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

**RSA-1128-2013 (O&M)
Date of decision-29.10.2015**

**JAGMAL SINGH & OTHERS ...Appellants
VS
STATE OF HARYANA & OTHERS ...Respondents**

CORAM:- HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. S.S Swaich, Advocate
for the appellant.

Mr. Sidharth Sanwaria, D.A.G. Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1] This appeal has been filed, challenging judgments and decrees passed by both the Courts below. Plaintiffs filed suit for declaration to the effect that plaintiffs along with defendant No.3 are owners in possession of 8 kanals 10 marlas of land (herein after to be known as suit land) and the entries in the name of Central Government in the column of ownership are illegal and are liable to be corrected. A decree for permanent injunction has also been sought restraining the defendants No.1 and 2 from interfering in the possession of plaintiffs and defendant No.3 over the suit land. Plaintiffs alleged that the suit land was earlier owned and possessed by the proprietors of the village. The land was given to the predecessor of the plaintiffs and defendant No.3 as occupancy tenants (Bhondedars). No rent or batai was ever paid by the plaintiffs and defendant No.3 in lieu of their cultivation on the land in question. With the enactment of Punjab Occupancy Tenants (Vesting of

Proprietary Rights) Act, 1953, the plaintiffs claimed that they along with defendant No.3 have become owners.

[2] With the migration of Muslim proprietors to Pakistan, the suit land came to be recorded in the name of Central Government under the provisions of the Administration of Evacuee Property Act, 1950, but their possession remained unfettered. No notice was ever given to the plaintiffs or their predecessor before vesting the land in the name of Central Government i.e. custodian. With this background, suit for declaration was filed which was opposed by the defendants No.1 to 4, alleging that Central Government has been recorded as owner and plaintiffs are not the Bhondedars after the partition of the country, because they are not performing the duties of Bhonde. The status of the plaintiffs was claimed to be that of unauthorized occupants. With the migration of Muslim proprietors to Pakistan, at the time of partition of the country, the land in question came to be automatically vested in custodian free from all encumbrances and right, title and interest of any party de hors his status in the revenue record, came to an end.

[3] From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiffs are entitled for a decree for declaration that they along with defendant No.3 are owners in possession of the land mentioned in plaint and the entries in the name of Central Government in the column of ownership in jamabandi are wrong, illegal, null and void? OPP
2. Whether the plaintiffs are entitled for decree for permanent injunction restraining the defendants no.1 and 2 from interfering in

possession of plaintiffs and defendant No.3? OPP

3. Whether this court has no jurisdiction to try the present suit? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the present suit is not properly valued? OPD
6. Whether the plaintiffs have no cause of action to file the present suit? OPD
7. Whether the present suit is barred by limitation? OPD
8. Relief.

[4] Both the parties led evidence. Trial Court dismissed the suit by taking note of the fact that the plaintiffs have also staked their claim on the basis of adverse possession, i.e. a plea to be taken as a defence. Though the trial Court has acknowledged the fact that the revenue record vis jamabandi for the year 1946-47 (Exhibit P-7,P-7A), jamabandi for the year 1952-53 (Exhibit P-8/A), showed the land to be Arazi Matruka, but in the column of cultivation, the possession of occupancy tenants/Bhondedars has been shown. Trial Court dismissed the suit on the ground that the plaintiffs have not proved ingredients of occupancy tenants in terms of Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietory Right) Act, 1953.

[5] The Lower Appellate Court while appreciating the entries in the revenue record admitted the factum of plaintiffs being in possession, but as unauthorized occupants because ownership of land stood vested in Central Government. The factum of plaintiffs being Bhondedars in revenue record is an admitted fact. The Lower Appellate Court while concluding, has observed that mere entries in the revenue record in favour of appellant in the capacity of “BILA LAGAN BAWAJA KHIDMAT” do not give them the status of tenant. In order to establish status of tenants, the plaintiffs were required to comply with the terms and conditions of bilateral obligation arising out of tenancy i.e. payment of rent, which is one of the incidence of tenancy.

[6] In view of Full Bench judgment of this Court in ***Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I,*** framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is sine qua non for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100 (1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim ***“interest reipublicae ut sit finis litium”.***

[7] The plaintiffs/Appellants have formulated the following questions of law in the grounds of appeal:-

(i) Whether the findings of the learned Courts below on Issue No.1, 2 & 7 are patently wrong, illegal and erroneous being against the pleadings and evidence on record?

(ii) Whether the findings of the learned Courts below the effect that the appellants/plaintiffs are unauthorized occupants of the land in dispute against the evidence on record in the form of revenue record since the year 1917-18, wherein, the plaintiffs/appellants (through their predecessors-in-interest) are recorded as Bhondedars?

(iii) Whether Bhondedars can be said to be unauthorized occupants simly because they are not paying any rent or batai and the entry in rent column is Bila Lagan Bawaja Khidmat?

(iv) Whether the appellants/plaintiffs who are recorded as Bhondedars over the land in dispute in revenue record have become owners/proprietors by virute of the provisions of The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952?

