

Lakha Singh v. Mohinder Singh (P&H) : Law Finder Doc Id # 1468331

PUNJAB AND HARYANA HIGH COURT

Before:- Sudip Ahluwalia, J.

CR No.1904 of 2019 (O&M). D/d. 13.05.2019.

Lakha Singh - Petitioner

Versus

Mohinder Singh & Ors. - Respondents

For the Petitioner :- Ashish Chopra and Prateek Sodhi, Advocates.

For the Respondents :- **Ashish Aggarwal** , Advocate.

A. Civil Procedure Code 1908, Order 39, Rules 1 and 2 - Challenge to orders of revenue authorities without impleading them as party - Suit will be defective for non-joinder of necessary parties - No such relief can be granted at interim stage which cannot be granted even at final stage of such a suit especially when the suit visibly suffers from the defect of non joinder of those necessary parties.

[Para 8]

B. Transfer of Property of more than ₹ 100/- - Can be only by way of a registered deed of transfer, not by mere a compromise.

[Para 7]

Cases Referred :

Hans Raj v. Banta Ram, RSA No.2175 of 2004. D/d. 10.8.2007.

Hanuman v. Rajesh Kumar, RSA No. 4260 of 2011. D/d. 4.12.2012.

JUDGMENT

Sudip Ahluwalia, J. - This Revision Petition has been preferred against the impugned order passed by the Ld. District Judge, Amritsar in Civil Appeal No.135 of 2018 on 06.02.2019 (Annexure P-10) whereby the Appeal filed on behalf of the Petitioner against the dismissal of his Application for temporary injunction under Order 39 Rules 1 & 2 of the CPC in CS No.1006 of 2018, passed by the Ld. Civil Judge (Junior Division), Amritsar on 20.08.2018 (Annexure P-8) was dismissed.

2. Background of the matter is that the Petitioner had filed the said Suit against the Respondents, who were arraigned as Defendants No.1 to 5 by contending that he was co-sharer in the disputed land along with the Proforma Defendant No.6, namely, Mahenga Singh, and that he had acquired the said land from its erstwhile owner Gian Singh (since deceased), who happens to be the predecessor-in-interest of the Respondents/Defendants.

The Suit filed by him was for a declaration that he is the owner in possession of the disputed lands along with the Proforma Respondent No.6, with an alternative prayer for a direction upon the Respondents to execute the sale deed in favour of the Petitioner and the Proforma Defendant No.6 in terms of the earlier Compromise dated 24.02.1994. He had further prayed for permanent injunction to restrain the Defendants or any other persons claiming through them from forcibly dispossessing him from the disputed lands on the basis of any order obtained by way of 'Form-K' from the Assistant Collector, Ist Grade or from the Additional Deputy Commissioner, Amritsar.

3. The chain of events leading up to the present litigation can be summarized by first taking note of the fact that a large area of the land measuring 53 Kanals 17 Marlas originally held by one Anant Ram was declared surplus and mutated in favour of the State in the year 1951. The said Anant Ram died in 1973 and ten years later, one of his Legal Representatives namely Abinash Rani filed CWP No.5055 of 1983 challenging the order declaring the said land surplus, which was passed way back on 10.10.1961. The Writ Petition was dismissed on 15.2.2006 and LPA No.124 of 2006 preferred against such dismissal was also dismissed on 8.10.2010. The Writ Petitioner thereafter filed a Review Application against such Judgment of dismissal, but even that was dismissed by the concerned Bench on 3.4.2012, after which, the SLP preferred by her was also dismissed by the Supreme Court. In the meantime, the land in question had been allotted in favour of Gian Singh way back in 1963. But on account of dismissal of the proceedings arising out of CWP No.5055 of 1983, vide which, the order holding the land surplus was upheld, its subsequent allotment in favour of Gian Singh was got perfected. But during the pendency of the Writ Petition, three other Legal Representatives, namely Saroj, Rajesh and Brij Bala had sold an area measuring 17 Kanals 2 Marlas in favour of one Kirpal Singh on 1.7.1990. The said Kirpal Singh in turn sold the land in favour of four persons, namely Gurdeep, Baldev, Joginder and Tarsem in 1991. In the same year, Gian Singh, whose allotment/Title to the allotted land had subsequently become perfected after dismissal of the Writ Petition, then filed a Suit for possession against the vendees of Kirpal Singh, namely Gurdeep and Tarsem. The Suit was initially decreed ex parte on 17.9.1991, but according to the Petitioner, the said decree was not executed. Subsequently, both the aforesaid Defendants on 23.1.1993 filed their Application for setting aside the ex parte decree under Order [9](#) Rule [13](#) of CPC. During the pendency of the Application, they alongwith their co-vendees sold some portion of the land in favour of the present Petitioner Lakha Singh and his brother Mehanga Singh on 21.2.1994. The Respondent/Plaintiff Gian Singh compromised the matter with the Petitioner and his brother Mehanga Singh (Respondent No.6) and a statement to that effect was given along with an Application to withdraw the Suit on 24/2/1994. The Application was allowed by the Court concerned and the Suit was dismissed as withdrawn in view of the compromise between the parties. It may be mentioned that the compromise was on account of the Petitioner and Respondent No.6 having passed on consideration money to the tune of ₹ 1,00,000/- to the said Gian Singh in view of the land which was allegedly in their possession.

