. According to the Plaintiff, he became the owner of the entire area. He was in cultivating possession of the same and the Defendant had no right, title or interest

in the same.

4. The suit was contested by the Defendant. Apart from taking legal objections, it was submitted that the land measuring 25 bighas 6 biswas. which comes to 42 kanals. was allotted to him by the Punjab Scheduled Castes land Development and Financial Corporation, Chandigarh, and since then, he is in cultivation possession of the same. It was alleged that the Defendant was allotted the land comprised in various khasra numbers mentioned in the written statement. After consolidation, old khasra numbers were converted into new khasra numbers. In short, the defence of the Defendant is that he allotted 25 bighas 36 kanals and he was allotted 6 kanals of land less than his entitlement.

5. The Plaintiff filed a rejoinder to the written statement of the Defendant denying the allegations made in the written statement and reiterating those made in the suit.

6. From the pleadings of the parties, the trial court framed the following issues:

1. Whether Plaintiff is in possession of the suit properly? OPP

2. Whether the suit is not maintainable in this form? OPD

3. Whether this Court has no jurisdiction to try this suit? OPD

4. Whether the Plaintiff is estopped to file this suit by his act and conduct? OPD

5. Relief.

7. The parties led oral and documentary evidence in support of their case and the trial court decreed the suit of the Plaintiff and the Defendant was enjoined upon not to disturb the possession of the Plaintiff with regard to the land comprised in khasra No. 23, the area of which was 8 kanals. The rest of the suit was dismissed. Aggrieved by the judgment and decree of the trial court, the Plaintiff filed the first appeal before the Addl. Distt. Judge. Ropar. who vide the judgment and decree dated 8.2.2000, dismissed the appeal. Hence the present appeal.

8. I have heard the counsel for the Appellant and with his assistance have gone through the record of this case.

9. Before I deal with the arguments of the counsel for the Appellant, it will be useful for me to reproduce paras 11 to 14 of the judgment of the trial court, which have crystallised the things. The same read as under-

11. I agree with this submission of Ld. Counsel for the Defendant. Perusal of Ex. D-7 reveals that a petition u/s 48 of the Consolidation Act was filed by Defendant Lachhman Singh. The Additional Director Consolidation Punjab has held that Lachhman Singh Defendant was entitled to be allotted land measuring 25 Bighas -6 biswas and during the consolidation he was allotted only 36 kanals of land and in this way the allotment made to Lachhman Singh was less by 6 kanal. Vide the said

order Lachhman Singh was allotted the land measuring 4K-12 Marias comprised in Khasra No. 20/22/1 and land measuring 8-0 comprised in khasra No. 20/19/2. Mohinder Sing Plaintiff filed a writ petition in the Hon"ble High Court which was dismissed, vide order dated 5.10.95 and the order passed by Additional Director Consolidation Punjab was upheld, vide Ex. D-5.

12. These circumstances shows that now the Plaintiff has no link with the land measuring 4 kanal 12 marlas comprised in Khasra No. 20/22/1.

13. Ld. counsel for the Plaintiff submitted that the Plaintiff is shown to be in possession of the land comprised in Khasra No. 22/1(7-12) in the khasra Girdawari Ex. P-I. jamabandi Ex. P-7 and the conveyance deed copy of which is Mark A/1, is executed in favour of the Plaintiff. Defendant has challenged the said conveyance deed in the civil court and the copy of the plaint is Ex. P-2, copy of written statement Ex. P-3 and copy of the issue is Ex. P-4.

