

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Regular Second Appeal No.1127 of 1989
Date of Decision: 26.8.2015

Charan Singh (since deceased) represented by his LRs and others.

..Appellants.

Versus

Gurpal Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. S.D.Sharma, Senior Advocate
with Ms. Bindu Goel, Advocate
for the appellants.

Mr. P.S.Mattewal, Advocate,
for the respondent.

RAJIVE BHALLA, J.

The appellants challenge, judgment and decree dated 6.4.1989, passed by Additional District Judge, Gurdaspur, setting aside, judgment and decree dated 21.7.1987, passed by Additional Senior Sub Judge, Batala and as a consequence, dismissing the suit filed by the appellants.

Counsel for the appellants submits that he confines his arguments to a plea that as the land in dispute is, admittedly, the shamilat land of Patti Ram Dev, the courts below had no jurisdiction to decide the question of title as this question has to be decided by the Collector, exercising power under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred

to as “the 1961 Act”). Counsel for the appellants further submits that even if the suit was filed by the appellants, the courts below should have referred the parties to the Assistant Collector, exercising power under Section 11 of the Act. Counsel for the appellants, while elaborating his arguments, submits that Section 13 of the 1961 Act prohibits a civil court from entertaining matters that are provided for under the 1961 Act. The impugned judgments may, therefore, be set aside and parties may be directed to approach the Collector, for adjudication of the question of title. Counsel for the appellants further submits that the Assistant Collector 1st Grade had no jurisdiction to partition the land as the matter had to be decided by the Collector, exercising power under Section 11 of the 1961 Act. The order directing partition could not have been affirmed by the first appellate court. Counsel for the appellants states that the following substantial questions of law call for an answer:-

1. Whether the suit land measuring 39 Kanals-6 Marlas described as Ram Dev Patti Shamlat land can be partitioned by the Assistant Collector 1st Grade vide order dated 26.10.1983 in view of section 11 of the Punjab Village Common Land (Regulation Act, 1961)
2. Whether on the basis of partition order dated 26.10.1983 passed by Assistant Collector, the respondent can be declared as the owner of Shamlat Patti Land without proving whether it does or does not vest in the Gram Panchayat?
3. Whether the approach of the 1st Appellate Court is

perverse and erratic in view of the fact that it has wrongly confirmed the partition order dated 26.10.1983 of the Assistant Collector?

4. Whether misreading of documentary evidence and ignoring the mandate of the Legislature has resulted into error of judgment and has resulted into a substantial question?

Counsel for the respondent submits that arguments addressed and questions framed do not relate to any dispute or objection raised or decided by the courts below. Counsel for the respondent further submits that it is rather surprising that the appellants who filed a suit claiming ownership of the land in dispute and prayed that order of partition passed by Assistant Collector 1st Grade, is illegal and void is now raising a plea that the land is “shamilat deh” and that jurisdiction of civil courts is barred. Apart from the facts that the appellants themselves claimed ownership of the land, the arguments now sought to be raised were not raised before the courts below nor are they pleaded in the memorandum of appeal. The dispute, in the present case, is not whether the land in dispute is shamilat but whether the respondent has any right in the shamilat land of Patti Ram Dev. The land in dispute, even as per the appellants, belongs to Patti Ram Dev. The appellants do not allege that the land is included in the shamilat deh of a village, under Section 2(g) of the 1961 Act. The dispute, in the present case, is a simpliciter dispute, between private individuals claiming proprietary rights in the shamilat land of Patti Ram Dev and its partition. The

appellants' only claim before the courts below was that as the respondent has sold his proprietary land holding, he is not left with any subsisting interest in the "shamilat land of the Patti" and, therefore, the land can not be partitioned. The trial Court held in favour of the appellants but the first appellate court has rightly held that sale of proprietary land, without reference to a sale of share in the "shamilat patti", does not divest a proprietor of his share in the "shamilat patti. The appeal may, therefore, be dismissed with heavy costs.

I have heard counsel for the parties, perused the impugned judgment and decree, the judgment and decree passed by Additional Senior Sub Judge, Batala, and appraised the entire record.