4. However, on 27.3.2015 the contesting Respondents/Legal Representatives of Gian Singh (who had expired in the meantime) got obtained 'K' Form from the Assistant Collector for getting possession of the disputed land out of the total land measuring 53 Kanals 17 Marlas. The Petitioner and his brother challenged issuance of the said 'K' Form before the Revenue Authorities by filing an Appeal against such order, but their Appeal was dismissed by the competent Authority/Collector on 22.2.2018. According to him, therefore, they have been left with no other alternative except to file the Suit in the Ld. Court below to protect their Right, Title and Interest in the suit land, since after dismissal of their Appeal, no further

provision exists to challenge the proceedings in view of the Provisions of the Punjab Land Reforms Act, 1972.

5. The Appeal preferred against dismissal of the Petitioner's Application for Temporary Injunction by the Trial Court was in turn upheld by the Ld. ADJ Amritsar in his impugned Judgment dated 6.2.2019. The relevant conclusions have been summarized by the Ld. ADJ in the light of the arguments advanced on behalf of the Petitioner as follows -

"14. Ld. Counsel for the appellant has argued that impugned order is against the law and facts on file and revenue record has not been considered by Ld. Trial Court. He further argued while detailing the facts of the case that Ld. Trial Court has not considered the statements and suit has also been decided which was withdrawn by the plaintiffs and order dated 24.2.1994 has not been considered. He further argued that it is wrongly observed that application under Order [9](#) Rule [13](#) of CPC has been filed by Gurdeep Singh and Tarsem Singh on 17.9.91 in favour of Gyan Singh in which the alleged compromise was effected whereas the application was filed against Gyan Singh and the case was decided on 24.2.94 as such the impugned order is liable to be set aside as there is no order for setting aside ex parte decree. He further argued that it is also not considered that entire sale consideration stands paid and there is no limitation for getting the sale deed executed and legal heirs of Gian Singh could not deny the payment which was received by way of compromise and all the documents have been placed on record but no reason has been given for declining the relief. The aforesaid contentions are meritless in view of the order dated 22.2.2018 passed by the Ld. Court of Sh. Subash Chander IAS Collector Amritsar which clearly shows that at this stage there exists no prima facie case in favour of the plaintiff. In fact, it is observed in the order that no sale deed can be executed when the land has been declared surplus. Moreso, the arguments with regard to compromise executed by Gyan Singh, statements of parties and setting aside of exparte decree and withdrawal of suit are matters which are to be considered during trial as such at this stage the aforesaid arguments are without any substance. The aforesaid discussion coupled with the material on record establishes that there is no illegality in the impugned order.

Ld. Counsel for the appellant has relied upon ***RSA No.2175 of 2004, D/d 10.8.2007 titled as "Hans Raj and others v. Banta Ram and others"*** and ***RSA No.4260 of 2011, D/d 4.12.2012 titled as "Hanuman and others v. Rajesh Kumar and others"*** and has argued that as per section 53A of TPA he cannot be dispossessed. The aforesaid citations are not applicable to the facts of the case in hand at this stage as in the case in citations, agreement to sell was involved whereas in the present case, one compromise has been alleged, which is yet to be proved during trial."

