

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 13739 of 2019 (O&M)

Reserved on: 20.4.2023

Date of Decision: 26.4.2023

Som Raj (deceased) through his LR

.....Petitioner

Versus

State of Punjab and others

....Respondents

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

Argued by: Mr. Jagjit Singh, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Raman Rekhi, Advocate and
Mr. C.L.Premy, Advocate
for respondent No. 4-Gram Panchayat.

SURESHWAR THAKUR, J.

Factual background

1. Petitioner Som Raj (since deceased) instituted a title suit bearing case No. 14-A of 2006, before the learned Collector concerned. Through a decision, made thereons, on 14.8.2014 (Annexure P-2), the learned Collector concerned, dismissed the said title suit of the petitioner (since deceased), wherein, the plaintiff claimed the relief qua his being declared as owner in possession of the suit land. The decision (supra), led the plaintiff therein to prefer an appeal bearing No. 304 of 2014, before the learned appellate authority concerned. During the pendency of the appeal (supra), the demise of petitioner/appellant-Som Nath occurred, but then he was substituted by his LR. On the said statutory appeal, as revealed by

Annexure P-3, a decision was made on 1.2.2019, whereby the decision,

carried in Annexure P-2, thus became affirmed. Resultantly, the petitioner, who is the legal representative of Som Nath, becomes aggrieved from the above concurrently made verdicts of dismissal, as became made by the authorities below, upon the title suit (supra), and, is led to institute thereagainst the instant petition, before this Court.

Reasons for accepting the instant petition

2. Prior to the institution of the title suit (supra), in the year 2006, the Gram Panchayat concerned, instituted before the learned Collector concerned, and, against the petitioner herein, a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the PVCL Act, 1961). Through a decision made on the said petition, verdict whereof, is enclosed in Annexure P-1, the learned Collector concerned, declined the espoused therein relief to the Gram Panchayat concerned. The said declining of relief, to the Gram Panchayat concerned, by the Collector concerned, became rested, upon the factum, that the jamabandis relating to the petition land, hence commencing since 1911-12, but reflecting, that the defendant therein, who is the petitioner herein (since deceased), thus was holding cultivating possession of the petition land(s). Furthermore, it was also therein concluded, that the said possession, became also affirmed by the Consolidation Officer concerned, in the finalized consolidation scheme, as became drawn by him. The said decision was made prior to a decision, being made through Annexure P-2, upon, the petitioner's title suit bearing case No. 14-A of 2006.

The apposite exclusionary clause, as carried in Section 2(g)(5)(viii) of the PVCL Act, 1961, is applicable to the petition land(s), as in previous lis comprised in Annexure P-1, credence has been assigned to the consonant therewith jamabandis.

was made on a petition cast under Section 7 of the PVCL Act, 1961, by the Gram Panchayat concerned, before the Collector concerned, wherein, the petitioner (since deceased) became impleaded as a respondent. Thus, when the said verdict has remained unchallenged. Therefore, the above referred to conclusions, as carried therein, if they have acquired conclusivity, thereupon, the effect of the conclusions (supra), thus would not become prefactorily whittled down. Nonetheless, though conclusivity, if any, as assignable to Annexure P-1, rather was amenable to be scuttled, by the Gram Panchayat concerned, even in the subsequent thereto instituted title suit, of the petitioner, before the Collector concerned. However, a reading of the concurrently made verdicts, as respectively comprised in Annexure P-2, and, Annexure P-3, do not unfold, that the Gram Panchayat concerned, took to adduce evidence, but suggestive, that the findings, and, conclusions (supra), even if assumingly they acquire conclusivity, were not rested, upon a worthy appraisal of all the relevant documentary evidence, given such relevant documentary evidence, rather becoming suppressed from the authority, who made Annexure P-1. Contrarily, the authorities concerned, appear to assign credence, to the jamabandis relating to the petition land, as became drawn for the year 1959-60 onwards, wherein, the panchayat deh is reflected, as owner, and, thus concluded, that the plaintiff was unable to adduce cogent evidence, that through his predecessor(s)-in-interest, he was holding independent cultivating possession of the petition land(s), but prior to 26.1.1950. Consequently, the authorities below concluded, that the petitioner (since deceased), cannot claim the benefit of the apposite exclusionary clause to the definition of shamilat lands, as becomes engrafted in Section 2(g)(5)(viii) of the PVCL Act, 1961.

