Before Amol Rattan Singh, J.

SAVITRI DEVI—*Appellant*

versus

HARYANA STATE THROUGH COLLECTOR, HISAR—*Respondent*

RSA No.2240 of 1996

May 07, 2019

A) ***Civil Procedure Code, 1908—S.80—Specific Relief Act, 1963—S.34 and 37—Resumption of plot due to non-payment of dues—Non service of notice—Held, in absence of a notice, plot can be resumed—Admittedly, not even a single installment paid after the initial payment—Resumption of plot proper.***

Held that, the judgment of that court, that the appellant-plaintiffs' husband (as her attorney), had testified to the effect that the conditions of the allotment included payment of installments being made on time, with the dates of such payments also having been given in the allotment letter, which finding could not be refuted by learned counsel for the appellant to show from the record that it was a perverse finding, I would not hold that in the absence of a notice, the plot could not have been resumed, with, admittedly, not even a single installment paid after the initial payment of Rs.1000 in the year 1968.

(Para 41)

B) ***Limitation Act, 1963—S.3—Non framing of issue on suit for declaration and permanent injunction being barred by limitation—Filing of suit after 11 years of order of resumption of plot—Testimony of appellant or plaintiff and her husband—attorney failed to show that she came to know of resumption of plot only upon reading advertisement for its re-auction—Hence, dismissal of suit on basis of barred by limitation proper.***

Held that, the suit having been instituted almost 11 years after the order of resumption was passed on 01.03.1972, it was beyond limitation, the stand of the appellant-plaintiff was that she gathered knowledge of that fact only when the plot itself was being auctioned off, with an advertisement/notice issued in the newspaper to that effect.

(Para 52)

Further held that, even from her own testimony, or from the

testimony of her husband-attorney, it has not been shown that it was stated anywhere by them that she came to know of the resumption of the plot only upon reading an advertisement for its re-auction in the year 1982-83.

(Para 53)

Suman Jain, Advocate,
for the appellant.

Pawan Jhanda, A.A.G., Haryana.

AMOL RATTAN SINGH, J.

(1) This is the second appeal of the plaintiff who instituted a suit seeking a declaration to the effect that the order passed by the Administrator, New Mandi Township, Haryana, on 01.03.1972, as regards Plot No.32 situate in Mandi Adampur, Tehsil and District Hisar, is an order that is illegal, null and void and therefore not binding on the rights of the plaintiff.

(2) She also sought the consequential relief of permanent injunction against her dispossession from the plot in dispute.

(3) As per the appellant-plaintiff (hereinafter to be referred to as the plaintiff), on 16.01.1968 the aforesaid plot was auctioned, with her having purchased it for a sum of Rs.4000/-, of which Rs.1000/- was paid by her, with the remaining amount to be paid in three installments.

(4) It was further contended that the possession of the plot had been given to her and that she continued to remain in such possession.

(5) However, allegedly without any notice issued to her as was required, the allotment was cancelled vide the aforesaid order, which consequently was contended to be illegal, null and void and not binding on her rights.

(6) It was still further contended that she came to know of the order only at the time of the subsequent auction of the plot on 22.01.1983 (such knowledge allegedly obtained through the newspaper), after which she approached the defendant State but with no success.

(7) Notice having been issued in the suit (instituted on 01.02.1983), the respondent-defendant State of Haryana (hereinafter to be referred to as the defendant), appeared and filed a written statement taking preliminary objections on want of notice under Section 80 of the

Code of Civil Procedure, lack of jurisdiction of the civil court to entertain the suit, its maintainability, lack of cause of action, the suit being pre-mature and the plaintiff being estopped by her own act and conduct from filing the suit.

(8) It was further contended that possession of the plot had already been taken by the State through its Naib Tehsildar on 22.03.1972.

(9) The aforesaid preliminary objections apart, on the merits of the case set up by the plaintiff, the defendant admitted the allotment of the plot to the plaintiff but thereafter averred that the plaintiff having failed to make the payment of the remaining installments, despite notices issued to her, the impugned order dated 01.03.1972 was passed and possession of the plot was taken.

