

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

Regular Second Appeal No.4528 of 2013 (O&M)

Date of decision: 20.7.2015

Gurdial Singh and others

... Appellants

Versus

Gram Panchayat and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Bhag Singh, Advocate,
for the appellants.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The eleven co-plaintiffs brought Civil Suit No.622 of 25th April, 2006 before the Civil Judge, Junior Division, Ambala City for permanent injunction against the defendant Gram Panchayat of village Kurbanpur, Tehsil and District Ambala for restraining the defendant from leasing out, alienating or dealing with the land falling in village Kurbanpur and in a portion of Hadbast # 259 as described in the plaint.

2. The case set up by the plaintiffs was that the suit land is joint holding of the plaintiffs and other inhabitants of the village. As per the Nehri entries of the year 1992, the Government of Haryana ordered the land in question to be mutated by the revenue officers in the name of Gram Panchayat Kurbanpur. The order of the Government which required

mutation of the suit land to be recorded in the name of Gram Panchayat was challenged by a large number of villagers in the High Court which culminated in the Supreme Court and the order of the Government was set aside reverting the ownership to the joint holding. These proceedings arose out of CWP No. 5877 of 1992 in case titled **Jai Singh etc. v. State of Haryana**. In implementation of the orders of the Supreme Court, Government of Haryana in the Department of Revenue passed a fresh order on 6th September, 2005 restoring the ownership to its original status in compliance with court directives. Resultantly, the Assistant Collector, 2nd Grade, Ambala sanctioned mutation in the name of the original joint khata holders and thereby the original status of the land in dispute was restored.

3. In response to the suit, Gram Panchayat appeared and filed a written statement and contested the case taking preliminary objections. On merits, Gram Panchayat submitted that the suit land belongs to Gram Panchayat and the Gram Panchayat is not in possession though it is in control of its management and had been leasing out the suit land for the benefit of the village inhabitants for the last more than 40 years to the knowledge of all the assembly. The plaintiffs themselves have participated in the auctions and had been taking the suit land on lease on year to year basis and thus, cannot dispute the title of the Gram Panchayat. It was urged that the mutation does not confer any title in the plaintiffs. The plaintiffs never came into possession of the land through proper channel and they have no right or title to the suit property. The Gram Panchayat was not privy to the sanction of the mutation in the name of the joint khata holders. If the plaintiffs nursed a grudge against the Gram Panchayat, it was open to them

to file a suit for possession as provided by law. However, neither could they take forcible possession of the land nor the Gram Panchayat can be restrained from carrying out its public work on the suit land for the benefit of the village community.

4. On the pleadings of the parties, the following issues were framed : -

1. Whether the plaintiffs are entitled to decree for permanent injunction as prayed for ? OPP
2. Whether the suit land is joint holding of plaintiffs as alleged? OPP.
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiffs have no locus standi to file the present suit? OPD
5. Whether the suit is bad for mis-joinder of necessary parties? OPD
- 5A. Whether this court has no jurisdiction to try and entertain the present suit? OPD (This additional issue has been framed vide order dated 13.09.2012).
6. Relief.

5. Both sides led both oral and documentary evidence in support of their cases.

6. Issues # 1, 2, 3 & 5(A) were found interlinked and were taken up together by the learned trial Court. The plaintiffs contended that the suit

land was never reserved for common purposes and, therefore, the Gram Panchayat could not exclusively claim it. The Gram Panchayat argued that the suit was not maintainable and the Civil Court had no jurisdiction to try the suit, as in essence, the plaintiffs seek a declaration that the suit property does not vest in the Gram Panchayat. Such a declaration can never be granted under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act') by the Collector exercising jurisdiction under Section 13-A of the Act. It was further submitted that the Gram Panchayat had already filed a suit for declaration before the Collector, Ambala which was being tried and, therefore, the present suit was not maintainable. If the injunction was granted, Gram Panchayat will be deprived of the land even when it has been leasing the suit property for the last more than 40 years to the respondents etc. at auctions held from time to time. It would be appropriate to take stock of Sections 13 and 13-A of the Act to take the case forward. They are reproduced : -

13. Bar of jurisdiction : - No civil court shall have jurisdiction --

(a) to entertain or adjudicate upon any question whether -

(i) any land or other immovable property is or is not shamlat deh;

(ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under this Act.

