

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 9632 of 2022 (O&M)

Reserved on: 20.4.2023

Date of Decision: 26.4.2023

Barkha Ram (since deceased) through his LRs

.....Petitioners

Versus

The Commissioner, Panchayat Lands for SAS Nagar
and Roopnagar and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. D.V.Sharma, Senior Advocate with
Mr. Tushar Sharma, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Vikas Singh, Advocate with
Mr. A.S.Pannu, Advocate
for respondent No. 4.

SURESHWAR THAKUR, J.

Factual background

1. Earlier to the institution of the instant writ petition, before this Court, whereby a challenge is made to the drawings of Annexure P-20, and, to the drawing of Annexure P-25, the petitioner (since deceased), through his LRs, accessed this Court, through their filing CWP No. 7067 of 1988. Through a decision made thereons, on 23.1.2012, this Court after allowing the said writ petition, had quashed and set aside the order(s), as, made respectively on 4.9.1987, and, on 6.6.1988, thus as became respectively became made by the authorities concerned, but with a mandate, upon, the

Collector/Divisional Deputy Director Panchayat, SAS Nagar, Mohali to decide the *lis* afresh, but in accordance with law. Therefore, the decisions, as respectively carried in Annexure P-20, and in Annexure P-25, are made in pursuance to the above order of remand, as became made by this Court, after its allowing, on 23.1.2012, CWP (*supra*).

2. The gravamen of the entire contest, as emerges amongst the contesting litigants, is centered, upon the essential factum relating to the consequentiality, and, the legality of the verdict, as made by the learned Civil Judge concerned, (Annexure P-7) whereby, the suit of the plaintiff, with impleadment therein of the Gram Panchayat concerned, thus for joint possession in respect of the khasra numbers, as detailed therein, hence became decreed. Moreover, the fulcrum of the entire *lis*, is hinged upon, as respectively contended by the counsels appearing before this Court, that the said Annexure is a sequel of collusion, and, fraud practiced, amongst the plaintiff therein, and, the defendants (*supra*), and/or is free from the above vices.

3. Both the statutory authorities below, through theirs making the impugned orders, as become enclosed in the above annexures, though, concluded, that the judgment, and decree, as made by the learned Civil Court concerned, verdict whereof becomes enclosed in Annexure P-7, and, which became also affirmed by the learned First Appellate Court concerned, given, uncontestedly, thus for want of a regular second appeal, being raised thereagainst before this Court, thus though *prima facie* acquires but a conclusive, and, binding effect. However, the statutory authorities below declined to assign credence to Annexure P-7, but on the ground, that it became stained with a vice of fraud, and, collusion rather becoming

Statutory authorities below discarded Annexure P-7 on the premise that it was obtained by fraud and collusion inter se the plaintiff therein and the Gram Panchayat concerned.

4. In making the above conclusions, the statutory authorities below had assigned the reasons, that since no acerbic contest emerged from the defendants in the said suit, besides also when cogent evidence to rebut the presumption of truth, if any, as was assignable to the jamabandi, drawn for the year 1942-43, and, to which in the said suit Ex. P-10, thus became assigned, therefore the said judgment and decree was a collusively obtained decree. The above conclusion was made irrespective of the factum, that though in Ex. P-10, the predecessor-in-interest of the plaintiff, namely, Chhaju, was shown to cultivate the suit land, but free from encumbrance of his being a chakotedar under the recorded land owner concerned. Moreover, though in Annexure P-7, a conclusion became arrived, that thus when but within the ambit of the apposite exclusionary clause, to the definition of shamilat lands, as becomes engrafted in Section 2(g)(5)(viii) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'PVCL Act, 1961'), the suit land in the said civil suit, became thus saved from vestment in the panchayat deh concerned. As a sequel, though the learned Civil Court concerned, proceeded to make the claimed for decree of joint possession in favour of the plaintiff-Barkha Ram. However, yet the authorities below appear to prima facie conclude, that the reliance, as placed upon Ex. P-10, by the learned Civil Judge concerned, rather was inapt. The reason for making the above inference became rested, upon the factum, that the plaintiff therein, had suppressed from the learned Court concerned, the subsequent thereto jamabandis, as became respectively drawn for the year

ownership, the Gram Panchayat concerned, became entered as such, but in the column of possession, the predecessors-in-interest of the petitioner, became entered as a gair marusi. Therefore, the said revenue entry qua the predecessor-in-interest of the petitioner, being a gair marusi over the petition land, was but a limited status over the petition land, and, was amenable to be terminated through his being ensured to be evicted therefrom, but through a petition, being instituted under Section 7 of the PVCL Act, 1961, before the Collector concerned. Therefore, the authorities below through theirs respectively drawing Annexure P-20 and Annexure P-25, hence concluded, that the decreeing of the plaintiff's suit for declaratory relief, yet did not warrant its becoming accepted.

