Ranjit Singh Vs Punjab State

R.S.A. No. 1754 of 1986 (O&M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 8, 2014

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Section 80#Punjab Land Reforms Act, 1972 â€" Section 18, 18(2)#Punjab Tenancy Act, 1887 â€" Section 82#Registration Act, 1908 â€" Section 17, 49#Transfer of Property Act, 1882 â€" Section 3

Citation: (2014) 3 RCR(Civil) 766

Hon'ble Judges: Paramjit Singh Patwalia, J

Bench: Single Bench

Advocate: Sukant Gupta, Advocate for the Appellant; Harsimrat Rai, D.A.G. and Ashok Jindal, Advocate for the Respondent

Final Decision: Allowed

Judgement

Paramjit Singh Patwalia, J.
This regular second appeal by plaintiff is directed against the judgment and decree dated 17.12.1983 passed

by learned Sub-Judge Ist Class, Barnala, whereby suit for declaration filed by plaintiff was dismissed as well as against the judgment and decree

dated 31.05.1986 passed by learned Additional District Judge, Barnala, whereby the appeal preferred by the appellant/plaintiff has also been

dismissed. For convenience sake, reference to parties is being made as per their status in the civil suit.

2. The detailed facts of the case are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However,

the facts relevant for disposal of this second appeal are to the effect that plaintiff filed a suit for declaration on the ground that he was owner in

possession of the land fully described in the head note of the plaint on the basis of registered sale deed dated 18.08.1973 executed by Waryam

Singh son of Pahara Singh, original owner of the property. Collector Agrarian, Barnala, vide order dated 16.06.1976 declared the suit land and

some other land of Waryam Singh as surplus and mutation in that regard was also sanctioned in favour of Punjab State on 26.04.1979. It was

pleaded that order of the Collector was without jurisdiction, null and void and not binding on the plaintiff as he was not served with any notice

before passing the order in question. The present suit has been filed after serving notice u/s 80 of the Code of Civil Procedure. Defendants tried to

dispossess the plaintiff as a result of which plaintiff has filed the suit in question.

3. Suit was resisted by defendants on the ground that civil Court has no jurisdiction and the order passed by Collector was perfectly legal, valid

and effective. Plaintiff has no locus standi to file the present suit which is also barred by limitation. Suit is bad for non-joinder of necessary parties.

Mutation in respect of the area declared surplus has rightly been sanctioned. Surplus area of Waryam Singh was correctly allotted to Sarwan Singh

son of Tara Singh resident of village Naiwal and possession of the suit land and remaining surplus area of Waryam Singh was delivered on

09.09.1980. Thereafter, on application moved by Sarwan Singh, he was impleaded as party vide order dated 15.10.1981 and filed written

statement almost similar to the pleas taken by defendants No. 1 to 3.

4. Plaintiff filed replications to the written statements denying the averments in the written statements and reiterating the averments in the plaint.

5. Court of first instance, on the basis of pleadings of the parties, framed following issues:-

1. Whether Civil Court has no jurisdiction to try the present suit? OPD

2. Whether the plaintiff has got no locus standi to file the present suit? OPD

3. Whether the suit is collusive and is not maintainable? OPD

4. Whether the suit is within limitation? OPP

5. Whether the suit is bad for non-joinder of necessary parties? OPD

6. Whether the plaintiff is owner and in possession of the property in dispute? OPP

7. Whether the order of Collector dated 16/6/1976 and mutation No. 2789 dated 26.4.79 are null and void and without jurisdiction and are not

binding on the plaintiff for the reasons given in para. No. 4 and 5 of the plaint? OPP

8. Whether the suit is not maintainable in the present form as alleged in para. No. 14 of the preliminary objection in the written statement of Sarwan

Singh defendant? OPD

9. Whether the plaintiff is entitled to the injunction as prayed for? OPP

10. Relief.

6. The Court of first instance, after appreciating evidence on record, dismissed the suit of the plaintiff. Appeal preferred by the appellant/plaintiff

against the judgment and decree of Court of first instance has also been dismissed by lower appellate Court. Hence, this second appeal.

7. I have heard learned counsel for the parties and perused the record.

8. At the time of admission no substantial question of law was framed nor the same has been placed on record during the pendency of appeal.