(10) A replication having been filed by the plaintiff, denying the contents of the written statement and reiterating those of her plaint, the following issues were framed by the learned trial court:-

> "1. Whether order dated 1.3.72 regarding plot No.2 of Administrator, New Mandi Township, Haryana, Chandigarh is against law, wrong, illegal, without jurisdiction, if so to what effect? OPP
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> 2. Whether the plaintiff is –owner in possession of plot in dispute? OPP
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> 3. Whether no notice was served upon plaintiff on depositing residuary amount in -lump-sum? OPP
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> 4. Whether the suit is bad for non-issue of notice u/s 80 CPC? OPD
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> 5. Whether the civil court has got no jurisdiction to try the present dispute? OPD–
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> 6. Whether the suit is not maintain–able in the present form? OPD
>
> 7. Whether plaintiff has got no cau–se of action? OPD
>
> 8. Whether the suit of the plaintiff i–s pre-mature, if so its effect? OPD
>
> 9. Whether the plaintiff is estoppe–d from filing the present suit by his own act and conduct? OPD
>
> 10. Reli-ef."

(11) In support of her case, the plaintiff examined her husband and attorney, Om Parkash, as PW1 and closed her evidence, the defendant State on the other hand not having examined any witness.

(12) Despite the above, the learned trial court, in its short first judgment dated 29.11.1988, held that other than examining PW1 the plaintiff had not even placed on file a copy of the order under challenge, nor had adduced any evidence on file for a "glimpse of the order under challenge", and therefore, even though the order itself was not disputed by the defendant, the suit had to be dismissed, no other evidence also having been led by the plaintiff to prove her claim, despite several opportunities granted to her.

(13) Consequently, the suit was dismissed.

(14) The appellant-plaintiff having filed a first appeal, the learned Additional District Judge, Hisar, after noticing the pleadings of the parties and the issues framed by the learned trial court, set aside the judgment and decree issued by that court and after framing an additional issue, remanded the matter to the trial court, with the trial ordered to be reheard, as would be obvious from a perusal of the judgment of the Senior Sub Judge, Hisar, dated 26.08.1992 (upon remand of the case).

(15) The additional issue framed was the following:-

> "9-A. Whether the plaint has been duly signed by the plaintiff? OPP"

(16) In the 2nd round, other than again examining her husband and attorney Om Parkash as PW1, the plaintiff also stepped into the witness box as PW2, in respect of the additional issue framed.

(17) The defendant State however did not adduce any oral evidence in the 2nd round too.

(18) The learned trial court then recorded a finding that as regards the possession of the suit property, even as per the pleadings of the plaintiff she was not in possession thereof, because she had actually taken a plea seeking such possession, on the ground that she had been dispossessed by the Naib Tehsildar on 22.03.1972.

(19) As regards the merits of the case, it was found by the trial court that even the original receipt of Rs.1000/-, which was the amount that had been deposited at the time of auction, was not actually led by way of evidence by her, though the notice sent to her, Ex.D1, showed

that the plot was resumed on account of non-payment of the remaining installments.

(20) The receipt of such notice was exhibited by the defendant State as Ex.D2, on which the plaintiff admitted her signatures during her cross- examination, though she denied the signature over the bid sheet, Ex.D3, which was seen to be in English.

(21) Thus that court came to the conclusion that the signatures on the bid sheets were not of the plaintiff and consequently, as she had not made the bid in the auction, no case was made out for declaring the impugned order illegal, null and void.

(22) Further, she also having not proved that she had not deposited the remaining installments, she could not be held to be entitled to the plot.

(23) In that context judgments of this court in ***Mayawati and others*** versus ***Administrator***[1], ***State of Punjab and others*** versus ***Shri Ram Kishan***[2] and ***Mohan Lal*** versus ***State***[3], were referred to by the trial court, to actually however hold that those judgments were not applicable, because in those cases, upon installments paid, allotment had been restored.

(24) On the aforesaid findings, issues no.1, 2 and 3 (on whether the impugned order could be declared to be illegal and whether the plaintiff was owner in possession of the plot in dispute, and whether the notices had been served upon her asking her to deposit the remaining installments), were decided against the plaintiff and in favour of the respondent State.

(25) Issues no.4 to 8 were held to be not pressed upon by the defendant and were therefore decided in favour of the plaintiff, with issue no.9-A, i.e. the additional issue framed on whether the plaint had been duly signed by the plaintiff or not, also decided in her favour, holding that she had in fact signed the plaint.

(26) However, the primary issues, of her being entitled to the plot and being in possession thereof, having been decided against her, the suit was dismissed.

(27) That judgment and decree again having been challenged

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[1] 1991 (1) LJR 827
[2] 1986 PLJ 456
[3] 1980 PLJ 618)

by way of a first appeal, the learned Additional District Judge, again after noticing the pleadings and the issues framed, including the additional issue framed by his predecessor court, recorded a finding that as regards the acknowledgment of the notice issued to the plaintiff by the defendant, (Ex.D2), it could not be held to be signed by the plaintiff, such acknowledgment being of the year 1969, with the notice claimed to have been issued on 03.02.1972, requiring the plaintiff to reply by 01.03.1972.

