

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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C.M. Nos. 2798-2800-C of 2013 &
RSA No. 1056 of 2013 (O&M)

Date of Decision: 30.11.2015

Bhagat Singh and others

.....APPELLANTS

VERSUS

Gram Panchayat Village Bhondsi and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. N.D.Achint, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J

C.M. No. 2798-C of 2013

Prayer in this application is for permission to place on record
Annexure A-1.

Prayer granted. Annexure A-1 is taken on record subject to just
exceptions.

Application stands disposed of.

C.M. No. 2799-C of 2013

Prayer in this application is for exemption from filing the certified
copy of Annexure A-1.

Prayer granted. Filing of certified copy of Annexure A-1 is
dispensed with.

Application stands disposed of.

RSA No. 1056 of 2013

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Gurgaon dated 07.03.2012, whereby the suit of the appellants-plaintiffs for a decree for declaration to the effect that they are in cultivating possession of land, as detailed in para-5 of the plaint out of the land mentioned in para-2 as a matter of right and having acquired occupancy rights of the land in question and the entries changed in favour of the respondents-defendants in the column of cultivation in the revenue records are illegal, null and void, without notice and knowledge of the appellants-plaintiffs and are liable to be corrected in their favour with a consequential relief of permanent injunction restraining the defendants from interfering in the possession of the appellants-plaintiffs over the land in question and from transferring the possession to any other person or institution, stands dismissed, appeal against which preferred by the appellants-plaintiffs has also been dismissed by the Additional District Judge, Gurgaon on 04.09.2012.

2. It is the contention of the learned counsel for the appellants that entries in the revenue records clearly establish that the ancestors of the appellants-plaintiffs were the proprietors of the village and were thus, owners of the suit land. The appellants-plaintiffs, through their ancestors, had been in possession of the land for last more than 30 years and, therefore, they are entitled to the benefit of the provisions as contained in Section 5 of The Punjab Tenancy Act, 1887 (hereinafter referred to as '1887 Act'). He contends that as per the judgment dated 08.05.1998 Ex. P7 passed by the Additional District Judge, Gurgaon in a reference under Section 30 of the Land Acquisition Act, in which the appellants have been alone held entitled

to receive the entire compensation regarding the land in question and the respondents including the Gram Panchayat were held not entitled to any share in the said compensation proves their ownership. He contends that in the light of the said judgment Ex. P7, the appellants are the owners of the suit land as the said reference pertains to the acquisition of the land, which was a part of the land, as described in para-2 of the plaint. His submission is that the entries, which have been made in the revenue records showing the Forest department and the Gram Panchayat as the owners in possession of the suit property having been made without any notice to the appellants-plaintiffs, are not binding upon them as the earlier jamabandis have been changed against the interest of the appellants. He, thus, contends that the said entries in the revenue records cannot sustain and, therefore, cannot be made the basis for disentitling the appellants the benefit as conferred on them under Section 5 of the 1887 Act. He, on this basis, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellants and with his able assistance, have gone through the impugned judgments.

4. The claim of the appellants-plaintiffs is based upon Section 5 of 1887 Act. As per the said Section, a person, who claims himself to be a tenant, must fulfil the conditions declaring himself to be an occupancy tenant. Section 2 (f) of The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (hereinafter referred to as '1953 Act') defines the "occupancy tenant". According to the definition, occupancy tenant means a tenant who, immediately before the commencement of this Act, is

recorded as an occupancy tenant of any land in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy with the land held by him whether by agreement with the landlord or through a Court of competent jurisdiction or otherwise and includes also the predecessors and successors in interest of an occupancy tenant. The appointed day in relation to any tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant of any land in the revenue records, is 15th day of June, 1952 as per Section 2 (a) of the 1953 Act. Section 3 further states that whatever right, title and interest including the contingent interest and share in *shamlat*, recognized by any law, custom or by usage, vested in the landlord shall devolve and vest in the occupancy tenants, who, thereafter, seized to be tenants and become full-fledged proprietors with all their rights and privileges. Right of occupancy tenants has been given in Section 5 of the 1887 Act, which conditions have to be fulfilled for declaration that a tenant is an occupancy tenant. The appellants-plaintiffs have relied upon Sub-Section (2) of Section 5 of 1887 Act for declaring themselves to be occupancy tenants. This Sub-Section reads as follows:-

“5 (2). If a tenant proves that he has continuously occupied land for thirty years and paid no rent therefore beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (a) of sub-section (1).”

5. The appellants-plaintiffs, to establish their claim under Section 5 (2) of the 1887 Act, have produced on record Jamabandis w.e.f. 1936-37 Ex. P1, 1939-40 Ex. P2, 1941-42 Ex. PS to show that their ancestors were in

continuous possession of the land in dispute. These jamabandis show that in the column of ownership, entry is “*shamlat deh*” and in the cultivation column, predecessors-in-interest of the appellants-plaintiffs are mentioned as “co-sharers”. Column No. 9, which pertains to rent, is vacant.