5. The above concurrently made disaffirmative verdicts, upon, the plaintiff suit, by both the statutory authorities below, has caused pain to him, and, has led him to file the instant petition, before this Court.

Submissions of the learned senior counsel for the petitioner

6. The learned senior counsel for the petitioner submits, that the above made verdicts by both the statutory authorities below, rather are legally infirm. In making the above submission, he rests the same, upon, the factum, that since Section 13 of the PVCL Act, 1961, became engrafted through an amendment made in the year 1976. Therefore, when the bar against the exercise of jurisdiction by the Civil Court, in respect of the lands designated, as shamilat deh lands, but operates prospectively, and, does not operate retrospectively. Resultantly, he contends, that since the verdict of the Civil Court, as enclosed in Annexure P-7, was made prior to the insertion of the above statutory provisions, in the PVCL Act, 1961, whereby there is a complete ouster of jurisdiction by the Civil Court, thus in respect

statutory authorities below were required to assign credence to Annexure P-7.

7. The learned senior counsel further submits, that since there was a verdict of remand, made on the said civil suit, therefore, it cannot be said, that there was any collusion inter se the plaintiff, and, the defendants in the said civil suit. Thus, he argues, that the inferences drawn by both the statutory authorities below, that Annexure P-7 is ridden with a vice of it being a collusive decree, or that the decree embodied therein, being collusive or being obtained by fraud, are required to be interfered with, by this Court.

Reasons for rejecting the above submissions

8. Though, this Court would accept the submissions (supra), as addressed before this Court, by the learned senior counsel for the petitioner, that the decree of the Civil Court concerned (Annexure P-7), whereby the suit of the of the plaintiff, whereby the espoused decree for a declaratory relief qua his being declared to be in joint possession of the suit land, thus became assigned to him, though does prima facie acquire immense evidentiary value. Moreover, though it became rendered prior to the above statutory provisions, being engrafted in PVCL Act, 1961 whereby, there is an ouster of jurisdiction of the Civil Court against the trying, and, adjudicating, upon, the suits, as become laid in respect of the shamilat deh lands. In addition, though also immense sanctity may be enjoyed by the said decree of the Civil Court concerned.

Annexure P-7 obtained by the parties therein, through their collusively practicing the vice(s) of suggestio falsi and suppressio veri, upon the Civil Court concerned, inasmuch as, their concealing from the learned Civil Court concerned, the jamabandis post 1950 wherein, the predecessor-in-interest of the petitioner, is reflected to be a chakotedar over the suit land, thus was not amenable to become assigned the benefit

of the apposite saving(s) clause, which but requires his having an encumbered independent cultivating possession of the suit land, prior to 1950

9. Nonetheless, for the reasons to be assigned hereinafter, this Court is of the firm view, that the conclusions, as became made by both the statutory authorities below, that Annexure P-7, was thus obtained by fraud or collusion becoming practiced by the plaintiff, but in connivance with the defendants therein, is but a validly drawn conclusion(s). Though, a perusal of Annexure P-7 discloses, that the Civil Court concerned, did assign credence to Ex. P-10 therein, exhibit whereof is a jamabandi relating to the suit land, hence drawn for the year 1942-43, wherein, the predecessor-in-interest of the plaintiff therein, was recorded to be holding an unencumbered cultivating possession of the suit land, inasmuch as, his cultivating the same without his paying rent to the land owners concerned. Thus, through Annexure P-7, the Civil Court concerned, held, that the relevant saving(s) clause against the vestment of shamilat dah lands in the panchayat deh, thus required its becoming applied to the suit land therein. On the other hand, yet the statutory authorities below, did not assign credence to Ex. P-10 in the said civil suit. The said non-assigning of credence to Ex. P-10 but appears to become generated from the factum, that the jamabandis post 1950, rather containing reflection(s), contrary to the one, as carried in Ex. P-10 in the said civil suit, inasmuch as, the said jamabandi(s) rather containing reflection(s), that the predecessor-in-interest of the plaintiff-petitioner herein, becoming entered, as a chakotedar over the suit land. Necessarily he became barred to become a valid recipient of the apposite saving clause, which rather required his having an unencumbered, and, independent cultivating possession over the disputed land, which

statutory nature of cultivation he did not have over the disputed lands.