6. This Court has perused the impugned orders passed by both the Ld. Courts below and also heard the submissions and arguments advanced by the Ld. Counsel for both sides. The Ld. Trial Court had dismissed the Petitioner's Application for temporary injunction under Order [39](#) Rules [1](#) & [2](#) of the CPC by holding that there was no prima facie case in his favour and the balance of convenience is also not supporting him. The relevant material observations in this regard are contained in Para 4 of the impugned order of the Trial Court dated 20.8.2018, in which it has been observed -

"It has been argued that the predecessor-in-interest of the defendants no.1 to 5 has already entered into the compromise in the civil suit filed against Gurdeep Singh and Tarsem Singh regarding the suit land. On the other hand as such the defendants has denied any compromise with the plaintiff. A copy file along with the suit is showing that an application under Order [9](#) Rule [13](#) read with 151 of CPC had been filed by Gurdeep Singh and Tarsem Singh for setting aside the exparte decree dated 17.09.1991 in favour of Gian Singh, in which the alleged compromise was effected. As per the compromise the application seems to be stand disposed off as there is no specific order that the ex-parte decree in favour of Gian Singh has been set aside. As such thereafter by getting joined the proceedings by the defendants of that suit the suit had to be disposed off by setting aside the ex-parte decree. However, there is no such order and it means that the exparte decree is standing still. Moreover the copy of the order of setting aside the decree has not been placed on the file. Whatever placed on the file that is regarding the disposal of the application of Order [9](#) Rule [13](#) of the CPC. Further, plaintiff has admitted in his plaint that there is no sale deed in his favour by Gian Singh, since the mode of the transferring the right in the property is sale deed as there is no decree in favour of the plaintiff or other instrument of transferring the rights in favour of the plaintiff. Furthermore the course of action taken by the defendants is legal way and since so many years they are pursuing the right in the legal manners, in view of the above discussion their legal remedy cannot be barred. So there is no prima facie case in favour of the plaintiff and balance of convenience is also not supporting him. Hence the application of the plaintiff under Order [39](#) Rules [1](#) & [2](#) of the CPC has been declined."

7. Admittedly, no registered Sale Deed was actually executed by Gian Singh in favour of the Petitioner and Respondent No.6, and their only claim qua the disputed land accrues from the Compromise they had allegedly arrived at with Gian Singh by virtue of which, they allegedly retained possession after paying the consideration amount of ₹ 1 Lac. Undoubtedly, it was a final disposal of the Suit in a very unusual manner whereby not only a Decree in favour of the Plaintiff was set aside on consent, but the terms of Compromise were effected when in fact that the Petitioner and his brother Mehanga Singh had not even filed any regular Written Statement against the original Plaint. The observations of the Ld. ADJ to the effect that "no sale deed can be executed when the land has been declared surplus", in the circumstances assume significance. Even otherwise no actual Right, Title and Interest in an immovable property exceeding ₹ 100/- in value can be passed on except by way of a registered Instrument of Conveyance.

8. Furthermore, the Respondents derived their claim to the disputed land on the basis of "K" Form issued in their favour by the Competent Authority i.e. Assistant Collector Ist Grade. The Appeal preferred against the order of AC Ist Grade was dismissed by the Collector, Amritsar vide his order dated 22.2.2018. These proceedings of the Revenue Authorities have therefore, attained finality. It is not the case of the Petitioner that the orders passed by the Revenue Authorities are per se null and void, or that they were not possessed of the requisite jurisdiction to entertain the matter. Assuming there is any illegality in the decisions of the Revenue Officers, the same can surely be challenged in the Writ Jurisdiction, if at all no Statutory remedy exists after dismissal of the Appeal as claimed by the Petitioner. Otherwise, to impeach the effect of those decisions, the Revenue Authorities would have been required to be arraigned as parties, which has not been done in the present case. So even on this count at this stage, the Suit as framed would appear to be not maintainable. Consequently, this Court is not inclined to grant any such relief to the Petitioner in the Suit

as it exists now, when apparently such relief would not be admissible at the time of its final disposal, since it visibly suffers from the defect of non joinder of those necessary parties whose orders are sought to be impeached in a Civil Suit.

9. For the aforesaid reasons, this Court finds no ground to interfere with the impugned orders passed by both the Ld. Courts below. The Revisional Application is, therefore, dismissed. However, as already mentioned by both the Ld. Courts below, dismissal of the Injunction Application shall have no bearing on the final outcome of the Suit, which shall be decided by the Ld. Trial Court independently on merits and on the basis of the evidence and submissions, which may be led during the course of regular trial.