

PETITIONER:  
DALIP CHAND & ORS.

Vs.

RESPONDENT:  
UNION OF INDIA & ORS.

DATE OF JUDGMENT 06/09/1994

BENCH:  
RAMASWAMY, K.  
BENCH:  
RAMASWAMY, K.  
VENKATACHALA N. (J)

CITATION:  
1995 SCC Supl. (1) 233 JT 1995 (2) 448  
1994 SCALE (4) 587

ACT:

HEADNOTE:

JUDGMENT:  
ORDER

1. 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, Jullundur in appeal No. 173/72. The Additional District Judge reversed the decree of the Sub - Judge First, Class, Jullundur dated August 3, 1972 where in 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.

2. The facts are not., in dispute. On March 12, 1928, 60 bighas of land was sold by Gajinder Singh Dhillon to Santa Singh and Phagat 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 casts was non - 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 Jullundur. In lieu of the land they had lost in Pakistan, they had applied for and were granted the suit lands. The rehabilitation authorities are said to have secured the mutation records from Pakistan where in 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.

3. 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 allotment of suit lands were made for the rehabilitation by the first re-  
450

spondent and that, therefore, as owners they are entitled to maintain the allotment. The mutation proceeding secured from Pakistan would show that the respondents' predecessors, 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, 1932 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 mutations effected will not have any effect on 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 Jullundur 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.

4. 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.

451