

Supreme Court of India

Hans Raj And Ors. vs State Of Punjab on 12 December, 1994

Equivalent citations: 1994 (5) SCALE 216, 1995 Supp (1) SCC 405, 1995 (1) UJ 150 SC

Author: Paripoornan

Bench: J Verma, S Bharucha, K Paripoornan

JUDGMENT Paripoornan J.

1. These are connected appeals. The appellants in both the appeals are the same persons. But the respondents are different in the two different suits and appeals. Civil Appeal No. 808/92 is filed against the judgment in Second Appeal No. 2841/80 dated 20.9.91. The appellants are plaintiffs in Suit No. 314/T dated 4.8.77. The suit was dismissed by the Trial Court and it was affirmed in appeal by the lower appellate court in C.A. No. 507/91T dated 8.8.79. Second Appeal No. 2481/80 filed by the plaintiffs-appellants was also dismissed. That has resulted in filing C.A. No. 808/92 in this Court.

2. The short facts of the case relevant to understand the controversy are as follows. The Maharaja of erstwhile State of Patiala gifted 115 bighas 4 biswas of land to one Harbans Singh. Mutation was effected in the name of Harbans Singh on 29.11.51. The plaintiffs purchased the aforesaid land from Harbans Singh by two registered sale deeds dated 7.11.52 and 30.11.55. Mutation was effected in the plaintiffs favour on 24.4.53 and 7.8.56. As a result of consolidation proceedings, the land measuring 174 bighas and 2 biswas was allotted in lieu of the land measuring 115 bighas and 4 biswas, The Revenue authorities took proceedings to modify the mutation effected in the name of Harbans Singh holding that the Maharaja of Patiala had given only 'life estate' in the property to Harbans Singh. Later, on 19.1.63 the Revenue authorities held that in view of Harbans Singh's death the ownership of land must stand reverted to the State. The appellants herein as plaintiffs filed a suit for declaration that Harbans Singh was full owner of the property in dispute and was competent to sell the property. There was also a prayer to declare that the mutation proceedings holding that the land reverted to the State, was illegal and void. The suit was decreed by the trial court on 21.9.64. In the appeal filed by the State of Punjab, the District Judge dismissed the suit by judgment dated 5.4.65. The appellants filed Second Appeal No. 733/65 before the High Court During the pendency of the Second Appeal (RSA No. 733/65) the mutation dated 19.1.63 was cancelled, since it transpired by then that Harbans Singh had not died. The appellants made a statement in court withdrawing the appeal. The appeal was dismissed as withdrawn on 7.5.76. Harbans Singh died on 16.5.74, and so mutation No. 1618 was effected, reverting the land to the State on 27.11.76. An order to that effect was passed on 21.12.76. The authorities were directed to take possession of the land from the appellants. The appellants challenged the above proceedings by filing civil writ petition No 174 of 1977 wherein the mutation dated 27.11.76 and the order dated 20.12.76, directing resumption of the land from the appellants, were challenged. Notice was issued to the Collector, the respondent in the civil writ petition. On 23.2.77 the High Court dismissed the writ petition in view of the averments made in the return. Thereafter, suit No. 314/T was filed on 4.8.77 by the appellants for declaration to the effect that they are owners-in-possession of the land in dispute. The main plea raised was that Harbans Singh was a full owner of the suit property and he was not holding a 'life estate'. The State of Punjab, the sole defendant, contested the suit and pleaded that the present suit is barred by res-judicata in view of the earlier proceedings. The trial court by judgment dated 25.7.79 held that

the present suit was barred by res-judicata in view of the previous proceedings. It was affirmed in appeal. In Second Appeal No. 2841/80, a learned single Judge of Punjab and Haryana High Court by judgment dated 20.9.91 affirmed the concurrent judgment of the courts below. He held that the question involved in the earlier proceedings and also in the instant proceedings are the same. The question was as to whether Harbans Singh had life interest or full ownership in the land. In view of the dismissal of the earlier proceedings, the instant suit was held to be barred by res-judicata. The plaintiffs in the suit have come up in appeal from the aforesaid concurrent judgments and decrees of the courts below in Civil Appeal No. 808/92.

