

CASE NO.:
Appeal (civil) 3632 of 1996

PETITIONER:
Mange Ram

RESPONDENT:
Financial Commissioner and Others

DATE OF JUDGMENT: 08/01/2003

BENCH:
CJ., V.N. Khare & ARUN KUMAR.

JUDGMENT:

J U D G M E N T

WITH

CIVIL APPEAL NO. 3633 of 1996

ARUN KUMAR, J.

Civil Appeal No. 3632 of 1996 : In this appeal, the appellant claims possession of a piece of land comprising 5 biswas, that is, 250 square yards. The claim is based on alleged occupation as a trespasser of 10 biswas of agricultural land in village Sanoth within the revenue estate of Delhi. Briefly the facts are that consolidation scheme in village Sanoth was prepared and confirmed in the year 1975-76 under Sections 19 and 20 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the 'Act'). The respondents admittedly owned and possessed lands in the said village. The appellant claimed that his predecessor had trespassed on a portion of the land belonging to the respondents and had been carrying on cultivation activity thereon. In the scheme, no encumbrance as alleged by the appellant was mentioned. The appellant, however, relied on a list dated 3rd July, 1982 for substantiating his claim. The Scheme of consolidation and re-partition had been completed by the year 1982. The record of consolidation and re-partition had been consigned in the year 1982 after finalization of consolidation proceedings. The appellant made an application on 16th February, 1993 for being put in possession of the 5 biswas of land to which he claimed to be entitled to an encumbrancer. The Consolidation Officer however dismissed the application of the appellant vide order dated 10th November, 1993. The Financial Commissioner dismissed the Revision Petition against the said order on 4th March, 1994. The appellant challenged these orders of the revenue authorities in the High Court of Delhi by way of a Writ Petition bearing No.1488/94. The said petition was also dismissed in limine on 6th April, 1994 which has given rise to the present appeal.

The learned counsel for the appellant contended that the appellant was making a claim on the basis of the fact that his predecessor was recognized as an encumbrancer and an encumbrancer in a scheme of consolidation is entitled to allotment of land on repartition. The name of his predecessor was found place as an unauthorized occupant in a list dated 3rd July, 1982 and therefore it is submitted that the rejection of the application of the appellant for being put in possession of land by the Consolidation Officer was wrong. We are unable to find any merit in this submission made on behalf of the appellant. On the other hand the

submission made on behalf of the respondents that a mere trespasser could not be treated as an encumbrancer as envisaged in the scheme of the Act has force. The word "encumbrancer" has to be read in the sense of a legal encumbrance like a lease or a mortgage and a mere trespasser cannot be elevated to the position of an encumbrancer in the context of the statute. Therefore, merely on the basis of being a trespasser, the appellant cannot succeed.

Secondly, this appeal must fail on account of long delay and laches on the part of the appellant in approaching the authorities for relief. The consolidation proceedings in the village admittedly concluded in the year 1982. The appellant himself relies on a list dated 3rd July, 1982 for purposes of basing his claim to a piece of land. The application for delivery of possession of land in question was made by the appellant only on 16th February, 1993, that is, after almost 11 years. The appellant has tried to explain this delay on the basis of some legal proceedings said to have taken place at the instance of another party. In our view, the appellant cannot get away by relying on proceedings in some other case. The appellant has to stand on his own feet. If he was interested in obtaining possession of the land in question, he should have taken steps within time and not after a lapse of nearly 11 years. The Consolidation Officer rejected the application of the appellant on the ground of long delay and laches. We are unable to find any fault with the decision of the Consolidation Officer in this behalf.

The learned counsel for the appellant tried to argue that in case of another party, the same Consolidation Officer ordered delivery of possession of land while the application of the appellant was rejected. This argument is again misplaced as it is factually not correct. In that other case of Chander etc., they had been allotted land in the consolidation proceedings. Delivery of possession was held up because of legal proceedings involving that very case. Thus, the facts of the two cases are entirely different.

Looking from another angle one gets an impression that the appellant has set up a false case. The appellant is claiming a piece of land comprising an area of 250 square yards, that is, 5 biswas. Such a small piece of land could hardly be said to be land meant for cultivation. Even if his predecessor had trespassed on a piece of land comprising 10 biswas, that is approximately 500 square yards, the situation remains the same. Such a small piece of land cannot be said to be land meant for cultivation. The case of the appellant seen from every angle appears to be totally without any merit.

In the result, the appeal fails and is dismissed.

CIVIL APPEAL NO. 3633 OF 1996 : In view of the reasoning given in the above appeal, this appeal is also dismissed.