

2025:PHHC:041551



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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA-2152-1993 (O&M)
Date of Decision: 19.03.2025**

Jodha Singh and others

..... Appellants

Versus

Punjab Sarkar Through District Collector, Sangrur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. A.K. Garg, Advocate
for the appellants.

Mr. Navneet Singh, Senior DAG, Punjab.

None for respondents No.2 to 5.

HARSH BUNGER J.

CM-9525-C-2023:

Present application is filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, seeking amendment of the plaint on the plea that counsel for the applicants/plaintiffs had failed to take the legal pleas in terms of Sections 41 and 53-A of the Transfer of Property Act and also that the condition regarding bar on alienation for fifteen years was clearly hit by the provisions of Section 10 *ibid*.

I have considered the aforesaid plea of learned counsel for the

applicants/plaintiffs, however, I do not find any merit in the same, in view of the well settled law that legal pleas are not required to be specifically pleaded in the case and it is always open for the litigant to raise such pleas at the time of final hearing of the case. In this regard, reference can be made to the judgment rendered by this Court in "**Sampuran Singh Vs. Arjan Singh**", 1961 PLR 90. Relevant extract thereof reads as under:-

"2. After hearing the learned counsel for the parties, we are of the view that this appeal must succeed. It is clear from the pleadings of the parties that the plaintiff did set out the case in the alternative that the only way in which he can pass the natural water from his land was over the defendant's land. There is no other way for the escape of this nature water. No doubt the plaintiff in the plaint used the word easement of necessity, but that will not, in my opinion, make any difference. It is well settled that in pleadings only facts have to be pleaded and not the law. On given facts whether the case falls under section 13 or section 7 of the Easements Act is a question, which cannot be said to be outside the jurisdiction of the Courts merely because only section 13 was relied on and not section 7. On the facts, the matter can admit of no doubt. The evidence led in the case proves beyond doubt that the only course for the natural flow of water was from the plaintiff's land over the defendant's land. This evidence was accepted by the Courts below and the defendant's evidence to the contrary was held unworthy of credit. ..."

In view of the above, there is no requirement for any amendment in the plaint and the submissions based upon the aforesaid provisions of law can certainly be addressed by the counsel for applicants/plaintiffs at the time of final hearing of the case.

The instant application is accordingly disposed of.

RSA-2152-1993:

For convenience, parties herein are being addressed as per their status in the original suit.

2. The instant Regular Second Appeal has been filed against judgment and decree dated 11.04.1991 passed by the learned Sub Judge, Ist Class, Sunam, thereby dismissing the Suit of plaintiffs; and judgment and decree dated 20.05.1993, passed by the learned District Judge, Sangrur, whereby an appeal filed by the plaintiffs against the aforesaid judgment and decree dated 11.04.1991, has been dismissed.

3. Briefly, the land of one Gurnam Singh son of Joginder Singh resident of Fatehgarh, was declared surplus under the Punjab Land Reforms Act, 1972 (in short 'the 1972 Act') and a part of the said land came to be allotted to Kishan Singh (defendant No.2) son of Harnam Singh under the Punjab Utilization of Surplus Area Scheme, 1973 (in short, 'the 1973 Scheme'), vide order dated 24.12.1984 (Ex. DW4/A).

3.1 It appears that Kishan Singh sold the aforesaid allotted land to the plaintiffs vide two separate Sale Deeds dated 31.10.1986. However, the aforesaid allotment made in favour of Kishan Singh (defendant No.2) came to be cancelled by the learned Collector, Agrarian, Sunam vide order dated 31.08.1988 (Ex. DW4/B) on the ground that under Clause 10(e) of the 1973 Scheme, an allottee can not sell the land for at least a period of fifteen years from the date of possession.

3.2 In the aforesaid circumstances, plaintiffs preferred a Suit for Declaration and Permanent Injunction (Suit No.523 dated 06.10.1988) before the learned Sub Judge, Ist Class, Sunam, stating that they are owners-in-possession of the suit property on the basis of Sale

Deed/Mutation. The said Suit was contested by the State of Punjab.