9. Learned counsel for the appellant vehemently contended that appellant was a bona fide transferee prior to the commencement of surplus

proceedings under the Punjab Land Reforms Act, 1972 (hereinafter referred to as "the Reforms Act") and registration of sale deed was in the

knowledge of Government and is a public notice as the same is compulsorily registrable document under the provisions of Indian Registration Act

read with the provisions of Transfer of Property Act. The area of appellant has been wrongly included in the surplus area. Appellant is still in

possession. The possession, if any delivered, is only a paper transaction. Learned counsel for the appellant further submitted that when no notice

was given, the order of the Collector Agrarian, declaring the area surplus at the back of the plaintiff, has no bearing on the rights of the

appellant/plaintiff. As such the judgments and decrees passed by both the Courts below are not sustainable in the eyes of law. Civil Court has

jurisdiction to set aside the order passed under the Reform Act.

10. Per contra, learned counsel for the State vehemently contended that Waryam Singh son of Pahara Singh was a big landlord. He had filed a

return on 03.10.1973 in which it has been mentioned that he had sold 12 acres of land in July, 1973. Surplus area has been correctly determined

by the Collector vide order dated 17.06.1976. In the declaration return filed by Waryam Singh in Form-A name of the appellant was not

mentioned. Sale deed in favour of appellant/plaintiff is after the appointed day i.e. 24.01.1971 and commencement of Reforms Act i.e.

24.03.1973. The land already stands utilized in view of rapat roznamcha No. 9 dated 09.09.1980. Plaintiff can proceed in accordance with law. It

is submitted that jurisdiction of Civil Court is barred.

11. I have considered the contentions raised by learned counsel for the parties.

12. On consideration of arguments raised by learned counsel for the parties, I find that following substantial questions of law arise for consideration

in this appeal:-

1. Whether revenue officials are under obligation and duty bound to make entries with regard to registered documents regarding transfer of

agricultural land under the provisions of the Punjab Reforms Act and Punjab Land Records Manual Chapter 7 para. 7.32 and a document

registered under the provisions of Indian Registration Act is a public notice?

2. Whether plaintiff is interested party and was required to be issued notice before declaring surplus area and civil Court has jurisdiction to try the

suit challenging the order passed by revenue authorities?

Re: question No. 1

13. Admitted facts are to the effect that appellant/plaintiff purchased land from Waryam Singh (original owner) vide sale deed No. 295 dated

18.08.1973. Waryam Singh filed declaration return (Form-A) before Collector Agrarian, Barnala, on 03.10.1973. In the said return it was

specifically mentioned that he had transferred 12 acres of land in July, 1973 but name of transferee was not mentioned in the return. The Collector

Agrarian declared the area surplus on 17.06.1976, including land purchased by the plaintiff. Admittedly, sale deed dated 18.08.1973 in favour of

plaintiff was prior to commencement of surplus proceedings and is a registered document under the provisions of Indian Registration Act. Once a

document is registered then under the Punjab Land Records Manual i.e. Chapter 7 para. 7.32 the Registrar/Sub-Registrar is required to inform the

Tehsildar, particulars of all the registered deeds which purport to transfer the agricultural land.

14. It would be appropriate to refer to Chapter 7 para. 7.32 of the Punjab Land Records Manual, which reads as under: -

Procedure as regards registered deeds of transfer. Registrars and sub-registrars send on the 15th and last day of each month to tehsildars

particulars of all registered deeds, which purport to transfer agricultural land. The office kanungo forwards these slips within three days of their

receipt in Tehsil Office to the field kanungo of the circle who distributes them to the patwaris concerned. The form of the notice is as follows:-

With the memoranda is sent an invoice in the following form:

Where a deed is not to take effect immediately but after a specified period, this fact should be noted in the column for remarks.

(i) A file should be kept of all invoices received during the year and a fly index will be attached to it in the form usually adopted for miscellaneous

files.

(ii) The registration memoranda should then be sent to the field kanungo, who will distribute them to the various patwaris for entry in their mutation

registers in the usual way. The information in the memoranda is sufficient to enable the patwari to enter up the transfer in his register of mutations as

soon as he receives them without reference to the transferee.

(iii) When the field kanungo hands over the memoranda to a patwari, the latter should make a note of the fact in his diary recording the serial

number of the sheet received by him. The entry should be signed by the field kanungo. The patwari will then enter up in his register the mutations

detailed in the memoranda before the next inspection of the Field kanungo and endorse the fact of entry on the memoranda giving the serial number

of each mutation and the date of entry. On his next inspection the field kanungo will see that this has been done and after comparing the entries in

the mutation registers with the memoranda, will sign both and himself forward the latter to the office kanungo within 15 days of their receipt. If a

memoranda contains land situated in more than one patwari circle, the field kanungo will take similar action as regards all the circles concerned

before forwarding the memorandum to the office kanungo.