(v) Whether the appellants/plaintiffs have become owners/proprietors of the suit land by virtue of the provisions of The Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010?

(vi) Whether the learned lower Appellate Courts committed jurisdictional error by dismissing the application of the appellants/plaintiffs for amendment of the plaint for taking the plea of becoming owners/proprietors under the provisions of The Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010, which was a subsequent event?

(vii) Whether the learned lower appellate Court erred by returning the finding that the case of the appellants/plaintiffs is not covered by the provisions of The Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010?

[8] Before embarking upon merits of the case, it is necessary to have a glance over the provisions of “Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010.

Sections 2, 3 and 4 are necessary to be quoted in order to appreciate the controversy involved in the case.

<u>Section 2:-</u>

(a) “appointed day” means in relation to Dohlidar, Butimar, Bhondedar or Muqararidar, recorded as such in revenue record for more than twenty years the day on which this Act comes into force and in other cases where twenty years have not yet been completed and such person is recorded as Dohlidar, Butimar, Bhondedar or Muqararidar on or before the date of commencement of this Act, the day on which the person fulfils the condition of twenty years;

(b) “Collector” means the Collector of the district in which the land, in respect of which such rights are vested in a Dohlidar, Butimar, Bhondedar or Muqararidar under this Act, is situated and includes any officer not below the rank of an Assistant Collector of the First Grade specially empowered by the State Government to perform the duties of a Collector under this Act;

(c) “Commissioner” means the Commissioner appointed under the Punjab Land Revenue Act, 1887 (Punjab Act 17 of 1887);

(d) “Dohlidar, Butimar, Bhondedar or Muqararidar” means a person who has been recorded as such in the revenue record and includes his predecessor and successor in interest;

(e) “Financial Commissioner” means the Financial Commissioner appointed under the Punjab Land Revenue Act, 1887 (Punjab Act 17 of 1887);

(f) “Land” means land which is occupied by a Dohlidar, Butimar, Bhondedar or Muqararidar and given to him by landlord in lieu of services rendered and includes the sites of buildings and other structures on such land;

(g) "Landowner" means a person under whom a Dohlidar, Butimar, Bhondedar or Muqararidar holds land and includes his predecessors and successors;

(h) "State Government" means the Government of the State of Haryana the Administrative Department.

Section-3:- Notwithstanding anything to the contrary contained in any other law, custom, usage or deed for the time being in force, on and from the appointed day-

(a) all rights, title and interest including the contingent interest, if any, recognized by any law, custom, usage or deed for the time being in force with respect to the land and vested in the landowner shall be extinguished, and such rights, title and interest shall vest in the Dohlidar, Butimar, Bhondedar or Muqararidar or any other similar class or category of persons, which the State Government has notified in the official Gazette under whose occupation the land is, free from all encumbrances, if any, created by the landowner;

(b) the landowner shall cease to have any right to collect or receive any rent or service in respect of such land.

Section-4

(1) Any landowner whose rights have been extinguished under Section 3 may, within twelve months from the appointed day, apply to the Collector, in such form, as may be prescribed, for the compensation payable to the landowner by the Dohlidar, Butimar, Bhondedar or Muqararidar.

Provided that the Collector may entertain the application after the expiry of the said period of twelve months if he is satisfied that the applicant was prevented by sufficient cause from filing the application in time.

(2) On receipt of an application under Sub-section (1), the Collector shall issue notice to the parties concerned and after giving the parties an opportunity of being heard and after making such enquiry, as may be prescribed, shall make an award for compensation payable at the rate of Five hundred rupees per acre by the Dohlidar, Butimar, Bhondedar or Muqararidar to the landowner.

(3) Where there is any dispute as to the person or persons who are entitled to the compensation, the Collector shall decide such dispute and if the Collector finds that more than one person is entitled to compensation, he shall apportion the amount thereof amongst such persons.

(4) Where the compensation is payable to a minor or to a person having a limited interest, the Collector may make such arrangements as may be equitable having regard to the interest of the minor or the person concerned.

(5) The Dohlidar, Butimar, Bhondedar or Muqararidar shall be liable to pay the compensation in lump sum.

(6) If the Dohlidar, Butimar, Bhondedar or Muqararidar fails to deposit the compensation within two months of the receipt of the award announced by the Collector, the land shall vest in the landowners.

(7) If the land is subject to a mortgage at the time of payment of compensation, the land shall pass to the Dohlidar, Butimar, Bhondedar or Muqararidar unencumbered by the mortgage or charge but the mortgage

debt shall be a charge on the compensation payable.

(8) If there is no such charge as aforesaid, the Collector, shall subject to any directions which he may receive from any court, pay the compensation to the landowner.

(9) If there is such a charge, the Collector shall, subject as aforesaid, apply in the discharge of the mortgage debt so much of the compensation as is required for the purpose and pay the balance, if any, to the landowner, or retain the compensation pending the decision of civil court as to the person or persons entitled thereto.