3.3 From the pleadings of the parties, learned Sub Judge, Ist Class, Sunam framed the following issues:-

(i) Whether the plaintiffs are owners in possession of the suit land? If so, whether the plaintiffs are entitled to the declaration as prayed? OPP

(ii) Whether the plaintiffs are entitled to the permanent injunction as prayed for? OPP

(iii) Whether the suit of the plaintiffs is time barred? OPD

(iv) Relief.

3.4 The trial Court, upon appreciation of the facts/pleadings as well as the evidence available on record, dismissed the aforesaid Suit for Declaration and Permanent Injunction filed on behalf of the plaintiffs, vide its judgment and decree dated 11.04.1991.

4. Feeling aggrieved against the aforesaid judgment and decree dated 11.04.1991, plaintiffs preferred an appeal before the District Judge, Sangrur, which was also dismissed vide judgment and decree dated 20.05.1993.

5. In the aforementioned circumstances, plaintiffs have filed the present appeal before this Court, seeking relief(s) as noticed hereinabove.

6. Here, it would be apposite to extract the provision of Clause 10(e) of the 1973 Scheme, which reads as under:-

“the allottee shall not be competent to transfer his rights in the land allotted to him to any person till he becomes the owner or before the expiry of a period of 15 years of the date of possession whichever is later.”

6.1 From a bare perusal of the aforesaid provision of the 1973 Scheme, it is abundantly clear that the allottee shall not be competent to transfer his rights in the land allotted to him to any person till he becomes

the owner and secondly, for a period of fifteen years, whichever is later.

7. Concededly, Kishan Singh (defendant No.2) was allotted the land on 24.12.1984 and he sold the said allotted land to the present plaintiffs, vide two Sale Deeds dated 31.10.1986, within a period of fifteen years from the date of allotment of land, therefore, the bar on alienation as envisaged under Clause 10(e) of the 1973 Scheme framed under the provisions of 1972 Act, was clearly attracted.

8. At this stage, a plea has been raised on behalf of the plaintiffs that sale of land in favour of the plaintiffs is protected under Section 41 of the Transfer of Property Act and even otherwise, any bar on alienation was hit by Section 10 of the Transfer of Property Act.

8.1 I have considered the aforesaid submissions, however, I do not find any merit in the same. It is well established that the Punjab Land Reforms Act, 1972 (for short, 'the 1972 Act') is a special Act whereas the Transfer of Property Act is a general Act; and the provision of the 1973 Scheme framed under the provisions of the 1972 Act, which is a special enactment will prevail upon the provisions of Section 41 of the Transfer of Property Act, accordingly, the plea of *bona fide* purchasers or that the bar on alienation is hit by Section 10 of the Transfer of Property Act, is not available to the plaintiffs.

9. In identical circumstances, this court in "***State of Punjab v. Baldev Singh***", **2018(1) Law Herald 197**; held that the provisions of Clauses 10 (d) and (e) read with Clause 11 of the 1973 Scheme prohibits the seller to make transfer and the plaintiffs therein cannot be treated as *bona fide* purchasers so as to claim protection under Section 41 of the Transfer of Property Act. This Court noticed the facts of that case in paragraphs No. 2 to

7 of the judgment, which read as under:-

“2. Undisputedly, earlier Harnam Dass chela Jamuna Dass was a big land owner having land in excess of the permissible area. Out of his total holding, the suit property measuring 90 kanal 19 marla was declared surplus under the provisions of Punjab Land Reforms Act, 1972 (in short 'Act of 1972'). As such same was vested with the State and was mutated in its name vide mutation Nos. 08 and 09 (Ex.D1 and Ex.D2 respectively). However, the Punjab Utilization of Surplus Area Scheme, 1973 (for brevity 'the Scheme') has been formulated for the purpose of utilization of the surplus area with certain conditions as provided under clauses 10 and 11 thereof. In pursuance of the Scheme, the suit land was proposed to be allotted to Kaka Singh son of Mangal Singh vide order dated 01.07.1975 (Ex.D3) under certain conditions as stipulated under the Scheme. However, it has been stipulated in allotment order Ex.D3 that the fair rent has not been assessed and after its assessment, the compensation shall be recovered from the allottee and allotment certificate shall be issued to him on payment of the entire compensation/consideration.

