

HIGH COURT OF PUNJAB AND HARYANA**BENCH : HON'BLE MRS. JUSTICE SUKHVINDER KAUR****Date of Decision: 03.04.2024**

RSA-2678-2019 (O&M)

Prem Singh ...Appellant**VERSUS****Tehsildar-cum-Sales, Ropar and others ...Respondents**

Subject: Appeal against the concurrent findings of the lower courts regarding the dismissal of a suit for declaration of ownership and injunction based on an alleged valid sale certificate.

Headnotes:

Declaration of Ownership - Validity of Sale Certificate - Challenge against Financial Commissioner's Order - Appellant's suit seeking declaration of ownership of land dismissed by lower courts - Appeal filed against concurrent findings - Plaintiff claimed ownership based on sale certificate dated 03.01.2005 - Allegations of illegalities in auction process and subsequent procedures - Financial Commissioner's order setting aside auction challenged - Courts below relied on previous judgments dismissing appellant's claims - Appellant argued lack of independent assessment of evidence by lower courts - Allegations of minor status of appellant at time of auction disputed - Voter list presented as evidence of age - Appellant's claim of clerical error in sale certificate rejected by authorities - Previous court orders highlighting defects in auction process upheld - Lack of substantial question of law raised in appeal - Appeal dismissed.

Referred Cases: None..

Representing Advocates: Mr. Rajesh Sethi, Mr. Arun Biriwal, Ms. Preeti Bansal, and Mr. Paramdeep Singh for the appellant.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/ plaintiff against the concurrent findings recorded by both the Courts below vide which the suit of the plaintiff was dismissed.

2. Plaintiff-Prem Singh filed suit against the defendants Tehsildarcum-Sales, Bhagat Singh @ Bhata, Jagir Singh son of Parshottam Singh and proforma defendant Somu seeking declaration to the effect that he was owner in possession of ½ share (i.e. 10 Kanal 17 Marlas) out of 21 Kanal 14Marlas, situated in Khewat Khatauni No.664/665/666 Khasra Nos.43//7(4-16), 14(7-8), 17(9-10) situated at village Bara Pind, H B No.326, Tehsil and District Ropar, as per sale certificate dated 03.01.2005. The plaintiff further sought a declaration to the effect that the sale certificate dated 03.01.2005 was legal and valid and the order of the Financial Commissioner, Revenue, Chandigarh dated 24.12.2012 was illegal, null and void. The plaintiff also sought the consequential relief of permanent injunction against forcible interference and dispossession by the defendants from the suit land.
3. Brief facts of the case as per plaint are that the plaintiff purchased the suit property in restricted petition of surplus rural evacuee agricultural land in the open auction being the highest bidder. He sold half of the suit property to proforma defendant No.4 and the name of proforma defendant No.4 was also entered in the revenue record and the mutation was also sanctioned in his favour. It has been alleged that defendant No.2 filed objections against the auction and the then Sales Commissioner, Jalandhar dismissed the objections on 24.02.1977 but the sale was not confirmed and thereafter, the case was sent to Sale Commissioner, Rupnagar for confirmation of sale. On

25.05.1985, Sale Commissioner passed an order that “whenever purchaser wants, he may move an application and re-open the case.” The plaintiff moved an application for confirmation of sale on 05.11.1985, which was dismissed on 07.02.1986 and the appeal preferred before Deputy Commissioner-cum-relief Sales Commissioner, Rupnagar against the order dated 07.02.1986, was dismissed on 05.12.1989. The revision petition against the order dated 05.12.1989 was accepted by the Divisional Commissioner, Patiala, Division Patiala, who sent back the case to the Sales Commissioner, Rupnagar with the direction to fix the price according to the present market rate, to be deposited by the petitioner. Market value of the land was fixed by Halqa Patwari, which was endorsed by Halqa Kanungo and the plaintiff deposited the said amount and on 03.01.2005, defendant No.1 issued the sale certificate in favour of the plaintiff regarding land measuring 21 Kanal 14 Marlas, *Gair Mumkin*, comprised in Khasra Nos.43//7 (4-16), 14(7-8), 17(9-10) and the mutation was also sanctioned and incorporated in the revenue record. However, the revenue officer gave instructions to the plaintiff to get corrected the area of land in para 2 of order dated 04.09.2001 passed by Commissioner, Patiala Division, Patiala as only 4 Kanal 14 Marlas was mentioned instead of 21 Kanal 14 Marlas. So the plaintiff moved an application for correction of the said order but his application was dismissed on 27.08.2006. Revision against the same was preferred in the Court of Financial Commissioner, Revenue, Punjab at Chandigarh, which was disposed of on 25.02.2008 and the case was remanded back to Chief Sales Commissioner, Rupnagar to decide it afresh within three months after hearing both the parties. The plaintiff also filed Civil Writ Petition No.1799 of 2009 (O&M) before this Court and vide order dated 22.02.2010, case was remanded back to Financial Commissioner, Revenue, Punjab which was dismissed vide order dated 24.12.2010. CWP No.1913 of 2011 was filed against the order dated 24.12.2010 passed by the Financial Commissioner but the same was also dismissed vide order dated 04.12.2012. This order was challenged by way of LPA No.2084 of 2012, which was dismissed on 14.12.2012. It was alleged that at the time of auction, the plaintiff was not minor and the observation of the Financial Commissioner and the Chief Sales Commissioner that he was a minor is against the record. The plaintiff had approached the Financial Commissioner only for correction of clerical mistake and the Financial Commissioner without providing any opportunity of hearing set aside the sale after 34 years. The plaintiff is owner in possession of the