[9] According to Section 2 of the aforesaid Act, "appointed day" in relation to Bhondedary in question i.e. status of Bhondedar recorded in the revenue record for more than 20 years, would be the day on which this Act comes into being. All rights and interest including contingent interest, of any landowner even if recognized by any law, custom and usage shall be extinguished and shall vest in Bhondedar by virtue of Section 3 (a) of the Act. The right of landowner so extinguished under Section 3, would entitle the landowner to apply to the Collector for compensation. Such compensation is payable by the Bhondedar in whose favour right of ownership is being created by the dint of aforesaid provisions.

[10] Bare language used in the aforesaid provisions makes it operational in terms of identifying retrospective status of Bhondedar on completion of 20 years of possession in such capacity and even in other cases where 20 years have not yet been completed and such person is recorded as Bhondedar on or before the date of commencement of this Act, the day on which the person fulfils the condition of 20 years.

[11] In view of existence of such right on commencement of aforesaid Act, the Lower Appellate Court should have allowed the application filed by the plaintiffs/appellants under Order 6 Rule 17 CPC where in plea of the plaintiffs was that they have become owner under the aforesaid Act of 2010. Even in the revenue record status of plaintiffs/predecessor-in-interest has been shown to be occupancy tenants (Bhondedars). The Courts are empowered to allow such amendment at any stage of litigation if it goes to the roots of the case and facilitate the Court in arriving at meaningful decision and the Court requires it for any other substantial cause. The cause of justice cannot be allowed to be hampered at the very threshold on technicalities, nor the same can be sacrificed at the alter of any such vagaries of procedure which intend to defeat substantial cause of justice. Therefore, this Court deems it appropriate to allow the application under Order 6 Rule 17 CPC filed by the plaintiffs at lower appellate stage.

[12] I have considered the submissions made by both the parties. According to Section 3 of the Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010, the "appointed day" means in relation to Dholidar, Butimar, Bhondedar and Muqararidar recorded as such in the revenue record for the last 20 years, the day on which this Act comes into force and in other cases where 20 years have not yet been completed. According to Section 3(a) of the aforesaid Act, all rights, title and interest including the contingent interest, if any, recognized by any law, custom, usage or deed for the time being in force with respect to land and vested in the land owners shall be extinguished and such rights and title shall vest in the Bhondedar, which the State

Government has notified in the Official Gazette. Apparently, by virtue of Section 3, the right of land owner i.e. Central Government shall be extinguished from the date of commencement of this Act and the status of such Bhondedar has to be seen for the last 20 years in term of revenue record. Admittedly, appellants are shown to be Bhondedars in the revenue record for last more than 20 years, therefore, their case is covered under Section 3 (a) of the Act of 2010.

[13] To my mind the Lower Appellate Court has misdirected itself in observing that the plaintiffs-appellants should move before the Collector for such a relief. The observations are totally misconceived inasmuch as that it is the Central Government who has to file appropriate application for seeking compensation in respect of extinguishment of its right of ownership before the Collector under Section 4 of the Act and not the plaintiff to whom right of Bhondedar is being conferred by virtue of Act of 2010.

[14] Since the Act in question has supervening and over-riding effect by virtue of Section 2 and 3 of the Act, prescribing conferment of right by extinguishing earlier existing rights of original owners. The rights of owners so extinguished have a remedy to apply to the Collector for compensation payable to land owners by Bhondedars and other categories. This aspect of the matter has been wrongly appreciated by the Lower Appellate Court.

[15] Cumulative reading of Sections 2, 3 and 4 would give absolute right in favour of the plaintiff-appellant on the basis of their status as Bhondedars which has been incorporated in the revenue record since more than 20 years from the date of commencement of Act of 2010. Even the respondent-State has admitted long standing entries in the revenue record in the aforesaid context.

[16] In view of above said discussion, benefit of this Act “2010” has to be given to the plaintiff-appellant. The relevant plea in the aforesaid context has already been taken before the Lower Appellate Court and that has been interpreted in illegal manner.

[17] In the light of aforesaid discussion, the questions of law as formulated by the appellants do arise. Questions are revolving around status of plaintiffs to be that of Bhondedar since long. In terms of provisions of Act of 2010, such status has to be acknowledged and the right of ownership of respondent-State automatically stands extinguished subject to terms and conditions of Section 4 of the Act which are to be complied with by the Bhondedar/plaintiffs. Therefore, judgments and decrees of the Courts below are held to be illegal and the same are result of misreading of evidence on record. Questions of law as formulated in para 12 i.e. (i), (ii), (iii), (iv) and (v) are accordingly answered in favour of the appellants. As earlier observed in preceding part of the judgment, the application under Order 6 Rule 17 CPC has been allowed, therefore, Question No. (vi) has been answered accordingly. Question No. (vii) has to be decided in the same manner as observed above. The Lower Appellate Court has gone wrong in holding that the case of the plaintiffs/appellants is not covered by the provisions of The Haryana Dohlidar, Butimar, Bhondedar or Muqararidar (Vesting of Proprietary Rights) Act', 2010.

[18] In view of aforesaid, this appeal is allowed. Impugned judgments and decrees of the Courts below are set aside. Suit is decreed with cost throughout.

October 29, 2015 **(RAJ MOHAN SINGH)**
vanita **JUDGE**