3. It is pertinent to mention here that under Clause 10 (d) of the Scheme it is specifically provided that allottee shall become owner only on the payment of entire amount of compensation as assessed by the Collector. Further, the condition is imposed under Clause 10 (e) of the Scheme that the allottee shall not be competent to transfer his rights in the land allotted to him to any person till he becomes the owner or before the expiry of 15 years of the date of possession, whichever is later. Clause 11 thereof makes it abundantly clear that if there is any violation in the conditions imposed under clause 10, then the allotment shall be cancelled.

4. It is apparent on the record that said Kaka Singh or aforesaid vendees Baldev Singh and others had paid nothing towards the compensation as required under clause 10 of the Scheme. Resultantly, the allotment in favour of Kaka Singh

was liable to be cancelled on this score.

5. However, in pursuance of the order of allotment Ex.D3, mutation No. 10 (Ex.D4) was entered and sanctioned in the name of Kaka Singh on 24.07.1975.

6. Said Kaka Singh, while wrongly asserting himself to be the exclusive owner had transferred the suit land by way of sale deed No. 3854 dated 05.11.1982 (Ex.P1) in favour of Baldev Singh, Tehal Singh sons of Fateh Singh to the extent of 1179/1819 share (which comes to 58 kanal 19 marla land) and in favour of Subhash Chand son of Sant Ram and Avtar Singh son of Mehar Singh to the extent of 640/1819 share (which comes to 32 kanal land) for a total consideration of Rs. 49,000/-.

7. When it came to the notice of the State that above-said Kaka Singh had not paid the requisite compensation, rather he had transferred the allotted area in favour of above-said Baldev Singh and others in complete violation of Clause 10(e) ibid, the said allotment was cancelled vide orders Ex.D7 and Ex.D8 which are dated 12.10.1984 by Collector, Agrarian, Kharar. Resultantly, mutation No. 39 (Ex.D9) was re-entered and sanctioned in the name of State of Punjab by Assistant Collector, vide his order dated 12.02.1985... ”

9.1 After considering the various provisions of law and also the judicial pronouncements, this Court held as under:-

*“26. Apart from it, the sale deed in question is hit by the clauses 10 and 11 of the Scheme. In other words we can certainly say that the sale transaction between Kaka Singh and the plaintiffs has violated the provisions of the Scheme which is a special enactment and will prevail upon the provisions of section 41 of Transfer of Property Act. The Full Bench of this Court in **Smt. Niranjani Kaur and others v. The Financial Commissioner AIR 2011 P&H 01(FB)** has already discussed a similar proposition of law. In that case the land was allotted under the displaced persons (Compensation and*

Rehabilitation) Act, 1954 (in short 'Act of 1954'). Under the said Act of 1954, the allottee was debarred from further transferring the allotted property for a period of 10 years but the allottee had violated this condition. In this view of the matter, the sale transaction was cancelled by Chief Settlement Commissioner. It was observed that Act of 1954 is a Special Act whereas Transfer of Property Act is a general one, therefore, the provisions of Special Statute would override the provisions of section 41 of the Transfer of Property Act, as such, the subsequent vendee cannot claim himself to be a bona fide purchaser, however, he can claim refund of damages from his vendor. This court would like to reproduce para Nos. 41 to para 44 from the judgment of the Full Bench hereunder:-

"41. It cannot be disputed that the Act is a special Act, whereas the Transfer of Property Act, is a general Act. Therefore, the provisions of the Property Act, would have no application to orders passed under Sections 19 and 24 of the Act.