may have been attempted to be rid of its efficacy, inasmuch as, the conclusions (supra) being prima facie infected with a vice of *suggestio falsi and suppressio veri*, therefore, no reliance being amenable to be placed upon Annexure P-1. However, since Annexure P-1 does disclose, that the jamabandis prior to the year 1950, were placed before the authority, which drew Annexure P-1, thus the drawing thereons of a conclusion, that as such they also necessitated the application to the petition land(s) thus, of the exclusionary clause (supra) to the definition of shamilat deh lands, therefore, but was a tenable conclusion, besides was not made through the litigant concerned, practicing the above vice of *suggestio falsi and suppressio veri*, before the authority, who drew Annexure P-1.

Procedure akin to the one to be adopted in the title suit, by the Civil Court, not adopted by the Collector concerned. Therefore, the jurisdiction exercised on the title suit, is exercised with a patent illegality or with a material impropriety.

5. Be that as it may, the conclusions, as made in the concurrently made orders, whereby no reliance is placed, upon, Annexure P-1 or upon the jamabandis prior to 1950, thus also appear to be obviously drawn perfunctorily or mechanically. Moreover, the impugned Annexures also appear to become generated from lack of an incisive scrutiny or from a worthy appraisal, being made of the jamabandis prior to the year 1950, wherein, reflections occur, that the predecessor(s)-in-interest of the petitioner (since deceased), were holding cultivating possession of the suit land, hence, under the relevant owner, who becomes described in the column of ownership, as Shamlat Deh Hasab Hisas Jaddi 48 share. The entries in the revenue record post 1950, even if they altered the status (supra) of the

occurs in the jamabandis prior to the year 1950. Resultantly, in a title suit, an apt jurisdiction became vested in the statutory authorities below, to permit the petitioner to dislodge the efficacy of such alterations, through his being permitted to adduce cogent rebuttal thereto evidence. However, in a most sketchy, and, slipshod manner, despite the petitioner herein (since deceased), instituting a title suit, yet the authorities below untenably but without striking apposite issues, on the respective contentious pleadings, nor theirs permitting the rival contestants to adduce their respective evidence on such struck issues, besides without obviously assigning any opportunity (supra) to the petitioner, to impugn the efficacy of the revenue entries, as made in the revenue record, but post 1950, rather merely on the basis of an entry in the ownership column of the petition land, reflecting the panchayat deh to be the owner of the petition land(s), thus made conclusions that the petitioner's title suit, was required to be dismissed.

6. The above manner of exercise of jurisdiction in a title suit, by the authorities below, is without application of mind to the necessity of compliances, being made to the procedural canon(s) (supra), especially when in a title suit, the procedure akin, to the one adopted by a regular Civil Court of competent jurisdiction, is to be also adopted, whereas, the above imperative statutory procedure remaining evidently unadopted by the statutory authorities below. Therefore, the jurisdiction exercised on the title suit (supra), is visibly exercised with a gross illegality as well as with a gross material impropriety. Therefore, the impugned orders are required to be quashed, and, set aside.

Final order

7. Accordingly, the impugned orders are quashed, and, set aside.

However, the lis is remanded to the learned Collector concerned, to draw a

fresh decision, upon the petitioner's title suit, but preceding therewith he shall frame the issue on the relevant contentious pleadings of the litigants concerned, and, thereafter shall permit them to adduce their respective evidence thereon. The Collector concerned, shall also make a conclusion whether the revenue entries post 1950 are or are not validly made. Obviously before his embarking upon the above process, he shall restore the lis to its original number, and, thereafter shall issue summons to the contesting litigants, for theirs causing, before him, their respective personal appearance(s) or through their respectively engaged counsels, rather on the date assigned in the said summon(s). The entire exercise be concluded within seven months from today but after hearing all the affected concerned.

8. With the above observations, the instant petition is disposed of.

9. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

April 26, 2023
Gurpreet

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