(iv) On receipt of the memoranda from the field kanungo the office kanungo will place them on the file together with the invoice covering them. In

the ""remarks"" column of this he will note the date of receipt. Thus he will be able to detect any delay in the return of the memoranda and bring it

home to the responsible official.

(v) When all the memoranda appertaining to an annual file have been returned by the patwaris, a note of the date on which the last memorandum is

received should be entered on the fly index. The annual file which will then be completed should be kept in the tehsil and destroyed on the expiry of

one year from such date.

15. In view of this, it was in the knowledge of the revenue authorities that document is registered as notice by Sub-Registrar is required to be given

to Tehsildar and other subordinate authorities on 15th and last day of each month and thereafter changes are required to be effected in the revenue

record.

16. In this regard reference can be made to judgment of this Court in Joginder Singh and Others Vs. Gurdev Singh and Others, wherein it has been

held as under:-

After giving my thoughtful consideration to this aspect of the matter, I do not find any substance in this submission of the learned counsel. Para.

7.32 of the Punjab Land Records Manual clearly lays down that Registrar and Sub-Registrar registering a document relating to the transfer of

agricultural land shall send every month the particulars of the registered deed to the Office Kanungo, who, in turn, would inform the Field Kanungo

and the Patwari in accordance with the requirements prescribed in the relevant form. Again, the form of mutation is prescribed by para. 7.3 of this

Manual. The subsequent paras contain the relevant instructions as to how this form is to be filled in or the revenue record in pursuance thereof has

to be prepared. A reading of these paras of the Munual clearly indicates that the Sub-Registrar registering a document with regard to transfer of

agricultural land is under a duty to inform the revenue officials about the same and those revenue officials in turn are under an obligation and duty to

make the entries in accordance with the instructions contained in these paras. It was in pursuance of this procedure laid down in this Manual that

the entries were made in Exhibit P. 10. That being the situation, it cannot reasonably be disputed that the original mortgage was created on 13th

Chet 1993 (B.K.) equivalent to 26th March, 1937. This date, obviously, is within the period of limitation from the date of filing of the present suit.

Thus, I do not find any infirmity in the concurrent findings recorded by the lower Courts on the point of limitation.

17. Hon''ble Supreme Court in Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another, has held as under:-

10. In the earlier order dated 15.5.2009, the objects and benefits of registration were explained and we extract them for ready reference:

The Registration Act, 1908, was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating

to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of

certain types of documents and providing for consequences of non-registration. Section 17 of the Registration Act clearly provides that any

document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in

future ""any right, title or interest"" whether vested or contingent of the value of Rs. 100 and upwards to or in immovable property.

Section 49 of the said Act provides that no document required by Section 17 to be registered shall, affect any immovable property comprised

therein or received as evidence of any transaction affected such property, unless it has been registered. Registration of a document gives notice to

the world that such a document has been executed. Registration provides safety and security to transactions relating to immovable property, even if

the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to

transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of

the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which

they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in

the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people

may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It

ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained

under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies

duly certified.

Registration of documents makes the process of verification and certification of title easier and simpler. It reduces disputes and litigations to a large

extent.

18. Explanation I to Section 3 of the Transfer of Property Act clarifies that where any transaction relating to immovable property is required by law

to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such party shall

be deemed to have notice of such instrument as from the date of registration.

19. In view of above, State was aware of the fact that land had already stood transferred and was required to verify this fact. Since plaintiff is

purchaser from Waryam Singh (original owner), he is interested person and principles of natural justice were required to be followed.

20. In view of above discussion, it is held that Government was having knowledge that land stood transferred in the name of plaintiff by way of

registered sale deed and the fact has also been mentioned in the return of the original owner, although complete details have not been mentioned. It

is just possible that big landlord to avoid deduction of his area may not give the complete details of the person to whom he has sold land and it

appears to be so happened in the present case. Otherwise, the Government should have also given due notice to the plaintiff to give details qua

transfer of land. There is no evidence to this effect that any notice was ever given to the plaintiff before proceedings in the surplus area. The

substantial question of law is accordingly answered in affirmative.

Re: question No. 2

21. Now I will deal with second substantial question of law. Plaintiff had filed the suit feeling aggrieved against the order passed by Collector

contending that no opportunity was given to him by the authorities under the Reforms Act to put forward his case and he was not a party in the

surplus proceedings. Notice of surplus proceedings was never given to him at any point of time. The land purchased by the plaintiff could not have

been included in the surplus area rather the land already sold should not have been considered towards the land of original owner. Both the Courts

below have categorically recorded a finding that no notice was given to the plaintiff before declaring the area surplus. This fact is not disputed by

learned counsel for the State. This is also not in dispute that plaintiff is a transferee/vendee from the original owner. When the transfer is made by a

landlord after the commencement date, transferee is a party interested in participating in proceedings for declaration of surplus area and he must be

given an opportunity of being heard to avoid his interest being prejudicially affected before declaring the surplus area under the Reforms Act.

