Jattu Ram vs Hakam Singh And Others on 15 September, 1993

Equivalent citations: AIR1994SC1653, I(1994)BC200(SC), 51(1993)DLT538(SC), JT1993(5)SC423, (1994)108PLR325, 1993(3)SCALE782, (1993)4SCC403, [1993]SUPP2SCR321, (1993) 3 SCJ 257, AIR 1994 SUPREME COURT 1653, 1993 (4) SCC 403, 1994 AIR SCW 1387, 1993 (2) UJ (SC) 746, 1994 (1) CIVILCOURTC 21, 1997 SRILJ 288, (1993) 5 JT 423 (SC), 1993 SCFBRC 500, 1993 UJ(SC) 2 746, 1994 (1) ALL CJ 492, 1994 ALL CJ 1 492, (1994) 1 CIVILCOURTC 212, 1993 (2) REVLR 365, (1993) 51 DLT 538, (1994) 1 BANKCAS 200, (1994) 1 PAT LJR 18, (1994) 2 APLJ 23, (1994) 3 PUN LR 325, (1993) 2 LANDLR 570, (1993) 2 RENTLR 441, (1993) 3 RRR 669, (1993) 2 CURLJ(CCR) 600

Author: K. Ramaswamy

Bench: Kuldip Singh, K. Ramaswamy

ORDER

K. Ramaswamy, J.

1. This appeal by special leave is at the behest of the plaintiff Jattu Ram. He laid a suit for declaration that Hakam Singh, the first respondent, had delivered possession of the plaint scheduled property in exchange and for consequential orders. In Case No. 253-1 of 1981 by Addl. Senior Sub-Judge, Ferozepore, decreed on September 8, 1983. On appeal, the Additional District Judge in Civil Appeal No. 161/83 allowed the appeal and dismissed the suit on February 12, 1986. The High Court of Punjab & Haryana in R.S.A. No. 758/86 dismissed in limine.

2. The admitted facts are that the appellant possessed of 90 kanals 7 marlas of land scattered at different places in the Village Malikzada. The first respondent had agreed to exchange those lands with his land in an extent of 90 kanals 12 marlas and for the excess 5 marlas, the appellant had paid the money. It transpired later on that the first respondent had defective title of his lands since he had purchased from Kartar Kaur and her two minor sons. The minor sons filed a civil suit against Hakam Singh claiming 2/3rd share and the Civil Court decreed the suit holding that the sale made by the mother of their 2/3rd share was void. Consequently on demand made by the minors, the appellant had to surrender 52 kanals 10 marlas of land to the minor sons of Kartar Kaur. As compensation thereof, the first respondent delivered 47 kanals 1 marla of land and promised to pay compensation for the balance loss of land and also promised to get mutation affected in the revenue

records. Thereafter, when the first respondent started alienating the land in favour of the respondent Nos. 2 to 9, the appellant filed the above suit. The first respondent admitted the factum of the exchange as well as his purchasing the property from and decree of the civil court that sale to the extent of 2/3rd share of minors as void and that the appellant had parted with possession of 52 Kanals and 10 Marias of lands in favour of the minOrs. However, he pleaded that the appellant had without his consent, voluntarily parted with possession of the lands. He further averred that the lands in the possession of the appellant are only as tenant-at-will. Yet the first respondent had admitted that no rent was paid after the delivery of the possession of 47 kanals 1 marla. The appellate court also found in column 9 of Exh. PB Jamabandi "Tassawar Tabadla" (as a result of exchange), but however, it proceeded on the premise posing a question in the beginning of the consideration whether the appellant came into possession only as a tenant and based on the entry of the Patwari in that behalf, without any further evidence, concluded that the appellant was only a tenant. The question, on these admitted facts, is whether the appellant is in possession of the plaint scheduled lands on exchange as a consequence of compensating him for the loss of 52 kanals 10 marlas.

3. Section 119 of the Transfer of Property Act. 1882 (for short 'The Act') envisages that if any party to an exchange... is by reason of any defect in title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him... for the return of the thing transferred...; The admitted case is that the appellant had exchanged his lands with the first respondent. Due to defect in title, the first respondent had suffered a decree of 2/3rd share of the minors who had admittedly taken possession of an extent of 52 kanals 10 marlas from the appellant. The appellant was deprived of that property and the first respondent is liable to return to the appellant to the extent of 52 kanals 10 marlas. Obviously, in furtherance of the oral understanding the appellant came in possession of 47 kanals 1 marla in exchange. The entry in column 9 thus fortifies the stand of the appellant. The sole entry on which the appellate court placed implicit reliance is by the Patwari in Jamabandi. It is settled law that the Jamabandi entries are only for fiscal purpose and they create on title. It is not the case that the appellant had any knowledge and acquiesced to it. Therefore, it is a classic instance of fabrication of false entries made by the Patwari, contrary to the contract made by the parties, though oral. The first respondent admitted that he received no rent from the appellant. Thus it is clear that the plea of the first respondent that the appellant was his lessee-at-will is a false one. It is not his case that for the loss suffered by the appellant, the respondent had compensated him by paying the price of that land. It is, therefore, too credulous to believe that he let the appellant in possession of the plaint scheduled property as a tenant-at-will and is a deliberate, desparate and false plea set up by him, which unfortunately found favour with the appellate court and the High Court paid no attention to go into the crucial question and dismissed the appeal as usual, in limine. The contention of Sri Ujagar Singh, the learned Senior counsel that the appellant's sons purchased 8 kanals of land from his client was a step in aid to wood wink the innocent appellant and a self serving. Thus we are constrained to hold that the decree of the appellate court is perverse, apart from manifestly, illegal. It and the High Court decree are accordingly set aside and that of the trial court is restored and the appeal is allowed with costs throughout.