(28) Thereafter, the facts of the case relied upon by the plaintiff in ***Mayawatis'*** case (supra), were referred to, and it was found that since during the pendency of the appeal filed by the allottee in that case (before the Govt. authority concerned), money had been paid, but even so the appeal had been dismissed, this court had held that once the money deposited had been accepted without much protest, the plot should have been restored to the petitioners/allottees.

(29) The facts of that case were therefore held by the first appellate court (like the trial court), to be not applicable to the case of the 'present plaintiff', because with the auction having taken place in 1968, the plot was resumed vide an order dated 01.03.1972.

(30) Further, it was recorded by the lower appellate court that though the allotment letter had been produced on file, however the plaintiffs' husband and attorney had admitted "some of the material condition of the allotment", including that the dates for payment of the installments were given in the allotment letter, and that it was provided therein that in case of non-payment, the plot would be resumed.

(31) Hence, with no reason forthcoming for non-payment of installments, the plaintiffs' contention that the installments could be recovered as arrears of land revenue was rejected, with that court not finding it appropriate to grant her the relief sought.

(32) It was next recorded that the resumption order dated 01.03.1972 was actually challenged on 01.02.1983, i.e. about 11 years later, with therefore even equity not being in her favour.

(33) Consequently, on the aforesaid findings, the first appeal filed by the appellant herein was also dismissed, as had been her suit by the trial court.

(34) Before this court, Mr. Jain, learned counsel for the appellant, submitted that the following two questions of law arise for consideration of this court and its adjudication thereupon:-

"(i) Whether in the absence of any notice issued to the appellant for resumption of her plot, could the plot be resumed? and

(ii) Whether in the absence of any issue framed on the question of the suit being barred by limitation, that could have been held to be a bar?"

(35) He submitted that though as per the respondent, notice had been duly issued to the plaintiff on 03.02.1972, to the effect that the plot would be resumed on 01.03.1972 if dues were not paid, the plaintiff denied receiving such notice with even the 1st appellate court having held that the said notice cannot be accepted to have been received by her, the date of acknowledgment on the receipt, Ex.D2, relied upon by the defendant State, being of the year 1969.

(36) Hence, he submitted that with no notice issued to the plaintiff at all, with regard to resumption of the plot, the order dated 01.03.1972, resuming the plot, cannot be held to have been validly passed.

(37) He next submitted that with no issue framed on the suit being barred by limitation, the lower appellate court wholly erred in holding that it was barred, making that a ground for dismissal of the plaint, thereby upholding the judgment and decree issued by the trial court.

(38) Mr. Jain then submitted that even if this court is not inclined to allow the appeal, the matter needs to be remanded to the courts below on the issue of limitation.

(39) *Per contra*, Mr. Jhanda, learned Assistant Advocate General, Haryana, submitted that the plaintiff not having led any evidence whatsoever to the effect that she had paid any installments after allotment of the plot to her, with her husband and attorney in fact having admitted in cross- examination, as PW1, that the allotment letter (though not produced by either side), contained a clause that in case of non-payment of installments the plot can be resumed, and that even the dates of installments had been given in the allotment letter, the appellant cannot take the plea of notice not having been received by her with regard to resumption, and on that ground claim that she is entitled to be allotted the plot.

(40) He next submitted that the learned lower appellate court in any case having found that the suit was filed in 1983, challenging an

order passed in March 1972, it was a suit not maintainable at the threshold itself.

(41) Having considered the matter in terms of what has been argued before this court, as also what has been held in the judgments impugned in this appeal, as regards the first question of law raised by Mr. Jain, no doubt otherwise a plot allotted would not be resumable without proper notice issued to the allottee and the learned lower appellate court has come to a finding of fact, that the receipt, Ex.D2, as was relied upon by the State, was of the year 1969 and therefore could not have been in respect of any notice received after 03.02.1972, yet, in my opinion, it also having been seen from the judgment of that court, that the appellant-plaintiffs' husband (as her attorney), had testified to the effect that the conditions of the allotment included payment of installments being made on time, with the dates of such payments also having been given in the allotment letter, which finding could not be refuted by learned counsel for the appellant to show from the record that it was a perverse finding, I would not hold that in the absence of a notice, the plot could not have been resumed, with, admittedly, not even a single installment paid after the initial payment of Rs.1000/- in the year 1968.

(42) This would be further so because though the suit of the plaintiff was one also seeking a decree of perpetual injunction restraining the respondents from interfering in her possession of the plot, it again could not be denied that her husband and attorney, as PW1, had admitted that in fact the possession of the plot had been taken over by the respondent.

