

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 5738 of 2016 (O&M)

Reserved on : 18.1.2024

Date of Decision: 31.1.2024

Gram Panchayat village Mirjapur

.....Petitioner

Versus

Joint Development Commissioner (I.R.D),
Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Argued by: Mr. Arjunveer Sharma, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Sandeep Khunger, Advocate
for respondent No. 2.

SURESHWAR THAKUR, J.

1. The instant petition is directed against the order dated 30.9.2015 (Annexure P-4), whereby the Appellate Court concerned, after allowing the appeal bearing No. 110 of 2015, as became preferred by one Baldev Singh, against the denial to him of the espoused declaratory decree, through the order dated 21.2.2005 (Annexure P-2), by the learned Collector concerned, thus reversed Annexure P-2, and, also thereby assigned the declaratory relief to the plaintiff one Baldev Singh.

2. The suit claim reared before the learned Collector concerned, by one Baldev Singh, became rested on the premise, that he had acquired valid right, title, and, interest to the suit land, on the basis of applicability to him, of the relevant savings clause, to the definition of shamlat deh, as occurs in Section 2(g)(viii) of the Punjab Village Common Lands (Regulation) Act,

became relied upon by the plaintiff (supra), in his declaratory suit, becomes extracted hereinafter.

“(viii) was shamilat deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950.”

3. Though in terms of the said savings clause, it was imperative for the plaintiff in the suit (supra) to adduce sufficient cogent evidence, thus personificatory, that in respect of the land, as described in the column of cultivation in the jamabandi, as *hasab rasad jar khewat*, rather he was in independent cultivation of the disputed land(s) but prior to the year 1950.

4. The learned Collector concerned, after making a keen appreciation of the evidence, which became adduced before him, concluded, that the plaintiff (supra), failed to adduce sufficient, and, clinching evidence to succor his suit claim, qua his in terms of the savings clause (supra), thus holding independent cultivating possession of the suit land, hence prior to 1950.

5. Therefore, the Collector concerned, through Annexure P-2, declined the espoused declaratory decree vis-a-vis the suit land, to one Baldev Singh. The operative part of the verdict, which became recorded by the Collector concerned, in Annexure P-2, becomes *ad verbatim* extracted hereinafter.

“After perusal of above claim, statements proofs and written arguments the Court has reached the conclusion that the jamabandis submitted by the petitioner Ex. P-7 to Ex. P-10, in column No. 4 it is entered as Nagar Panchayat Deh, in Ex. P-11, jamabandi for the year 1984-85 in column No. 4 it is entered as Gram Panchayat Deh and in cultivator it is entered Satnam Singh son of Sant Ram ‘Gair Mumkin’. In the same manner in jamabandi year 1989-90 in khewat No. 45 and

khatauni No. 76 possession has been shown of Satnam Singh son of Sant Ram as cultivator and in khatauni No. 86, Baldev Singh son of Ajit Singh in column No. 9 has been shown as lease holder cultivator. The same is entered in Ex. P-14. From this it appears that the petitioner as per jamabandi 1984-85 came in possession on some numbers and in Ex. P-14, jamabandi year 1999-2000 came in possession as lease holder (chakodedar). The petitioner could not prove the possession from 26.1.1950 continuously, as per above record the petitioner came in possession in 1999-2000 as lease holder, therefore, as per decision of the higher courts, after the stipulated tenure, the lease holder is considered as in illegal possession and the lease holder cannot challenge the title. Therefore, the petition of the petitioner is dismissed.”

6. A reading of the above extracted conclusion, which became formed by the Collector concerned, does *ipso facto* candidly reveals, that a keenest application of mind was made by him, to the revenue entries, as were occurring in the relevant revenue records. The said revenue entries have been unfolded in the above extracted operative part of the verdict (supra), to reveal, that the plaintiff one Baldev Singh, rather had completely failed in adducing sufficient, and, cogent evidence, to justify his resting a claim but premised on the savings clause (supra), to the definition of shamlat deh. Contrarily, he made a conclusion, that the said Baldev Singh, rather in the relevant jamabandis became entered, as a gair marusi, and, the said entry continued to appear in subsequent thereto jamabandis, as, relating to the disputed land.

7. Significantly the import of the said entry, is but that the plaintiff one Baldev Singh, rather as required by the above extracted savings clause to the definition of shamlat deh, thus did not hold any independent cultivating possession of the suit land prior to 1950, contrarily his name

appeared as a gair marusi over the suit land. The said entry in the revenue records, does have an aura of truth or presumption of truth, thus attached thereto, and, unless cogent evidence became adduced at the instance of the plaintiff rather to bely the efficacy of the said entry, thereupon conclusivity is to be assigned to the said entry. However, no cogent rebuttal evidence thereto became adduced at the instance of one Baldev Singh, thereby the presumption of truth attached to the said entry in the revenue record, thus acquires an aura of conclusivity. Resultantly, thereby the limited capacity of the plaintiff, as a gair marusi over the disputed land, thereby did not make him well entitled to become a recipient of the declaratory decree, which he claimed from the learned Collector concerned.

8. The aggrieved plaintiff Baldev Singh reared an appeal against the order (Annexure P-2), before the learned Appellate Authority concerned, who through Annexure P-4, after accepting the said statutory appeal proceeded to make an interference with Annexure P-2, and, thereby assigned the espoused declaratory decree to the plaintiff, one Baldev Singh, arrayed as respondent No. 2 in the instant petition.

9. It appears, that the said order, which has been challenged before this Court, has been made on a gross non-appreciation, and, also on mis-appraisal of the jamabandis, thus with the above said entries occurring therein, which but necessarily, as stated (supra), facilitated the Gram Panchayat concerned, as tenably concluded by the Collector concerned, through Annexure P-2, to non suit the plaintiff one Baldev Singh.

10. For the reasons stated hereinabove, thus the impugned order, recorded by the Appellate Authority concerned, as stated (supra), but evidently suffers from a gross non-appreciation, and, mis-appraisal of the

by the learned Collector concerned.

11. Consequently, this Court finds merit in the instant petition, and, is constrained to allow it. Accordingly, the instant petition is allowed, and, after annulling the impugned order (Annexure P-4) passed by the Appellate Authority concerned, this Court proceeds to affirm the decision (Annexure P-2), drawn by the Collector concerned.

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

(SURESHWAR THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

January 31, 2024
Gurpreet

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