suit property but the defendants in connivance with each other are trying to take forcible possession of the same.

4. The suit of appellant/plaintiff was dismissed by the trial Court, vide judgment and decree dated 22.11.2017. The appeal preferred by the appellant/ plaintiff before the First Appellate Court was dismissed, vide judgment and decree dated 27.09.2018. Hence, the present Regular Second Appeal has been filed by the appellant/ plaintiff.
5. Learned counsel for the appellant/ plaintiff has contended that both the Courts below while dismissing the suit of the plaintiff relied upon only on the judgments passed by this Court in CWP-1913-2011 and LPA2084-2012 and did not give any independent finding in respect of issues No.1 and 2, on the basis of the evidence led by the appellant/ plaintiff. A suit is to be decided on the basis of pleadings and evidence led in support thereof. The evidence led by the appellant/ plaintiff was not considered in the right perspective by the Courts below. The trial Court in fact held that the suit is not barred by resjudicata, but still dismissed the suit on the basis of findings given by this Court in the aforesaid cases. He has argued that the appellant/ plaintiff purchased the land in open auction, way back in the year 1976 and in continuity of the proceedings for confirmation of this sale, the Divisional Commissioner Patiala, Division Patiala, accepted the revision petition on 04.09.2001 and directed the authorities to fix the price of the land as per the market rate. The value of the land so fixed was deposited by the appellant/ plaintiff and sale certificate was issued in his favour and mutation was also sanctioned. But the Financial Commissioner set aside the sale of the land after about 34 years vide order dated 24.12.2010, which was challenged by way of civil suit which had not been taken into consideration by the Courts below. He has also submitted that when the auction took place in the year 1976, the appellant/ plaintiff was 24 years old as per the Voter list of the year 1975 of Village Bara Pind of the Constituency of Anandpur Sahib, District Ropar. So it was amply proved that at the time of auction the appellant/ plaintiff was 22 years old and was not a minor as alleged by defendants No.2 and 3. So findings of the Financial Commissioner as well as The Chief Sales Commissioner, Ropar that appellant/ plaintiff was minor while participating in the open auction, which was conducted in the year 1976, are perverse and against the record. The alleged delay in no circumstances could have been attributed to the appellant/plaintiff, but the revenue authorities failed to issue the sale certificate. Though, later on the sale certificate was issued in his

favour vide order dated 04.09.2001 passed by the Commissioner, Patiala Division but a clerical/ typographical error crept in the order dated 04.09.2001, which was pointed out to the appellant/ plaintiff by the revenue authorities. But the application which was moved by the appellant/ plaintiff for correcting that error in the revenue entry was dismissed by the Commissioner. He has submitted that there was no fraud or concealment on the part of the appellant/ plaintiff to hold that the sale certificate had been procured by the appellant/ plaintiff fraudulently and has prayed that the judgments and decrees passed by both the Courts below be set aside.

