

Punjab-Haryana High Court

Bhag Singh vs Amar Singh on 14 March, 2000

Equivalent citations: (2000) 126 PLR 436

Author: M Singhal

Bench: M Singhal

JUDGMENT M.L. Singhal, J.

1. This revision is directed against the order dated 7.9.98 passed by District Judge, Senior Division, Ambala dated 26.9.96 allowing temporary injunction to Bhag Singh plaintiff against Amar Singh defendant restraining the latter (Amar Singh) from interfering with his possession over the suit land forcibly, otherwise than in due course of law. This revision has arisen in the following:-

2. Bhag Singh instituted suit for declaration against Amar Singh to the effect that the alleged allotment order dated 13.6.96 passed by the Tehsildar, Sales, Ambala in favour of Amar Singh qua land measuring 57 kanals situated in Village Gola Tehsil Barara as detailed in the heading of the plaint is illegal, null and void, ineffective, without jurisdiction and not binding upon him with consequential relief of permanent injunction restraining him from dispossessing him forcibly, illegally and unauthorisedly from the said land. It was alleged in the plaint that this land was originally let out to his father, by the Governor of Punjab on yearly rent of Rs. 7/- for ten years vide lease deed dated 14.4.1996. The entire lease money was paid by his father. Possession of the land was with his father since the execution of lease deed. It was further alleged in the plaint that as that land was of inferior quality, it was let out to his father at low rate of Rs. 7/-. His father spent huge amount and improved the land. His father died on 10.7.79. After his death, he came in possession as lessee as he is only legal heir of his father. He is in continuous possession of the suit land since then. It was further alleged in the plaint that Tehsildar Sales, Ambala allotted the land to the defendant vide order dated 13.6.96 without giving any notice to him. Alongwith the plaint, plaintiff made application for the grant of temporary injunction restraining the defendant from interfering with his possession forcibly, illegally and unauthorisedly.

3. Civil Judge, Senior Division, Ambala allowed this application and granted temporary injunction in his favour restraining the defendant from interfering with his possessing forcibly that is otherwise than in due course of law.

4. Aggrieved by this order dated 26.9.96 Amar Singh went in appeal. Appeal was allowed by District Judge, Ambala vide order dated 7.9.98.

5. Aggrieved by the order dated 7.9.98 passed by District Judge, Ambala, Bhag Singh has come up in revision to this Court.

6. I have heard the learned counsel for the parties and have gone through the record.

7. As per the terms of the lease deed, Bhag Singh's father was given option to purchase the land after the expiry of five years of lease on payment of the government sale price at the rate of Rs. 40/- per acre for banjar land and Rs. 25/- per acre for gair mumkin land. After the expiry of that period, his

father applied to purchase the suit land by offering the entire sale price in lump sum. Tehsildar promised to get the sale deed executed in favour of his father but no action was taken by him. Tehsildar Sales, Ambala allotted the land to Amar Singh vide order date 13.6.96 without issuing any notice to him. He is Harijan and he is in cultivating possession of the suit land since 1966 continuously without any break. As per him, as such he got a right to purchase the land on reserved price but Tehsildar Sales allotted the land to Amar Singh vide order dated 13.6.96 without issuing any notice to him. As per defendant Amar Singh, this land was Muslim evacuee property. It was reserved for allotment to displaced persons from Pakistan in lieu of the land left by them in Pakistan. Land in suit was allotted to him vide allotment order dated 13.6.96. It was in pursuance of that order that he took possession. As per the defendant, he was put in possession in pursuance of the order of allotment. In jamabandi for the year 1989-90, the plaintiff figures as in possession. Rapat roznamcha vakayati dated 11.7.96 shows that defendant was put in possession in pursuance of the order of allotment. Learned counsel for the petitioner (plaintiff) submitted that plaintiff was in possession. Earlier, the plaintiffs father was in possession. Land was leased out to him on yearly rent of Rs. 7/- for ten years vide lease deed dated 14.4.66. His father had paid the entire lease money. After the expiry of five years of lease, in terms of clause 3 III of lease dated 14.4.66 lessee had an option to purchase from the government, the proprietary rights in the land on payment to the Govt. of the sale price at the rate of Rs. 40/- per acre of banjar land and Rs. 25/- per acre of gair mumkin land. The lease money recovered from him was to be adjusted towards the sale price and the net amount due was to be paid by lessee either in lump sum or in four equal instalments. If the whole of the purchase money was not paid in lump sum previous to the delivery to the lessee of deed of conveyance of the land, he shall execute deed of mortgage to secure payment within four years of the unpaid balance. It was submitted by the learned counsel for the petitioner that the land should have been sold to the plaintiffs father when he had applied to purchase the land. If the land was to be allotted to the defendant, he should have been heard. It was submitted by the learned counsel for defendant Amar Singh that the land was allotted to the defendant-respondent as he is a displaced person from Pakistan and the land was Muslim evacuee property. It was allotted to him against the verified claim. It was also submitted that the civil Court had no jurisdiction to undo the order of allotment issued by the Tehsildar Sales in favour of the defendant. If the plaintiff was to challenge the order of allotment, he could do so by going to the authorities constituted under section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and Section 46 of the Administration of Evacuee Property Act, 1950. It was submitted that no injunction could be issued in favour of plaintiff in a suit where the civil court had no jurisdiction.

8. In Khasra-girdawari also the plaintiff was figuring in possession of the land. It is to be shown at the trial whether vide rapat roznamcha vakayati dated 11.7.96 actual physical possession was really given to Amar Singh or and it was all a paper transaction. In jamabandi for the year 1989-90, in column No. 10. there is entry of chakota one rupee per killa for the entire year. If the land was leased out to the plaintiff as a chakota of Rs. 7/- per acre of banjar land, it is for the defendant to prove how he came to throw him out of land and take its possession. In Darbara Singh v. The Union of India and Anr., (1972)74 PLR 381 it was held that "Civil court had no jurisdiction in view of section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 to go into the validity of the order passed by Managing Officer. Order made by any officer under this Act is final and is not open to be called in question in any court by way of appeal or revision." It was also held that "Civil court is

barred from determining whether particular property is or is not evacuee property by the provisions of section 46 of the Administration of Evacuee Property Act, 1950 relying upon Custodian Evacuee Property Punjab and Ors. v. Jafran Begum respondent, AIR 1968 SC 169.

9. In this case, the question that concerns the civil Court is whether plaintiff was in possession or that he was dispossessed in pursuance of the order of allotment made by the Tehsildar Sales in favour of the defendant. Civil Court may still be able to grant injunction to the plaintiff even if it finds that it has no jurisdiction to go into the validity or otherwise of the allotment offer dated 13.6.96 made by Tehsildar Sales in favour of the defendant. In Charan Singh etc. v. State of Punjab and Ors., AIR 1997 Supreme Court 1052 the Hon'ble Supreme Court held that "where Nazul or government land was leased to a member of the scheduled caste as per policy of the State Government and here claims land and remains in possession after the expiry of the lease period, government must regularise his possession and assign land in his possession in accordance with its policy. "In my opinion, temporary injunction should have been allowed to the plaintiff which was rightly allowed to him by Civil Judge, Senior Division, Ambala because the presumption is in favour of continuity of possession and it will be for the defendant to prove at the trial that he was put in possession in pursuance of the order of allotment and that he is in possession. So, this revision is allowed and the order of District Judge, Ambala is set aside and that of Civil Judge, Senior Division, Ambala is restored.