22. This issue has been decided by Full Bench of this Court in Harnek Singh and Another Vs. The State of Punjab and Others, wherein the Full

Bench held as under:-

18. Though Mr. Seth has tried to argue that a transferee is included in the expression ""persons concerned"" occurring in Section 32-D(2) of the Act,

and is, therefore, entitled to be heard at all stages relating to the declaration of the surplus area of the transferor, we consider it unnecessary to

enter into this controversy for the simple reason, that even if the statute and the rules framed thereunder are silent on the point, it appears to us to

be necessary for satisfying the principles of natural justice, without which it is impossible to maintain the rule of law, to give an adequate opportunity

to a transferee to safeguard his interest in proceedings which can possibly culminate in a decision pre judicially affecting him and his property rights.

I have already illustrated in an earlier part of this judgment that the interests of such a transferee are always in jeopardy in proceedings for

determination of the surplus area of his transferor. The Full Bench in Pritam Singh''s case appear to have thought (in the passage quoted above)

that the net result of Section 32-FF was that ""the transfers have to be ignored"" and, therefore, ""no question of any notice to the transferees arises.

It has since been settled by the Supreme Court in S. Pritam Singh Chahil''s case (supra) that the only effect of Section 32-FF is that such transfers

do not bind the Government, but they are otherwise good transfers so far as the transferors and the transferees are concerned. The point in issue

does not appear to have been argued before the Full Bench at any length and appears to have been raised there almost incidentally towards the

end of the case. It appears to me that in view of the authoritative pronouncement of the Supreme Court in Pritam Sigh Chahil''s case relating to the

scope and effect of Section 32-FF relating to transfers referred to therein and having regard to the other provisions of the Act and the Rules, the

observations of the Full Bench in the case of Pritam Singh and others v. The State and others (supra) (about no notice of the surplus proceedings

to the transferee being necessary), which have been quoted in an earlier part of this judgment, are no longer good law. 20. It is absolutely fallacious

for the State counsel to argue that principles of natural justice cannot operate in a case where the relevant rules do not make provision for the same

being followed. Things may be different in a case where the application of particular rules of natural justice may be excluded by the Legislature, that

is not the case here. No part of the Act or the Rules framed of audi alteram partem. Without feeling the necessity of referring to the long series of

cases relating to the observance and importance of the abovementioned principle of natural justice, I may quote with advantage the following

passages from the latest judgment of the Supreme Court on the subject in Union of India (UOI) Vs. Col. J.N. Sinha and Another,

As observed by this Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, ''the aim of rules of natural justice is to secure

justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other

words they do not supplant the law but supplement it.'' It is true that if a statutory provision can be read consistently with the principles of natural

justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the

principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of

any or all the principles of natural justice, then the Court cannot ignore the manage of the legislature or the statutory authority and read into the

concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the

principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the

purposes for which it is conferred and the effect of the exercise of that power.

23. Thereafter another Full Bench of this Court in State of Haryana and Others Vs. Vinod Kumar and Others, has held as under:-

5. Broadly speaking there are two types of judgments/orders, namely, judgments in rem and judgments in personam. The former binds the whole

world whereas the latter binds only the parties. The judgments/orders in rem are the ones passed by the authorities or the Courts exercising the

jurisdiction such as insolvency, admiralty and matrimonial. The jurisdiction exercised by the authorities under the Punjab Act is not of such a nature

that the orders passed under it would bind the public at large. Obviously, they are the judgments/orders in personam. The fundamental principle as

to their nature is that they only bind the parties to it or the persons named therein. So far as the person who is neither a party nor named in such an

order is concerned, the order in the eye of law is ineffective and non est and as such he is under no obligation to take proceedings to get it set

aside. Strictly speaking her terms ''void'' or ''voidable'' when used qua a judgment or and order would be relevant when a person is a party or

named in the judgment or the order because it is only such a person who can take proceedings to get it declared void or set aside as the case may

be. On the other hand a person who is not a party would have no right to get the order set aside or declare it void as the order would be binding

on the persons who are party or named therein and his remedy would be only to get a declaration that the order was ineffective and non-est so far

as he is concerned. In Dhaunkal Sheo Ram Vs. Man Kauri Ram Jas and Another, this basic principle was not taken notice of and instead, if we