Imperative premise for not assigning credence to Ex. P-10

10. The prime premise for not assigning any evidentiary value to Ex. P-10, appears to also become embedded on the further plank, that the said jamabandis post 1950, and, with the above reflection became neither tendered into evidence by the plaintiff therein, nor obviously the respective probative vigour thereof, became either deliberated upon nor became adjudicated upon, thus by the learned Civil Court concerned, which made Annexure P-1. Therefore, but obviously despite the fact, that the Gram Panchayat concerned, became impleaded as a defendant in the said civil suit, instituted on 10.1.1972, yet the defendants thereins, also appear to suppress the jamabandis (supra), especially the one(s) which became drawn prior to the institution of the suit (supra), before the learned Civil Court concerned, wherein, there is a reflection that the predecessor-in-interest of the petitioner, was though holding cultivating possession of the suit land, but yet he was doing so, under an encumbrance of his attorning rent to the recorded land owners concerned. Therefore, the factum of the predecessor-in-interest of the petitioner, paying rent to the land owners concerned, did confer, upon him, only the limited status of a tenant over the petition land(s), and, which status was but amenable for being terminated through a lawful order of eviction, being made, on a motion being cast against him, before the competent statutory authority below. Resultantly, the petitioner's claim for assigning credence to Annexure P-7, was to be rejected, as was tenably done.

11. Be that as it may, the above suppression, at the instance of the defendants thereins, of documents (supra) for their consideration by the

learned Civil Court concerned, especially with theirs carrying the above

reflections, thus results in an inference, that though prima facie thereons, the credence assigned to Ex. P-10 in Annexure P-7, rather was amenable to become dislodged or rebutted. In other words, when the presumption of truth assignable to Ex. P-10 in Annexure P-7, thus would have become rebutted or overcome, through the jamabandis subsequent thereto carrying the above reflections, thus, upon the said jamabandis becoming adduced into evidence by the plaintiff therein or by the defendant therein, which is the Gram Panchayat concerned. However, merely for suppression of the above documents, at the instance of the defendants therein, does mobilize an inference, that the said suppression occurred at the instance of the defendants, but, upon the defendants colluding with the predecessor-in-interest of the petitioner herein.

12. The effect of the above, is that, the parties to the said civil suit but conjointly practicing, upon the Civil Court concerned, the vice of *suggestio falsi and suppressio veri*. Necessarily, it brings-forth an inevitable inference from this Court, that it has obviously resulted in the Civil Court concerned, rather upon the above, thus making but a collusive decree of joint possession, on the plaintiff's suit. The said decree, since for the above reasons, may not have been made in case, the jamabandis subsequent to the drawing of Ex. P-10, had been placed before the Court concerned, which, however, did not become either tendered nor exhibited, whereas, their tendering, and, exhibition, was of the utmost importance, to dislodge the presumption of truth, if any, assignable to Ex. P-10. Resultantly, if on the above score, some view other than the one taken by the learned Civil Judge concerned, could have been taken by him, thus when he has been preempted to do so, only because obviously of such suppression (supra), besides when

concerned. Therefore, the result of the above suppression, is that, the learned Civil Judge concerned, was misled by the parties to the said civil suit, to draw a conclusion, other than one that may be drawable, on presentation of all the relevant documents, before him. Obviously the said judgment, and, decree, as obtained by the plaintiff is but in collusion with the defendants therein, through all practicing the vice of *suggestio falsi and suppressio veri*, upon, the learned Civil Judge concerned.

13. Irrespective of the above, apart from the petitioners making dependence, upon Annexure P-7, he did not even in the civil suit (supra), make any challenge to the validity of the drawing of jamabandis subsequent to the making of Ex. P-10. If he had made a recouring to the above endeavour, he could permissibly ensure, that credence was aptly assigned to Ex. P-10, as done by the learned Civil Judge concerned, as the subsequent thereto occurrence of entries in the jamabandis, displaying the predecessor-in-interest of the petitioners, to be a chakotedar, became entered in the revenue records, rather either unauthorizedly or without any valid order of mutation, being made by the competent revenue officer concerned. Since the above endeavour remained unrecoursed, therefore, it is not open for the learned senior counsel for the petitioner to contend, that the entries in the revenue records, subsequent to drawing of Ex. P-10, were unauthorizedly made, and, they did not rebut the presumption of truth, as became assigned to Ex. P-10, by the learned Civil Judge concerned. In consequence, the petitioner cannot argue before this Court, that the dependence, as, made by the learned Civil Judge concerned, upon Ex. P-10, was a valid dependence, nor can they argue before this Court, that in the either the plaintiff or the defendants, thus suppressing the revenue entries pertaining to the suit land,

was not a collusive exercise inter se the plaintiff, and, the defendants, nor can they argue, that Annexure P-7 has been drawn through the parties concerned, practicing the vice(s) of *suggestio falsi and suppressio veri*, upon, the Civil Court concerned.

Final order

14. In the wake of the above discussion, this Court finds no merit in the petition, and, is constrained to dismiss it. Consequently, the petition is dismissed. The impugned orders are maintained, and, affirmed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

April 26th, 2023
Gurpreet

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