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DALIP CHAND AND ORS.
v.
UNION OF INDIA AND ORS.

SEPTEMBER 6, 1994

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[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Punjab Prohibition of Ownership & Transfer of Lands Act:

C

Purchase of land from Non-Agriculturist Tribe—Area now forming part of Pakistan—Mutation in favour of vendee—Subsequent notification declaring vendor as Agriculturist Tribe—Review of Mutation Proceedings—Migration to India—Allotment of lands in lieu of lands lost in Pakistan—Cancellation of land allotted—suit for declaration filed in a Court having Territorial Jurisdiction over land allotted—Held Civil Court had jurisdiction to give declaration—Cancellation of land held unjustified.

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On March 12, 1928 the respondents' predecessor, a Non-Agriculturist Tribe, sold certain lands - which now forms part of Pakistan - to the appellants. Thereafter, mutation was effected in favour of the appellants. Subsequently, the vendor's caste was notified as Agriculturists Tribe and proceedings were initiated for reviewing the mutation as owners and treating the appellants as mortgagees. In the meantime, the appellants migrated to India and settled down at Jullundhur. They were granted the suit lands in lieu of their lands lost in Pakistan. Thereafter, the rehabilitation authorities secured mutation records from Pakistan wherein appellants were shown as mortgagees and cancelled the allotment of land made in favour of the appellants. The appellants filed a declaratory suit and the Sub-Judge, Jullundhur declared that the appellants were the owners of the lands in Pakistan and in lieu of that lost lands suit lands were allotted to them for rehabilitation. A permanent injunction restraining the respondents from dispossessing the appellants from the suit lands was also issued. The first appellate Court reversed the decree of the Trial Court and on second appeal the order of the Appellate Court was confirmed. The appellants filed appeal in this Court.

Allowing the appeal, this Court

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HELD : The District Court and the High Court were palpably wrong

in holding that the Civil Court has no jurisdiction for the obvious reason that the appellants are not claiming any declaration of their ownership of the lands in Pakistan. Allotment of suit lands were made for appellants, rehabilitation in lieu of lands lost by them in Pakistan. Therefore, as owners they are entitled to maintain the allotment. Since on the date of sale vendors were non-agriculturists, the Punjab Prohibition of Ownership & Transfer of Lands Act, is inapplicable. The subsequent notification that vendor's caste is an agriculturists Tribe, did not have any retrospective effect on the alienation made earlier. The subsequent mutation effected will not have any effect on the character of the ownership of land held by the appellants. Since the allotment initially was rightly made the authorities were not justified in cancelling the allotment. Further the lands allotted to the appellants are situated within the territorial jurisdiction of the trial court which rightly gave the declaration prayed for. [194-F, G, H; 195-A-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 839 of 1984.

From the Judgment and Order dated 21.9.83 of the Punjab & High Court in R.S.A. No. 530 of 1975.

Shrinath Singh and Pradeep Kumar for Mitter & Mitter Co. for the Appellants.

C.B. Balak and Ms. Sushma Suri for the Respondents.

The following Order of the Court was delivered :

The whole case appears to have gone on a wrong track. This appeal by Special Leave arises from the decree dated September 21, 1993 in Regular Second Appeal No. 530/75 dismissing the second appeal of the appellants and confirming the decree of the Additional District Judge, Jullundhur in appeal No. 173/72. The Additional District Judge reversed the decree of the Sub-Judge First Class, Jullundhur dated August 3, 1972 wherein the Sub-Judge had declared that the appellants were the owners of the lands in Pakistan and in lieu of their lands in Pakistan suit lands were allotted to the appellants for rehabilitation and issued a permanent injunction restraining the respondents from dispossessing the appellants from the suit lands.

The facts are not in dispute. On March 12, 1928, 60 bighas of land

A was sold by Gajinder Singh Dhillon to Santa Singh and Bhagat Singh for valuable consideration of the land situated in the Village Sewai Tehsil Ahmedpur Distt., Rahimpur Khan in Bahawalpur State which is a part of Pakistan. It is the case of the appellants that mutation was effected on February 17, 1932 in their favour. At the time of the sale Dhillon caste was non- agriculturists tribe. By notification dated May 9, 1931 the Government notified the Dhillon caste as an Agricultural Tribe. Thereafter, it would appear that proceedings were initiated to review the mutation effected in favour of the appellants as owners and to treat them as mortgagees. Before mutation could be effected the appellants who had migrated from Pakistan to India and settled down at Jullundhur. In lieu of the land they had lost in Pakistan, they has applied for and were granted the suit lands. The rehabilitation authorities are said to have secured the mutation records from Pakistan wherein it later on appeared to have been recorded that the appellants remained in those lands as mortgagees. Therefore, their allotment came to be cancelled on July 3, 1961 which was challenged by the appellants in various proceedings and ultimately in a writ petition No. 598/64 and the High Court held that since there is a disputed question of fact, the appropriate course will be the civil suit. Accordingly the civil suit came to be filed and declaration was given by the civil court which was reversed as narrated hereinbefore.

E As regards the contesting respondent Nos. 2 to 4 are concerned admittedly they did not make any application before the competent authority for allotment of land in lieu of the lands they lost in Pakistan nor any allotment made in their favour more particularly in relation to the suit lands . These facts are not in dispute. The only question which ultimately arose and decided by the District Court and the High Court is whether the civil court had jurisdiction to give the declaration. The Distt. Court and the High Court were palpably wrong in holding that the Civil Court has no jurisdiction for the obvious reason that the appellants are not claiming any declaration of their ownership of the lands in Pakistan. What they had claimed was that they had lost the land in Pakistan and in lieu thereof an allotment of suit lands were made for the rehabilitation by the first respondent and that, therefore, as owners they are entitled to maintain the allotment. The mutation proceedings secured from Pakistan would show that the respondents' prodecessors, namely, vendor-Gajinder Singh was an Agriculturist Tribe. The sale to the appellants by him was on March 12, 1928 is not in dispute. On that date they were non-agriculturists and that,

therefore, the Punjab Prohibition of Ownership & Transfer of Lands Act, is inapplicable., The subsequent notification that Dhillon caste is an agriculturist Tribe on May 9,1931 did not have any retrospective effect on the alienation made as early as March, 1928. In consequence the sale of the lands by Gajinder Singh in favour of the appellants was valid. When the sale is valid they were the owners of the land and since that land was lost due to partition they rightly made an application for allotment in lieu of the lost land. The subsequent mutation effected will not have any effect on the character of the ownership of land held by the appellants in the year 1928. Therefore, the allotment initially was rightly made. The authorities, therefore, were not justified in cancelling the allotment on July 3, 1961. Since the lands allotted to them are situated in Jullundhur Distt. within the territorial jurisdiction of the trial court, it is not in dispute that certainly the Civil Court can go into and in fact the trial court had gone into that aspect of the matter and given the declaration as prayed for. The Distt. Court and the High Court, therefore, have committed grievous error in holding that the Civil Court had no jurisdiction and the finding that the appellants are only mortgagees, is also illegal in view of the fact we have stated.

Accordingly, the appeal is allowed, the judgment and decree of the High Court and the District Court are set aside and that of the trial court is confirmed but in the circumstances parties are directed to bear their own costs.

T.N.A.

Appeal allowed.