may say so with due respect to the learned Judges, the reasoning proceeded on an erroneous basis that as the Collector had the jurisdiction to

determine the surplus area of the landowner, the non-issuance of notice to the tenant would not render its order void and the order was binding on

the latter. If the landowner includes in his reserved area any land which is on lease, the tenant would have a right to be heard, because the order of

reservation necessarily clothes the landowner with a right to eject him from such an area, if the landowner does not include any area on lease with

the tenants, the latter would have no right of being heard and the order of determination of the surplus area of the landlord would be perfectly valid

even when passed at their back. The order of the Collector including the area under lease in the reserved area of the landowner though would be

within jurisdiction but would not bind any tenant whose area has been included in the reserved area unless he is issued a notice or is named in the

order of the Collector. Some what similar question arose in State of Punjab (Now Haryana) and Others Vs. Amar Singh and Another, and the rule

laid down in Dhaunkal Sheo Ram Vs. Man Kauri Ram Jas and Another, stands impliedly overrated by the decision in that case. What happened

there was that Smt. Lachhman was a big landowner on the prescribed date i.e. April 15, 1953. Her son-in-law, Amar Singh, and his brother

Indraj claiming themselves to be tenants of the area other than the reserved area of the landowner filed an application u/s 18 of the Punjab Act for

its purchase and the same was allowed by the Assistant Collector, the competent authority. On the basis of the sale certificate the said tenants

claimed themselves to be the owners of the area purchased by them before the Collector during the proceeding concerning the determination of the

surplus are of the landowner. One of the pleas raised on behalf of the State was that it being not a party to the proceedings u/s 18 of the Punjab

Act, was not bound by the order of the presented authority allowing the purchase to the tenants of the area which but for that purchase formed

part of the surplus area of the land-owner. It may be noticed here that under the provisions of Section 18(2) of the Punjab Act, when an

application is made in writing to the Assistant Collector, by a tenant for purchasing the area of a big landowner, he is required to issue notice to the

landowner and to all other persons interested in the said land. If the area sought to be purchased by the tenant did not form part of his permissible

area or he has been settled thereon after the appointed date i.e. April 15, 1953, such are would form part of the surplus area and State would be

obviously an interested party entitled to notice under the said section before the purchase application is allowed. According to rule laid down in

Dhaunkal Sheo Ram Vs. Man Kauri Ram Jas and Another, the order of purchase passed in favour of the tenant without notice to the State would

be binding on the State and only voidable at its instance because the prescribed authority had the jurisdiction to try such an application and allow it

u/s 18 of the Punjab Act. But the Supreme Court in Amar Singh''s case (supra) held that the State, which was seriously prejudiced by the order

but was not a party to it, would not be bound by that order. It was further held that the State which was not a party to the proceedings did not

have a right of appeal because ordinarily the rule is that only a party to the suit adversely affected by the decree or any of his representatives can

file an appeal or petition for review as would be evident from paragraph 32 reproduced below that:

An order like Annexure ''a'' ordinarily binds the parties only and here the State which is the appellant is seriously prejudiced by that order but is

not a party to it. Therefore, it cannot bind the State propro vigore. It was argued by Shri Dhingra that the State could have moved by way of

appeal or review and got the order set aside if there was ground and that not having done so it was bound by the order. As a matter of fact, the

State, which is not a party to the proceedings, does not have a right of appeal. The ordinary rule is that only a party to a suit adversely affected by

the decree or any of his representatives-in-interest may file an appeal. Under such circumstances a person who is not a party may prefer an appeal

with the leave of the appellate Court if he would be prejudicially affected by the judgment and if it would be binding on him as res judicata under

Explanation 6 to section 11 (See Mulla Civil Procedure Code, 13th Edn. Vol. 1, p. 421). Section 82 of the Punjab Tenancy Act 1887, which may

perhaps be invoked by a party even under the Act, also speaks of applications by any party interested. Thus no right of review or of appeal u/s 18

can be availed of by the State as of right.

The issue of jurisdiction is no more res integra. Full Bench of this Court in Vinod Kumar and others (supra) has held that even if there is alternative

remedy under the provisions of the Land Reforms Act that would not bar the remedy of suit if it is otherwise available. In view of the above, it is

held that plaintiff is interested party and civil Court has jurisdiction to try the suit. Substantial question of law is answered accordingly.

In view of above, order of Collector Agrarian qua rights of plaintiff is set aside. However, this will not preclude the Collector Agrarian to proceed

in the matter after affording adequate opportunity of hearing to the plaintiff in accordance with law.

In the above terms, appeal is allowed.