

Telu Ram and Others Vs Niranjan Singh and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 5, 2010

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 80

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Judgement

Alok Singh, J.

Plaintiffs have filed present Second Appeal challenging the judgment dated 14.09.1987 passed by learned First Appellate

Court/Additional District Judge, Faridkot, whereby the first appeal filed by defendant Nos. 2 and 3 was allowed and suit of the plaintiffs was

dismissed.

2. The brief facts of the present case are that plaintiffs have filed suit for declaration declaring the plaintiffs are the owner of the property in suit and

seeking possession from defendant Nos. 2 and 3 over the land Khasra No. 205//20/1, against the Central Government, as well as, defendant Nos.

2 and 3. The main contention of the plaintiffs are that earlier land of Khasra No. 2599 and 6239 was owned by Govind, father of the plaintiffs and

after the death of Govind, plaintiffs became owner of the land khasra No. 6239 and 2599 and their names and possession was duly recorded in

the revenue record; Chanan was the occupancy tenant on behalf of the plaintiffs; Chanan has mortgaged the land in favour of Mangal; on partition,

Mangal, the Muslim migrated to Pakistan; plaintiffs moved an application for redemption of the mortgage being owners of the land; District

Competent Officer vide order dated 20.06.1957 directed the plaintiffs to deposit Rs. 177/- for the redemption of the land; on deposit of amount

as directed by the District Competent Officer, land was redeemed in favour of the plaintiffs vide order dated 20.06.1959; thereafter, names and

possession of the plaintiffs was recorded in the revenue record; land in question was allotted to the plaintiffs in lieu of old Khasra No. 6239 and

2599 and mutation was sanctioned in favour of the plaintiffs; thereafter all of sudden, mutation was sanctioned in favour of the Central Government

without any notice to the plaintiffs and defendant No. 2 has taken possession over Khasra No. 205//20/1 with the conspiracy of revenue

authorities; notice u/s 80 CPC was issued prior to the filing of the suit.

3. Defendant No. 1 contested the suit saying that it was rightly recorded in favour of the Central Government being evacuee property; however, it

is admitted that in the jamabandi for the year 1946-47 the plaintiffs were recorded as owners and Chanan son of Bhola was recorded as

occupancy tenant. Chanan mortgaged the land in favour of Mangal son of Shera, a Muslim who has left the country on or before the partition of

the country hence, property became the evacuee property. On enforcement of the Punjab Occupancy Tenant Act, rights of the plaintiffs stood

extinguished, hence, any order passed by the District Competent Officer is not correct. It was further alleged by the Central Government that

Chanan could have got the land redeemed but he did not opt to get it redeemed, hence, Central Government is the owner of the property.

4. Private defendants also filed their written statement. Niranjana Singh - defendant No. 2 has pleaded that he was in possession on behalf of the

Central Government and was paying "Taman" to the Central Government at the rate of Rs. 20/- per annum and thereafter land in possession of

defendant No. 2 was auctioned in favour of his son Nachhattar Singh and now Nachhattar Singh, son of defendant No. 2, is the owner and

defendant No. 2 is in possession on behalf of Nachhattar Singh. Defendant No. 2 has also pleaded that suit is barred by limitation and Section 80

C.P.C.

5. Defendant No. 3 - Sukhdev Singh has alleged that he has purchased the land in his possession from the Central Government for Rs. 6,000/-

and is paying the installments to the Central Government. Defendant No. 3 has also pleaded that suit is barred by limitation and Section 80 C.P.C.

6. Learned Trial Court has observed that as per the entries in the revenue record and as per the admitted case of the Central Government, it is

proved that earlier Govind, father of the plaintiffs, was the original owner in possession of the property and after the death of Govind, plaintiffs

being sons of the Govind, inherited the ownership rights. It has further been observed by the Trial Court that Chanan was the occupancy tenant

and he has mortgaged the land in favour of Mangal son of Shera, a Muslim who has left for Pakistan on or before the partition and thereafter, the

District Competent Officer has redeemed the land in favour of the plaintiffs and after in exchange, land was given to the plaintiffs and mutation was

duly sanctioned in favour of the plaintiffs. Learned Trial Court has further observed that any mutation in favour of the Central Government without

any notice to the plaintiffs is illegal and cannot take away the title of the plaintiffs. Learned Trial Court, thereafter decreed the suit of the plaintiffs

vide judgment and decree dated 09.10.1985.

7. Central Government did not file any appeal, however, appeal was filed by defendants No. 2 and 3 before the learned First Appellate Court.

Learned First Appellate Court has allowed the appeal filed by the private defendant Nos. 2 and 3 on the ground that it has not been proved that

notice u/s 80 CPC was ever issued and served on the Central Government prior to the filing of the suit; suit for declaration is barred since it was

filed after three years from the date the mutation was sanctioned in favour of the Central Government. First Appellate Court further observed that

Chanan, the mortgagor has the right to get the mortgage redeemed and since Chanan did not get mortgage redeemed, hence, any redemption order in

favour of the plaintiffs is bad and Central Government is the owner of the property. Appellate Court has further held that property remained

evacuated property, hence, mutation in favour of the Central Government is correct and defendant Nos. 2 and 3 are in possession being auction

purchasers of the property.