14. There is no doubt that there is presumption of truth in the entries of Jamabandi but this is a rebuttable presumption. In the present case the Defendant has successfully rebutted the entries of the jamabandi and he has proved on record that he has been allotted the land measuring 4K - I2M comprised in Khasra No. 22/1 vide order Ex. D-7 passed by the Additional Director Consolidation Punjab. The said order has been upheld by the Hon"ble High Court. Now the Plaintiff has no link with the land measuring 4K I2M comprised in Khasra No. 22/1. The conveyance deed copy of which is Mark-A/1 has been obtained by the Plaintiff by concealment of the facts. The order Ex. D-7 was passed by the Additional Director Consolidation Punjab on 11.7.95 whereby the land measuring 4K - I2M comprised in khasra No. 22/1 was allotted to the Defendant Lachhman Singh and at the time of the passing of the said order, the Plaintiff Mohinder Singh was present along with his counsel. The said order was upheld by the Hon"ble Court vide order Ex. D-8 on 5.10.95 and counsel for the Plaintiff Mohinder Singh was present at the lime of passing of the said order. These circumstances show that Plaintiff was well aware of the fact that the land comprised in khasra No. 22/1(4-12) has been allotted to the Defendant and the order Ex. D-7 has been upheld by the Hon"ble High Court. Dispite that on 26.10.1995 i.e. after the passing of the order of the Hon"ble High Court (on 5.10.95). he got executed the conveyance deed in his favour, copy of which is Mark A/1. At the time of execution of conveyance deed he did not disclose to the competent authority that the land measuring 4K 12M comprised in Khasra No. 22/1 has since been allotted to Defendant Lachhman Singh. A serious action is required to be taken against the Plaintiff for his false representation and concealment of facts. The conveyance deed, copy of which is Mark A/1, has been got "executed between Mohinder Singh Plaintiff and Punjab Scheduled Caste Land Development and Financial Corporation. Chandigarh, through its Executive Director. The interest of the public at large is involved and such type of acts of concealment of material fact before the Government departments should be condemned, and serious action should be

taken against such persons. The concerned authority of Punjab Scheduled Castes Land Development and Financial Corporation, Chandigarh, may take action under law against the Plaintiff,

10. The learned Counsel for the Appellant submitted that the area in dispute has been transferred to the Plaintiff vide conveyance deed dated 26.10.1995 after the passing of the High Court order dated 5.10.1995. vide which the writ petition of the Plaintiff against the order of the Addl. Director Consolidation, was dismissed, against which a contempt petition was filed by Lachhman Singh and the same was dismissed by the High Court on 26.8.1996. It was submitted that vide order dated 26.8.1996. the transfer in favour of the Plaintiff dated 26.10.1995 has been upheld. It was also submitted that the conveyance deed dated 26.10.1995 has been challenged by Lachhman Singh and a suit is still pending in this regard and, in these circumstances, till the decision of the suit, no findings can be given in favour of the Defendant with regard to the land in question.

11. I do not subscribe to the argument of the counsel for (he Appellant. I may say at the outset that the Plaintiff approached the civil court with soiled hands. He was not entitled to the benefit of equitable relief. The order of transfer of land in question measuring 4 kanals and 12 marlas was challenged by the Plaintiff in the High Court vide a civil writ petition, which was dismissed vide order dated 5.10.1995. Thereafter, the Plaintiff got the conveyance deed dated 26.10.1995 executed without disclosing to the department about the fate of the writ petition. In these circumstances. Lachhman Singh approached the High Court and filed a contempt petition alleging that the conveyance deed in favour of the Plaintiff dated 26.10.1995 could not be executed. In the contempt petition, the learned Judge simply gave the findings as follows:

The corporation can obviously transfer that property of which it is the owner and in case it has transferred some property to a private Respondent of which it is not the owner, the conveyance deed does not effect the right of the Petitioner. Dismissed.

12. The scope of contempt petition is totally different. The civil court has to see whether a valid title passes to the Plaintiff with regard to the property in dispute vide conveyance deed dated 26.10.1995 or not. When vide order. Ex. D-7. the order of the Addl. Director Consolidation dated 11.7.1995 vide which the land measuring 4 kanals and 12 marlas has already been confirmed, it was not open to the department to execute a fresh conveyance deed in favour of the Plaintiff with regard to the same area which had already been allotted to the Defendant. In these circumstances. I approve the reasons given by the trial court quoted above, and do not see any merit in this appeal, which is dismissed with the observations that nothing stated above shall amount to expression of opinion of the High Court, over the suit which is pending between the parties.