At the outset, it would be appropriate to point out that counsel for the appellants has not addressed any argument touching upon any point decided by the courts below or objection raised before them or raised in the memorandum of appeal.

The respondent, claiming a share in the land of 'Patti' Ram Dev, filed an application for partition of the land. The Assistant Collector 1st Grade, vide order dated 26.10.1983, partitioned the land and allotted the land, in dispute, to the respondent, in accordance with his share holding. The appellants filed a suit for declaration claiming ownership of land allotted to the respondent, by pleading that as he has sold his proprietary land holding measuring 151 Kanals-15 Marlas along with a share in a well and Ahata Chah together with all other rights, title or interest appurtenant thereto, in

favour of Joginder Singh son of Ganda Singh, vide sale deed dated 5.10.1964, the respondent has no subsisting right, title or interest in the suit land. In addition, the appellants prayed that the order of partition, dated 26.10.1983, passed by Assistant Collector 1st Grade, Batala, may be set aside. The appellants also prayed that as they are in actual physical cultivating possession of the disputed land as co-sharers/co-owners of Patti Ram Dev, the respondent should be restrained from interfering in their possession. The appellants also pleaded ownership by way of adverse possession.

The respondent put in appearance and filed a written statement raising various pleas but, in essence, pleaded that he may have sold his private property but as he has not sold his share in the shamilat land of Patti Ram Dev, he continues to be a share-holder with a right to seek partition and possession of the land. The respondent also pleaded that order dated 26.10.1983, passed by Assistant Collector 1st Grade, recording a partition of the land in dispute is legal and valid. The respondent pleaded that as the Punjab Land Revenue Act, 1887, prohibits a civil court from entertaining to challenge to partition proceedings, the jurisdiction of civil courts to entertain the suit is barred.

The learned trial court, after considering the pleadings and the evidence on record, held that as the respondent had sold his private land holding in the village, he has lost his status as a proprietor and, therefore, the Assistant Collector 1st Grade, Batala, had no jurisdiction to entertain the application for partition and/or partition the land. The learned trial court decreed the suit and

restrained the respondent from interfering in the possession of the appellants.

Aggrieved by this judgment and decree, the appellants filed an appeal. The Additional District Judge, Gurdaspur, allowed the appeal, set aside the judgment and decree passed by the trial court and dismissed the suit by holding that the sale of private proprietary land does not divest a proprietor of his share holding in the shamilat land of a Patti.

At this stage, it would be appropriate to record that rights in the “shamilat patti” of a village and proprietary rights are different. A person may sell his private proprietary land, but at the same time, retain his rights in the “shamilat patti” of a village.

Counsel for the appellants, as already recorded, has not advanced any argument against findings returned by the first appellate court but has raised a set of arguments that were neither raised before the courts below nor are they pleaded in the memorandum of appeal, namely, that as the land in dispute is shamilat deh, the courts below had no jurisdiction to entertain the suit. With due deference to the learned Senior Counsel, the appellants having filed a suit claiming private ownership of the land in dispute, asserted their cultivating possession and at no stage of the proceedings, whether in the plaint, in the evidence or even in this appeal, pleaded that the land is “shamilat deh”, as defined under Section 2(g) of the 1961 Act or that the land vests or does not vest in the Gram Panchayat are not entitled to raise such a plea to set up an altogether new case. The appellants do not even now admit or

assert that the land is “shamilat deh” but in an attempt to perpetuate their possession and thwart partition proceedings, have raised this bogey of Sections 11 and 13 of the 1961 Act.

The land of a “shamilat patti”, it would be appropriate to point out, vests in proprietors and only if it is used for common purposes, as per the revenue record, may vest in a Gram Panchayat. The appellants do not allege that the land was used for common purposes but in fact, allege that they are cultivating the land in dispute. The questions of law framed by counsel for the appellants do not arise for adjudication, but appear to a desperate attempt to retain possession.

Before parting with the judgment, it would be appropriate to record that findings have been recorded, in personam, i.e. between two private parties, claiming ownership of the land in dispute.

The appeal is, consequently, dismissed with no orders as to costs.

26.8.2015
VK

(RAJIVE BHALLA)
JUDGE