8. I have heard learned Counsel for the parties and perused the record.

9. With the consent of the learned Counsel for the parties, following substantial questions of law are being formulated for fair adjudication of this

case:

1. As to whether suit can be dismissed for want of notice u/s 80 CPC even if this plea is not taken by the Government and is taken by the private

defendants?

2. As to whether mutation entries confer any title or it is the source of title which is to be seen?

3. As to whether redemption order passed by the District Competent Officer dated 20.06.1959 in favour of the plaintiffs is binding on the Central

Government?

Substantial question No. 1

10. As to whether suit can be dismissed on the plea of the private defendants in the absence of any plea of the Government on the ground notice

u/s 80 CPC has not been served is no more res integra.

11. This Court in the matter of Sambhavna Welfare Society and Ors. v. State of Haryana and Anr. in Civil Revision No. 395 of 2010, decided on

07.09.2010 in paragraph No. 13 has held as under:

13. In the opinion of this Court since plea regarding the service and validity of notice was not taken by the State Government and its officers in the

written statement, hence, it shall be deemed that State Government and public officers i.e. other defendants have waived their right on the question

of service and validity of notice u/s 80 C.P.C. Since no notice is required to be served on the private defendants u/s 80 C.P.C., hence defendant

No. 3 has absolutely no locus to challenge the maintainability of the suit on the ground of valid notice u/s 80 C.P.C.

12. Record reveals that plaintiffs have pleaded in the plaint that valid notice u/s 80 CPC was served upon defendant No. 1 (Central Government).

Defendant No. 1 (Central Government) did not dispute this fact. No notice u/s 80 C.P.C. was required to be served on the private defendants.

Hence, on the plea of private defendants, suit cannot be dismissed for want of valid notice u/s 80 C.P.C. Finding of First Appellate Court on this

point is hereby reversed.

Substantial question No. 2

13. Undisputedly, Govind, the father of the plaintiffs, was the original owner in possession of the property and his name and possession was duly

recorded in the revenue record. Undisputedly, after the death of Govind, name of the plaintiffs were recorded as owners of the property.

Undisputedly, Chanan was in possession on behalf of the plaintiffs as an occupancy tenant. Undisputedly, Chanan has mortgaged his occupancy

right in favour of Mangal son of Shera, the Muslim. Undisputedly, Mangal has migrated to Pakistan on or before the partition. Undisputedly, on the

migration, Mangal to Pakistan, the real owners of the property moved an application seeking redemption of the mortgage. Undisputedly, District

Competent Officer after getting money deposited from the plaintiffs, redeemed the mortgage in favour of the plaintiffs vide judgment dated

20.06.1959. Undisputedly, neither Chanan, the occupancy tenant, nor Central Government ever challenged the order of the District Competent

Officer dated 20.06.1959. Undisputedly, thereafter plaintiffs' name and possession was recorded in the revenue record. Undisputedly, property in

dispute was allotted to the plaintiffs in lieu of the original property owned by the plaintiffs and redeemed in favour of the plaintiffs. Undisputedly,

mutation was made in favour of the plaintiffs over the land in question which was given to the plaintiffs in exchange of the property owned and

redeemed in favour of the plaintiffs. In the opinion of this Court, ownership of the plaintiffs is proved. Undisputedly, for the first time in the year

1977 without notice to the plaintiffs, property was mutated in favour of the Central Government. Thereafter, defendant Nos. 2 and 3 took the

possession of the property in the garb of alleged auction in favour of son of defendant No. 2 and in favour of defendant No. 3.

14. In the opinion of this Court, in view of source of title being proved revenue entries, loses its importance. In the opinion of the Court, revenue

entries are only rises presumption and when this presumption is stood rebutted by cogent evidence/admission as in the present case, then

ownership on the basis of entry cannot be conferred.

15. In the opinion of this Court, entries do not confer any title, rather, it is the source of the title which confers title. In the opinion of this Court if

source of title is proved in favour of the plaintiffs from the time of their father Govind mere mutation in favour of Central Government that too

without notice to the plaintiffs shall not deprive the plaintiffs from the ownership / title of the property. In the opinion of this Court, view taken by

the learned Trial Court was correct and of First Appellate Court is wrong.

Substantial question No. 3

16. Undisputedly, District Competent Officer has redeemed the mortgage in favour of the plaintiffs. Undisputedly, order was never challenged by

the Central Government, hence, in the opinion of this Court, now it is not open to the Central Government to say that property was never

redeemed, hence, it was evacuee property and stood vested in the Central Government. Any order passed by the District Competent Officer is

binding on the Central Government unless and until, the same is challenged and set aside by the competent authority. In the present case, order

dated 20.06.1959 was never challenged by the Central Government, hence, Central Government is stopped to challenge the same.

17. In view of the above, impugned judgment and decree cannot be sustained. Second appeal is allowed. Impugned judgment and decree passed

by learned First Appellate Court dated 14.09.1987 is set aside and that of learned Trial Court dated 09.10.1985 is restored.