

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 418 of 1991 (O&M)

Date of decision: 23.12.2015

The State of Haryana and another ... Appellants

versus

Hari Pal Respondent

2. RSA No. 212 of 1996 (O&M)

Hukam Singh ... Appellant

versus

State of Haryana and another Respondents

3. RSA No. 213 of 1996 (O&M)

Rulia S/o Sh. Mam Raj ... Appellant

versus

State of Haryana and others Respondents

4.. RSA No. 115 of 1996 (O&M)

Amrao Singh (deceased) through his LR's. ... Appellants

versus

State of Haryana and another Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Saurabh Mohunta,
Deputy Advocate General, Haryana.
Mr. Sanjiv Gupta, Advocate for the respondent.

K.Kannan, J. (ORAL)

The following questions of law arise for consideration in
the regular second appeal:

1. Whether the Civil Court has jurisdiction to entertain the suit for grant of relief of containing the challenge to the mutation of revenue entries?
2. Whether the suit challenging the entries made in the year 1966-67 describing respective plaintiffs as *gair marusi* under the Central Government within time when suits were instituted in the year 1986 and afterwards?

The appeals have been admitted without framing substantial questions, therefore, I have framed the questions as above and with the consent of the counsel the appeals themselves have been taken up for hearing.

RSA No. 418 of 1991 is at the instance of the State of Haryana and RSA No. 115, 212 and 213 of 1996 are at the instance of private individuals against the State. They have all been disposed of through independent judgments but they have been joined altogether and brought up for hearing on common substantial questions which are framed as above.

While in appeal by the State, the Lower Appellate Court has held that the suit was within time and the Civil Court had jurisdiction in the other suits disposed of independently, the findings have been against the persons claiming to be the owners of the property. The entries are reported to be similar and I, therefore, examine the entries in one case in

Hukam Singh Vs. State of Haryana and another which is a subject of appeal in RSA No. 212 of 1996 and treat the judgment referring to the document as covering the contentions raised by all other appellants of the connected cases.

To a plea made that the Civil Court has no jurisdiction since the relief is barred under Section 36 of the The Displaced Persons (Compensation And Rehabilitation) Act, 1954, (in short the 'Act') I must observe that it is a central enactment dealing with the payment of compensation for rehabilitation of displaced persons. Displaced person is a person who on account of setting up at the time of division of India and Pakistan has left or been displaced from his place of residence and who is unable to manage or supervise the control of the property belonging to him in Pakistan. The Act also makes reference to an evacuee property defined as such in the provisions of The Administration Of Evacuee Property Act, 1950 (in short the '1950 Act'). The reference to Section 36 of the Act is that no civil Court would have jurisdiction to entertain the suit in respect of any matter over which the Central Government is empowered to determine and no injunction will be granted in respect of any action taken under the Act.

The Act in Chapter II deals with compensation pool for payment of compensation. The compensation pool includes of evacuee property acquired by the Central Government under Section 12 and cash balances lying with the custodian. Even any property which is treated as an evacuee property and acquired for rehabilitation of

displaced persons, they will form part of compensation pool and if there is any action taken by Central Government in relation to the property so acquired, then the Civil Court will be incompetent to decide on any matter of what constitutes the compensation pool, and who would be persons competent to secure the relief under the Act. If the cause of action of suit would therefore be taken as the property identified as evacuee or part of the compensation pool, the Civil Court cannot be instituted to challenge the action of an authority from distribution of the property from the pool for the benefit of any person. Consequently, if in this case, the defendant were to contend that this property was an evacuee property and have been acquired for the purpose of creating compensation pool, then an intervention by means of a civil suit to prevent such an act would have been barred under Section 36.

I do not find that there is any ground taken in the written statement anywhere except that the plaintiff has filed the suit against Tehsildar and has stated that the plaintiffs have been shown as *gair marusi* under Central Government and hence, the suit was being filed. There is no reference anywhere in the plaint that the property is brought under the compensation pool or there was any apprehension that the property was being admitted to be distributed to persons who claim some rights under the Act and that was sought to be thwarted by means of the suit. Even in the written statement filed, there is no reference anywhere except to set out a bar under Section 36 and 46 that

it was ever treated as an evacuee property or it will form part of compensation pool meant for distribution. I, therefore, hold that the objection regarding the lack of competence for a civil Court is not tenable and the finding in that regard by the Courts below cannot be supported.

As regards the contention of the plea of the limitation attributed to the plaintiff's cause of action I have seen that in all the suits the contentions raised are similar. For instance, in the suit filed by Hukam Singh, the contention is that vide mutation No.803 appearing in Column No. 12 of the *jamabandi* for the year 1971-72 and 1976-77 the land has been shown to belong to the Central Government and the plaintiff's father has been shown as *gair marusi* under the Central Government. Later in the same para, it is stated that the mutation was not been sanctioned and it was cancelled but the implementation has not been incorporated in the *jamabandis* after the year 1966-67. According to the plaintiff, the entry in the *jamabandi* prepared in the year 1966-67 was wrong and the plaintiff had made several representations for correction after the year 1966-67 but since no action has been taken, the suit was being filed after serving notice under Section 80 CPC.