(43) Hence, I would find no ground actually to interfere with the reasoning given by learned courts below to dismiss the suit of the plaintiff, on account of complete non-payment of the installments due in respect of consideration to be paid for the plot, other than Rs.1000/- that was deposited at the time of allotment.

(44) The matter may have been different even if the appellant-plaintiff had offered to deposit the installments, with due interest thereupon; however, even before the learned courts below, her stand was that the installments due may be recovered as arrears of land revenue. In other words, she obviously did not have, even during the pendency of the suit filed in the year 1983 (i.e. 11 years after the resumption order), the money to pay for the plot that she had bid for and which had been allotted to her in the year 1968.

(45) Consequently, the basic term of allotment itself not having been fulfilled, at any stage whatsoever, even as regards payment of the consideration for the plot, mere absence of a notice for resumption in the year 1972, would not, in my opinion, entitle the appellant to a decree in her favour, seeking a declaration to the effect that she is the owner of the suit property and that the respondent be restrained from dispossessing her.

(46) Hence, as regards the merits of the case of the appellant, I see actually no such merits to allow this appeal.

(47) Even so, as regards the issue of limitation, i.e. the 2nd question of law raised by learned counsel for the appellant, on principle it is answered to the effect that limitation being a fundamental ground to entertain or reject a suit, simply because the learned courts below failed to frame a specific issue in respect thereof, would not debar them from holding the suit to have been filed beyond limitation.

(48) Here, Section 3 of the Limitation Act, 1963, needs to be referred to, which reads as follows:-

> "**3. Bar of limitation.**—(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.
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> (2) For the purposes of this Act—
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> (a) a suit is instituted—
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> (i) in an ordinary case, when the plaint is presented to the properofficer;
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> (ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and"
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> (iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;"
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> (b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—
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> (i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;"

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

(49) Thus, it is obvious that sub-section (1) of the said provision specifically stipulates that even if a defendant has not set up limitation as a ground to oust the plaintiff, a duty is cast upon the court to determine that basic issue, as to whether the suit has been filed within the period of limitation provided, or not.

(50) In this context, a judgment of the Privy Council in ***Lachhmi Sewak Sahu*** versus ***Ram Rup Sahu and others***[4] can be cited, wherein it was held as follows:-

"3. Upon one point however this appeal has been urged. It is not a point taken at any stage of the proceedings in either of the Indian Courts but, as it is a point of limitation, it is prima facie admissible even in a Court of last resort."

(51) A judgment of the Supreme Court, more elaborate, may also be cited, in the case of ***Kamlesh Babu & Ors.*** versus ***Lajpat Rai Sharma & Ors.***[5], wherein after discussing the entire law on the subject, it was held essentially to that effect by their Lordships (reference paragraphs 10 to 22 of that judgment).

(52) Whether or not the suit in the present case was actually filed within limitation, would have been a matter of fact to be proved by the appellant, because though what has been held by the learned courts below is to the effect that the suit having been instituted almost 11 years after the order of resumption was passed on 01.03.1972, it was beyond limitation, the stand of the appellant-plaintiff was that she gathered knowledge of that fact only when the plot itself was being auctioned off, with an advertisement/notice issued in the newspaper to that effect.

(53) If that fact had been proved by her, by actually producing any newspaper clipping by way of evidence, her stand may possibly have been acceptable, that she did not have knowledge of the resumption till the year 1983. However, it has not been shown from the

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[4] AIR 1944 PC 24
[5] 2008 (2) RCR (Civil) 872

record by learned counsel for the appellant, that other than an averment to that effect in the pleadings, any evidence was led, whatsoever, to substantiate that contention. Even from her own testimony, or from the testimony of her husband-attorney, it has not been shown that it was stated anywhere by them that she came to know of the resumption of the plot only upon reading an advertisement for its re-auction in he year 1982-83.

(54) In fact, in her husbands' testimony, it has been stated that orders had been passed for resumption and re-auction, which despite the appellant having protested against before the concerned authority, were not withdrawn.

(55) Consequently, I would find no ground even to interfere with the finding that the suit was instituted well after limitation to do so had expired, it having been instituted on 01.02.1983, with the order impugned therein having been passed on 01.03.1972.

(56) In any case, even on merits, it having been held by this court also, that with no installment paid at all towards satisfying the sale consideration, other than Rs.1000/- paid at the time of allotment in the year 1968, there is no reason to interfere with the judgments of the courts below.

(57) Consequently, this appeal is dismissed.

Ritambhra Rishi