6. I have heard learned counsel for the appellants and gone through the records thoroughly.
7. In the instant case, the plaintiff has sought the declaration that he is owner in possession to the extent of $\frac{1}{2}$ share of land comprised in Khasra Nos.43//7 (4-16), 14(7-8), 17(9-10). It has also been claimed that the sale certificate issued in his favour on 03.01.2005 is valid. Further, declaration has been sought that order dated 24.12.2012 passed by the Financial Commissioner, Revenue, Punjab, Chandigarh is illegal, null and void and is against the law and equity.
8. As per the case of the plaintiff, auction was conducted on 21.01.1976 and he participated in the auction proceedings and was the higher bidder. The petition filed by defendant No.2 was dismissed by the Sales Commissioner on 24.02.1977. On 25.05.1985, Sales Commissioner, Rupnagar ordered that the property be sold to the plaintiff as and when he moved an application. On 05.11.1985, the application was moved by the plaintiff for depositing the money which was dismissed on 07.02.1986. The appeal preferred against the said order was dismissed on 05.12.1989. However, revision filed by the plaintiff on 05.12.1989 was accepted by the Divisional Commissioner Patiala, Division Patiala and sale certificate dated 03.01.2005 was issued by Tehsildar in respect of the suit property in favour of the plaintiff on the basis of the auction dated 21.01.1976. Thereafter, when the plaintiff moved an application for correction of the clerical error in the order dated 04.09.2001 of the Commissioner, the said application was dismissed on 25.02.2008. Thereafter, the writ petition was filed before this Court and the case was remanded back to the Financial Commissioner, Punjab, who vide order dated 24.12.2010, dismissed the application of the plaintiff. The plaintiff approached this Court by way of filing the writ for quashing of the order dated 24.12.2010

passed by the Financial Commissioner, Revenue and the Financial Commissioner, vide order dated 24.12.2010 rejected the claim of the petitioner. The copy of order dated 14.12.2012 of this Court in LPA-2084-2012 (Ex.D4) has been produced on record wherein it was held as under:-

“The perusal of the order passed by the Financial Commissioner reveals that as the appellant did not address any arguments with reference to infirmities in the restricted auction and was unable to explain why the application for confirmation of sale was moved after 7 years delay and the revision before the Commissioner was filed after 11 years, the Commissioner had no jurisdiction to pass an order confirming the auction and directing the Tehsildar, sale, to issue a sale certificate in favour of the appellant 18 years after the auction. It is rather surprising that an application for confirmation of auction was accepted and sale certificate was ordered to be issued 18 years after the auction. The infirmities in conduct of the restricted auction and facts noticed by the Financial Commissioner and the learned Single Judge, in our considered opinion, were sufficient to enable the Financial Commissioner to exercise jurisdiction in the matter and to set aside the order passed by the Commissioner and the auction.”

9. In the writ petition No.1913 of 2011 decided on 04.12.2012, this Court after considering the contentions of counsel for the appellant/ plaintiff, dismissed the writ while holding that the Financial Commissioner was justified while going into the entire issue and has rightly come to the conclusion that the allotment of the land on the basis of auction was not in consonance with the rules and the petitioner failed to remove the other lurking defects or infirmities appearing from the record. It was also held that the Financial Commissioner was justified in reopening the entire issue as this was as per the directions issued by this Court and the plea of the petitioner that he had only argued in regard to the correction of the clerical error in the order would not take him anywhere. The relevant part of the aforesaid order is reproduced as under:-

“Counsel for the petitioner was asked to even disclose the date of birth of the petitioner so as to consider this aspect but he is unable to disclose the same. The Financial Commissioner in my view is justified in re-opening the entire issue as this is as per the direction issued by this Court. In this background plea of the petitioner that he had only argued in regard to the correction of the clerical error in the order would not take him anywhere. Once

this Court had directed the Financial Commissioner to decide the case afresh in accordance with law, the Financial Commissioner was justified in going into the entire issue and has rightly come to the conclusion that the sale in this case by way of auction suffer from various infirmities and has rightly interfered therein to pass the impugned order”

10. The Courts below have rightly held that once this Court has endorsed that the order for setting aside the auction was legally passed, then the appellant/ plaintiff cannot seek declaration claiming himself to be the owner in possession of the suit property when he is not holding any sale certificate. Rather while by way of filing the present suit, the appellant/ plaintiff is trying to reagitate the matter already decided by this Court. The appellant/ plaintiff has also failed to point out any perversity in the order of the Financial Commissioner. The Financial Commissioner found that the auction was defective as the restricted auction was not duly published. The notice was not given to the harijans of the village and there was doubt about the age of the petitioner for participation in the auction. Voter list cannot be taken as authentic proof of his age. The plaintiff/ appellant has also admitted in his cross-examination that he had no proof of his age.
11. For the reasons recorded above, the present Regular Second Appeal fails and is dismissed as it does not raise any question of law much less substantial question of law.
12. All pending applications, if any, also stand disposed of accordingly.

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