3. The appellants in Civil Appeal No. 808/92 are the appellants in Civil Appeal No. 809/ 92 also. Therein, the appellants were defendants 4 to 7 in the suit and appellants in lower appellate court and High Court. Civil Appeal No. 809/92 arises out of C.S. No. 322/81 and C.A. No. 203T/85 and S.A. No. 1157/89. Therein, the suit was filed by Gurcharan Singh and others, the legal heirs of Harbans Singh, the transferor of the property to the appellants. They claimed that they are owners-in-possession of the property and prayed for injunction against the State from auctioning the suit-land. It was pleaded that the revenue record showed that after the death of Harbans Singh the property reverted to the State, and on this basis the State purported to lease out the property. The heirs of Harbans Singh, the plaintiffs, prayed for a declaration that they are the owners-in-possession of the property and that an order of injunction be granted restraining the State of Punjab (the defendant) from auctioning the property. The transferees of the land from Harbans Singh (appellants in C.A. No. 809/92) as defendants 4 to 7 in this suit, claimed 'ownership' over the property, as per the sale deeds. The State pleaded that Harbans Singh obtained a grant as per Ex. P1 and the land was given in separate pieces and mentioned in Ex. P2 list "to settle down". Harbans Singh was not the full owner and on his death the property reverted to the State. It was further stated that the property was demised on lease to the plaintiffs and so they cannot claim the declaration or injunction regarding the said property. The trial court, by judgment dated 30.10.85, held that Harbans Singh obtained title to the property to "settle down", as full owner, which means that the property could be used by him and his heirs and the grant will be heritable. It was also held that the plaintiffs deposited the lease money under protest and since the property did not revert to the State, the plaintiffs claim as owner of the land is perfectly valid and the State of Punjab cannot claim to be the owner or lesser of the land and the plaintiffs cannot be treated as lessees. The plea of defendants 4 to 7 was also found against. The declaration prayed for by the heirs of Harbans Singh was granted. Besides, the State of Punjab was restrained from auctioning the suit land or disturbing the plaintiffs possession. From the said judgment, defendants 4 to 7 in the suit, (plaintiffs in suit No. 314/T of 1977-appellants in CA No. 808/92) filed an appeal before the Additional District Judge and it was dismissed by judgment dated 21.11.88. The lower appellate court held that the heirs of Harbans Singh are owners-in-possession and by the grant, the suit-land was heritable but inalienable. From the aforesaid concurrent judgment defendants 4 to 7 filed Second Appeal No. 1157/89, before the High Court and it was dismissed by judgment dated 27.4.89. Defendants 4 to 7 (the plaintiffs in suit No. 314/T of 1977) have come up in appeal therefrom and the said appeal is Civil Appeal No. 809/92.

4. We heard Mr. D.V. Sehgal, learned Counsel for the appellants and Mr. Ujagar Singh, learned Counsel for the respondents. Counsel for the appellants contended that though the suit filed by

them was dismissed holding that it is barred by res-judicata, in view of the decree in the connected suit CS 322/81 wherein Harbans Singh was held to be the full owner of the properties, appropriate relief should be given to the appellants (transferees) upholding their rights to the suit-property. It was argued that Harbans Singh was the full owner of the property and it has been so declared in the latter suit CS 322/81, and the decree therein should be given effect to and appropriate relief afforded to the appellants. We are unable to accept the said plea.

5. The appellants filed suit No. 314/T of 1977 and claimed that they are the owners of the land conveyed by Harbans Singh. The said suit was dismissed holding that it was barred by res-judicata, in view of the previous decisions. Counsel for the appellants could not point out any error in the judgments of the courts below holding that the suit is barred. It is common ground that the question in the earlier suit filed by the appellants, which resulted in S.A. No. 733/85, civil writ petition No. 174/77 and in the present suit, was whether Harbans Singh had only a life estate in the property or full ownership. The earlier suit was dismissed and though appellants filed RSA No. 733/65, it was withdrawn. The question as to whether or not Harbans Singh had only a life interest in the suit-property or full ownership was not resolved by the discovery that Harbans Singh was alive and the appeal could have been prosecuted. It was withdrawn. It is not now open to the appellants to agitate the same issue again. Again, after the death of Harbans Singh, when the State effected change in the mutation on 27.11.76, the appellants challenged the action in civil writ petition No. 174/77 and after notice to the Collector and in the light of the averments made in the returns, the writ petition was dismissed. The plea of the appellants that Harbans Singh had full ownership in the property and so they are the owners of the property, was negatived. In such circumstances, it is not open to the appellants to put forward the same plea in the fresh suit. The plea was rightly negatived by all the courts holding that the present suit is barred by res-judicata. We see no error in the aforesaid reasoning and conclusion of the courts below. Therefore, Civil Appeal No. 808/92 is without merit and it deserves to be dismissed.

6. The plea of the appellants that since in the suit filed by the heirs of Harbans Singh, it has been found that the said heirs are owners-in-possession, appropriate relief reckoning the said conclusion should be given to the appellants, is without merit. Even in the suit which is the subject-matter of Civil Appeal No. 809/92, the trial court held that the plaintiffs therein, the legal heirs of Harbans Singh, are owners in-possession of the suit-property. It was further held that they could not be treated as lessees and the State of Punjab cannot claim to be the owner or the lessor. The lower appellate court in its judgment dated 21.11.88 considered the matter in great detail and held that Ex. P1 grant and Ex. P2, list, showed that Harbans Singh was granted the property to "settle down" and this will include the use of the land by him and his legal heirs, and it will be heritable but inalienable. The courts further held that the sale deeds executed by Harbans Singh to defendants 4 to 7 are illegal and void. The second appeal filed by defendants 4 to 7 (the appellants herein) was dismissed. The appellants (defendants 4 to 7) are bound by the aforesaid judgments. Since the sale deeds executed by Harbans Singh in favour of the appellants were found to be illegal and void, no right passed to the appellants. No error was pointed out in the reasoning and conclusion so arrived at by the courts below. In both the suits, one filed by the appellants and the other filed by the heirs of Harbans Singh, it was found that the appellants have no title to the property. Therefore, it is idle for the appellants to contend that by the passing of the decree in favour of Harbans Singh's heirs, the

position of the appellants was in any way improved or altered. We hold that the judgments and decrees of the courts below in Civil Appeal No. 809/92 do not merit interference. The said appeal also deserves to be dismissed.

7. Accordingly both Civil Appeal Nos. 808/92 and 809/92 are dismissed, with costs.