



In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4890 of 2019 (O&M)

**Reserved On: 16.05.2025
Pronounced On: 27.05.2025**

State of Punjab and Another

... Appellant(s)

Versus

Hardial Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Dr. Dharminder S. Lamba, Additional Advocate General,
Punjab, for the appellant(s).

Mr. Lovepreet Singh Sidhu, Advocate
for Mr. Harpreet Maini, Advocate
for the respondents.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.
2. The defendants assail the correctness of the First Appellate Court's judgment, which, in turn, has reversed that of the Trial Court.
3. In order to comprehend the issue involved in this appeal, the relevant facts, in brief, are required to be noticed. The heirs of late Sh.Harnam Singh filed a suit for declaration to the effect that they are entitled to get recorded their names in column No.4 of jamabandi as owners

instead of column No. 5 with respect to the 1/7th share each of the land measuring 48 kanals 8 marlas which belongs to State of Punjab with consequential relief of permanent injunction. They claim that their predecessor-in-interest, namely Harnam Singh was one of the members of the scheduled caste community and was allotted suit land in the year 1962 and whereas, he made the land cultivable and as per the government policy and the judgment passed by the Supreme Court in *Charan Singh v. State of Punjab AIR 1997 Supreme Court 1059*, they are entitled to be declared owners. The defendant-State contested the suit on the ground that Harnam Singh was cultivating the land in question as it was given on lease on yearly basis. The land in question is in the same position and condition as it was at the time of lease given to Harnam Singh and no amount has been invested by the plaintiffs or their father. The judgment of the Supreme Court in *Charan Singh's case (supra)* is distinguishable and not applicable in the present case.

4. From the pleadings of the parties, the following issue were framed:-

- “1. *Whether the plaintiffs are entitled for declaration, as prayed for?OPP*
2. *Whether the plaintiff are entitled for permanent injunction, as prayed for?OPP*
3. *Whether plaintiffs have no locus standi to file present suit?OPD*
4. *Whether plaintiffs have no cause of action to file the suit? OPD*

5. *Whether suit is not maintainable in the present form?*

OPD

6. *Whether notice u/s 80 CPC has not been served upon the defendants, if so its effect?OPD*

7. *Relief.”*

5. The Trial Court dismissed the suit. The plaintiffs filed the first appeal which has been accepted on the following grounds:-

i) It is not in dispute that the property in dispute is a *nazool land* and was allotted to the members of the scheduled caste community.

ii) The Supreme Court directed that the property should be assigned which, as per the judicial dictionary, means the transfer of ownership.

6. Hence, the State of Punjab has filed the present appeal.

7. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with the scanned copy of the requisitioned record.

8. The learned State counsel has submitted that the plaintiffs were delivered possession as lessee and in the absence of policy or rule, they cannot claim ownership as a matter of right.

9. Per contra, the learned counsel representing the respondents submits that vide letter issued on 09.04.1997, the Collector, pursuant to the direction of the Supreme Court in *Charan Singh's case (supra)* regularized their possession. Hence, the plaintiffs are entitled to ownership.

10. This Court has considered the submissions of the learned

counsel representing the parties.

11. The allotment letters dated 09.04.1987 is a part of record. On its careful perusal, it is evident that Harnam Singh was inducted as a tenant for a period of ten years in the year 1962. Subsequently, on the direction of the Court, a fresh lease deed was executed in order to regularize their possession as lessees. As per the allotment letter, the lessees were not permitted to mortgage, sell or further give the property on lease. Such allotment of land would not confer ownership. The ownership of the State property cannot be directed to be transferred to the lessees in the absence of any policy, statutory provisions or rules to this effect. The learned counsel representing the plaintiffs has failed to draw attention of the Court to any policy, statutory provision or rules.

12. This Court has carefully read the judgment passed in *Charan Singh's case (supra)*. In this case, the lessee was given possession of uncultivable waste land which was subsequently reclaimed. The Supreme Court has culled out the following question for answering:

“Whether the respondents were justified in law to take action against the appellants for their ejection?”

13. While answering the question, the Supreme Court issued the following directions:-

“The appellants, therefore, are directed to make necessary application within four weeks from today to the competent authority and the authorities are directed to regularise their possession imposing necessary conditions for their continuance in possession and enjoyment of the same in the light of the

constitutional objective of rendering them socio-economic justice, putting restrictions on sub-letting or selling; all the relevant conditions in that behalf may be imposed so that they remain in possession and enjoy the same to improve their social and economic status as enjoined under the Constitution. The authorities also are directed to dispose of the applications within a period of two months from the date of the receipt of the same. The appellants shall remain in possession until the regularisation is done and shall enjoy the lands without any sub-letting or alienation thereof.”

14. It is evident that the Supreme Court also never directed the transfer of ownership from the State to the lessees.

15. The First Appellate Court has also erred in observing that undisputedly, the property is “nazool land”. In fact, the “nazool land” under the Nazool Lands (Transfer) Rules, 1956 has been defined as under:-

“(d) "Nazool land" means -(i) The land situated beyond two miles of the Municipal Limits, which has escheated to the State Government and has not already been appropriated by the State Government for any purpose.

(ii) such other land as the State Government may make available for being transferred under these rules.”

16. As already noticed, the State has notified the Rules for transfer of nazool lands. The plaintiffs do not claim that they are entitled to transfer of ownership as per rules.

17. The First Appellate Court has also erred in overlooking the

terms of the allotment letter while interpreting the word “assign”. In fact, in the concluding part of the judgment in *Charan Singh’s case (supra)*, the Supreme Court never directed the transfer of ownership. The only direction was to regularize their possession by imposing necessary conditions so as to allow the persons to continue in uninterrupted possession during the period of lease. The only *ratio decidendi* of the judgment passed by the Supreme Court is binding under Article 141 of the Constitution of India, 1950, which, in other words, means the soul of the judgment. Thus, the First Appellate Court has erred in applying the judgment without comprehending the directions issued by the Supreme Court.

18. Keeping in view the aforesaid facts and discussion, this appeal is allowed. The First Appellate Court’s judgment is set aside and that of the Trial Court is restored.

19. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

May 27, 2025
“DK”

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No