6. Appellants have also placed on record Jamabandis for the year 1945-46 Ex. P4, 1955-56 Ex. P5 and 1961-62 Ex. P6, wherein Department of Forest is recorded in the column of cultivation although predecessors-in-interest of the appellants-plaintiffs are shown in cultivating possession but through Forest Department. In the Jamabandi for the year 1945-46 Ex. P4, Gram Panchayat Bhondsi is recorded in the column of ownership and cultivation column depicts Forest Department with the predecessors-in-interest of the plaintiffs cultivating through Forest Department as *gair marusian*. A perusal of these jamabandis shows that the predecessors-in-interest, from the year 1945-46 till date, are not shown in direct cultivating possession.

7. A suit for declaration to the effect that they were owners in possession of the suit land was filed on 28.08.2000 by the appellants-plaintiffs under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 in the Court of Collector, Gurgaon, which suit was dismissed by the Collector, Gurgaon vide judgment dated 06.05.2003 Ex. D2. Appeal/revision preferred by the appellants-plaintiffs up to the Financial Commissioner, Government of Haryana were dismissed. The present civil suit has been filed on 29.08.2005, which is after a period of 70 years challenging the entries in the jamabandis for the year 1945-46 onwards whereby in the column of cultivation, the predecessors-in-interest of the appellants-plaintiffs have been shown under the Forest department

instead of independent cultivators. The challenge is to the entries in the name of Gram Panchayat and Forest department claiming the same to be illegal, null and void and without notice. This clearly shows that the challenge to the revenue entries is much beyond the period of limitation prescribed. They have not challenged the entries in the revenue record for the period of more than 70 years. The suit, therefore, is barred by limitation as the appellants-plaintiffs cannot state that they were not aware of the said entries in the revenue records especially when in the reference under Section 30, an Award has been passed in their favour on 08.05.1998 Ex. P-7. A perusal of the judgment Ex. P-7 would show that the issues were framed on 11.11.1992, which were later modified on 18.02.1998, thus, the appellants were at least aware of these jamabandis prior to these dates.

8. That apart, it appears that the appellants-plaintiffs have taken self contradictory pleas, which cannot be accepted. It has been pleaded that the ancestors of the appellants-plaintiffs were the proprietors of the village and were recorded in the column of cultivation as co-sharers. If they are co-sharers, they cannot claim themselves to be *gair marusi* tenants. The proprietors of the village, even if they are in possession of the suit land, cannot acquire the tenancy rights in the land as they are co-sharers. This itself demolishes their claim under the provisions of the 1953 Act.

9. Further, a perusal of the entries in the revenue record, which have been produced by the parties, shows that the nature of the land has been mentioned as *Bhood* in the jamabandi for the year 1935-36, *gair mumkin darar* in the jamabandi for the year 1955-56 till 1985-86 and as per jamabandi for the year 1990-91, it is recorded as *gair mumkin pahar*. This clearly shows that it is not a cultivable land. If it is not cultivable land, the

plea of the appellants-plaintiffs that during their continuous peaceful possession, they had spent huge money and labour in order to make the land cultivable is absolutely false as it is contrary to the actual status of the land. The plea of the appellants that they have right of occupancy tenancy, thus, cannot be accepted. The entry under the Forest Department in the revenue records is *gair marusi doam*, which is continuing since long. If that is so, title over the suit land and right, if any, would be of the Forest Department, which in the guise of certain wrong entries made in the revenue records is being sought to be grabbed by the appellants. Evidence has come on record that the land in the nature of *gair mumkin pahar* is being used by all inhabitants of the village for their common purposes such as pasturing their cattle and collecting the fuel which further goes against the appellants.

10. The revenue entries, as is apparent, show that the 9th column, which deals with the 'rent', is vacant throughout. If the jamabandi for the year 1935-36 would have shown any Government revenue having been paid, the plea of the appellants-plaintiffs that they have made the land cultivable could have been worth consideration but the entries throughout show the 9th column, which deals with the 'rent', lying vacant. This is obvious as the suit land was uncultivable, no rent or government revenue was required to be paid by the occupants. Since land has never been cultivated by any person including the ancestors of the plaintiffs in any capacity i.e. individual or co-sharer and it being a *gair mumkin* land, the same vests in the Gram Panchayat as per the definition of *shamlat deh*.

11. The contention of the learned counsel for the appellants that as per the judgment dated 08.05.1998 Ex. P7 passed by the Additional District Judge, Gurgaon in a reference under Section 30 of the Land Acquisition

Act, the appellants have been held entitled to the compensation and the Gram Panchayat and other defendants have been held to be having no share in the compensation, would not be of any help to the claim of the appellants-plaintiffs as those are two different matters. In the present case, the appellants-plaintiffs are claiming their right under the 1953 Act, which has nothing to do with the provisions under the Land Acquisition Act. In any case, as per the judgment of the Lower Appellate Court, a revision under Article 227 of the Constitution of India against the said judgment is pending in this Court and the counsel for the appellants could not dispute this fact. The plea, thus, as taken keeping in view the fact that the suit filed by the appellants-plaintiffs under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 has been dismissed by the Collector, Gurgaon on 06.05.2003 Ex. D2 and the appeal/revision of the appellants-plaintiffs up to the Financial Commissioner, Government of Haryana admittedly stands dismissed, which has attained finality, is binding on the parties. The findings, thus, recorded by the Courts below cannot be faulted with.

12. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

13. In view of the above, finding no merit in the appeal, the same stands dismissed.

C.M. No. 2800-C of 2013

In the light of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

November 30, 2015

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**