courtkutchehry.com

**Company:** Sol Infotech Pvt. Ltd.
**Website:** www.courtkutchehry.com
**Printed For:**
**Date:** 05/11/2025

**(2010) 10 P&H CK 0244**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

| | |
|---|---|
| Telu Ram and Others | APPELLANT |
| Vs | |
| Niranjan Singh and Others | RESPONDENT |

**Date of Decision:** Oct. 5, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - 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. Niranjan 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 redeem and since Chanan did not get mortgage redeem, 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 evacuee 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, looses 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 tile 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 deprived 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.