*42. In support of this conclusion, reference can be made to the judgment of the Hon'ble Supreme Court in **Harishchandra Hegde v. State of Karnataka and others, (2004) 9 SCC 780**, wherein the Hon'ble Supreme Court while interpreting the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 vis-a-vis Section 51 of the Property Act, has laid down as under :-*

"13. By reason of an order passed under Section 4 of the Act, the lands are directed to be restored in the event the illegalities specified therein are discovered. The consequences contained in Section 5 of the Act apply automatically in the event an order under Section 4 of the Act is passed. Section 4 of the Act contains a non-obstinate clause. The said provision would, thus, apply notwithstanding anything contained in any agreement or any other Act for the time being in force. The Act is a

special Act whereas the Transfer of Property Act is a general Act and in that view of the matter also section [51](#) of the Transfer of Property Act will have no application and the consequences contained in Section 5 would prevail."

43. *The Hon'ble Supreme Court in **Hardev Singh v. Gurmail Singh (dead) by L.Rs., (2007) 2 SCC 404**, while interpreting the scope of provisions of Sections 41 and 42 of the Property Act, has laid down as under :-*

"9. Application of Section 41 of the Act is based on the law of estoppel to the effect that if a man has represented that the transferor consents to an act which has been done and that he would not offer any opposition thereto, although the same could not have been lawfully done without his consent and he thereby induces others to do that from which they might have abstained, he could not question the legality of the act he had so sanctioned, to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

10. The ingredients of Section 41 of the Act are :

(1) the transferor is the ostensible owner;

(2) he is so by the consent, express or implied, of the real owner;

(3) the transfer is for consideration;

(4) the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.

11. Section 43, on the other hand, embodies a "rule of feeding the estoppel" and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts thereupon and it is immaterial whether the transferor acts bona fide or fraudulently in making the representation.

12. In order to get the benefit of the said provision, the

conditions which must be satisfied are :

(1) the contract of transfer was made by a person who was competent to contract; and

(2) the contract would be subsisting at the time when a claim for recovery of the property is made.

13. However, the provisions would have no application if the transfer was invalid as being forbidden by law or contrary to public policy, as envisaged under section 23 of the Contract Act. Thus, no estoppel can be pleaded contrary to the provisions of a statute. The "rule of feeding the estoppel" shall apply in absence thereof."

44. In view of the authoritative pronouncements of the Hon'ble Supreme Court, question No. 2 is answered against the petitioners, by holding, that the provisions of the special statute, would override the provisions of Section 41 of the Property Act."

*27. Similar are the observations of the single bench of this court in case **Sarvshri Ajit Singh and others v. Department of Agrarian Reform, Punjab (RSA Nos. 948 and 949 of 1988, decided on 22.03.2016).***

28. Viewing from all the angles, this Court is of the considered opinion that the plaintiffs failed to make a reasonable enquiry with regard to the title of their vendor and also that the provisions of clauses 10 (d) and (e) read with clause 11 of the Scheme prohibits the seller to make transfer in their favour. Thus, the sale deed (Ex.P1) dated 05.11.1982 is not only against the public policy rather the same is also against the various provisions enshrined in the Scheme. The plaintiffs cannot be treated as bona fide purchasers and are not protected by the equitable principle as enshrined under section 41 of the Transfer of Property Act..."

9.2 The aforesaid judgment in case of **State of Punjab v. Baldev Singh (supra)**, is clearly applicable to the facts of the present case as well.

10. In my considered view, the findings of the lower Courts below

are based upon appreciation of facts/pleadings as well as the evidence on record and I see no illegality or perversity in the findings returned by the lower Courts. Furthermore, no question of law, much less a substantial question of law, is involved herein, so as to exercise appellate jurisdiction under Section 100 of Civil Procedure Code, 1908.

11. Resultantly, the present appeal is dismissed, being bereft of any merit.

12. All pending application(s), if any, shall also stand closed.

19.03.2025

Apurva

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No