At the trial, the plaintiffs brought an evidence through a village official as PW-2 who claimed that the mutation entry 803 and 804 had been cut since they were not sanctioned but *jamabandi* entry made from the year 1966-67 continued to remain the

same showing the plaintiffs as in possession under the Central Government. I have seen that entries relating to the years 1966-67 that gives the names of the representative plaintiffs and describing them as gair marusi in column No. 11 as regards the revenue payable records the facts that it is *Bashra Malkhan and Billa Malkhan*, revenue 90 paise. In column No. 4 the name of the owner is given as shamlat deh. The counsel for the appellants who claim ownership contend that under the Punjab Village Common Land Act, 1961 is applicable to Haryana, the exceptions marked to Section 2(g) is the property that becomes or has become shamlat deh due to river action or has been reserved as *shamlat* deh in villages subject to river action, but they will be shamlat deh if used as pasture, pond or playground in the revenue entries. Even the property cannot, therefore be treated as common land under the Punjab Village Common Land Act, 1961. The mere entry of the property as shamlat deh cannot constitute vesting of property with the State of Punjab or Central Government or Gram Panchayat. I have no problem in accepting the contention that the entries as found referring to the property as shamlat deh may not give rise to inference that it is a common land but it cannot immediately meant as a necessary corollary that a person entered as a gair marusi becomes the owner. Even the reference to an entry of the Central Government through mutation Nos. 803 or 804 for which the plaintiff sought for declaration that the entries were bad, the plaintiff themselves were contending through a witness cited as PW2 that the entries were scored out since they were not

sanctioned. I do not believe that there is anything for me to grant any relief that the entries were bad in law. I cannot really vouch for the details of how the property was entered in the jamabandi for the subsequent years.

On the direct question, whether the suit is barred by limitation, the counsel for the appellants refers to me a decision in Sant Singh and another Vs. Labh Kaur 1984 PLJ 138, as assuring the point his favour. It was a suit for a declaration of ownership complaining of adverse entries in the revenue records as not factually correct where the Court held that it could be rectified when the suit is brought for declaration on the ground that the defendants were threatening to dispossess. A threat of dispossession was taken as giving rise to a cause for declaration and the mutation entry to be declared to be illegal on the basis of such declaration. In all these cases, there is no reference anywhere that the government was trying to dispossess them. The grievance is merely on the fact that an entry found in the year 1966-67 as *gair marusi* under the Central Government was found to be objectionable. If that mutation itself was according to them not sanctioned, I do not think there is any need for grant of relief through these suits. The issue of limitation could be seen only from the context of the particular action which was complained of as illegal requiring the Court's intervention. The counsel for the appellant would want me to take the issue of whether the entry in the name of the Central Government was ever possible without proof of the fact about how the

Central Government became the owner. If the Central Government was not the owner or proved as such, the reference to the entry cannot be allowed as continue and the relief must be granted by the Court irrespective of when the plaintiff arrived in Court to seek for the relief.

Attractive as the argument is, I may not be able to make intervention for the plaintiff to arrive to the Court at any time and seek the assistance of the Court for modification. I have already observed that the plaintiffs brought a witness PW2 to show at the time of the trial was that the reference to the entry of the Central Government as the owner was scored out, since they were not sanctioned. There cannot, therefore, be a valid cause of action for the suit. If the entry in suit and the plaintiffs' respective possession is admitted, there have been no plea anywhere or apprehension raised that the possession was being disturbed, it shall not be possible to invoke the decisions cited in Sant Singh and another Vs. Labh Kaur 1984 PLJ 138, as governing the case. I will treat the suit to be merely falling within residuary Article 113 of the Limitation Act where no period of limitation is prescribed anywhere in the schedule, the limitation would be 3 years from the date when the right to issue accrues. If the respective plaintiffs would contend that the wrong entry came in the year 1966-67 and they have been making several representations for modification of the entry, the plaintiffs cannot wait for 20 years to bring the suit for securing the assistance of the Court to declare that the particular entry to be illegal. I have not found anywhere that the property belongs to the Central

Government but I still do not think it is necessary for me to rush the relief for any of the plaintiffs. The plaintiffs' action must fail as wanting inadequate cause of action for the reasons set out above. I vacate the finding that the suit is barred by the provisions of the Act, but, I will give no relief for modifying the entry when it is not even clear whether it still exists or not. The plaintiffs will have other remedy when their own possession is sought to be disturbed and when they do so, the result all these decisions must be taken as confined only to the particular relief of modification entry and will have no bearing on the plaintiffs' assertion to possession or the nature of possession that they claim.

With these observations, all the appeals are disposed of.

(K.KANNAN)
JUDGE

23.12.2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
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RSA No. 115 of 1996 (O&M)

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Amrao Singh (deceased) through his LRs.

... Appellants

versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sanjiv Gupta, Advocate for the respondent.

Mr. Saurabh Mohunta, DAG, Haryana.

K.Kannan, J. (ORAL)

For detailed orders, see order of even date in RSA No.418
of 1991, The State of Haryana and another Vs. Hari Pal.

**(K.KANNAN)
JUDGE**

23.12.2015

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