(iii) in respect of any matter which any revenue court, office or authority is empowered by or under this Act to determine; or

(iv) to question the legality of any action taken or matter decided by any revenue court, officer or authority

empowered to do so under this Act.

13-A. Adjudication – (1) Any person or in the case of Panchayat either the Panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorized by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Gram Panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is shamlat deh or not and whether any land or other immovable property or any right, title or interest the rein vests or does not vest in a Panchayat at under this Act, in the court of Collector, having jurisdiction in the area wherein such land or other immovable property is situated.

Provided that no suit shall lie under this Section in respect of the land or other immovable property, which is or had been the subject matter of the proceedings under Section 7 of this Act under which the question of title has been raised and decided or under adjudication.

(2) The procedure for deciding the suits under Sub-Section (1) shall be same as laid down in the Code of Civil Procedure, 1908 (Act 5 of 1908)”

7. On reading the aforesaid provisions of law, the trial court reached the conclusion that if any dispute arises as to vesting or not of any land in the Gram Panchayat, such a dispute can only be adjudicated by the Collector exercising jurisdiction under the Act. The jurisdiction of the Civil Court to entertain such a dispute is explicitly barred by Section 13 of the Act. Be that as it may, the Civil Court has no jurisdiction to injunct the Gram Panchayat from leasing out the land and if it was ordered it would deprive the Gram Panchayat of its property and to the detriment of the common wealth. Hence, issues # 1 and 2 were decided against the plaintiffs while

issues # 3 and 5A on which the burden was on the Gram Panchayat was decided in its favour.

8. Issues # 4 and 5 were not pressed by the parties. Resultantly, the suit was dismissed by the learned Civil Judge, Junior Division, Ambala vide judgment and decree dated 21st September, 2012 as not maintainable before the Civil Court.

9. Aggrieved by the decision of the learned trial court, an appeal was carried under Section 96 CPC to the learned District Judge, Ambala in Civil Appeal # 267 of 2012 which was dismissed on 18th July, 2013 and the findings of the learned trial court were affirmed.

10. It was argued by the plaintiffs in the court of second instance that the learned trial court could not have based its decision as to maintainability of the suit as barred under Section 13 and 13-A of the Act. They relied on **Udey Singh v. Gram Panchayat Nangal Jat**; 2010 (1) Civil Court Cases 406. In this case, the Court held that when the plaintiff is in established possession and is also constructing a house in the suit property, then title is not to be decided in a suit for permanent injunction and, therefore, jurisdiction of the Civil Court is not barred.

11. The question merely is this; if the title is involved in the suit, then there is no ouster of claiming jurisdiction under Section 9 of the CPC and the suit is not barred. To the contrary, it was contended by the defendant Panchayat that the appellants had claimed ownership of the suit land and, therefore, question of title is involved whereas the suit land vests in the respondent Gram Panchayat which had been leasing it out from time to time for several decades. The appellants were proven in established possession of

the suit land at the trial. The Gram Panchayat produced documents Ex.D2 to Ex.D6 showing some of the appellants having participated in the proceedings for leasing out the suit land to different persons of the village. Mere mutation in the name of the plaintiffs or some of them could not create any title over the suit land in their favour. Similarly, entries in the Nehri Girdawaris do not confer any right of possession over the suit land and in the presence of the Jamabandi and revenue khasra girdawaris as admitted by PW4 Krishan Kumar, Patwari Nehri not much could be said in favour of the plaintiffs. Besides, the appeal against the order Ex.P7 dated 15th June, 2012 passed by the Assistant Collector, 1st Grade, Ambala in the aftermath of the decision of this Court in **Jai Singh's** case [supra] is pending before the learned Commissioner of the Revenue Division. The Gram Panchayat relied on the following decisions in first appeal : **Jaingh Singh and others v. State of Haryana**, 2003-2, PLR 658, **Birbal v. Shanker Dev and others**; 2000 (2) PLJ 204, **Amar Singh v. Waryam Singh**; 1994 PLJ 539, **Jai Pal Singh v. Ram Dhan Saini and another**; 2003 (1) CCC 142, **Ram Kumar alias Onkar v. Gram Panchayat Village Nangal Katha**, 1987 PLJ 235, **Ujagar Singh v. Gram Panchayat Ballon and others**; 1994 PLJ 604

12. The Court of first appeal found from the prayers in the plaint that the plaintiffs really wanted a decree for permanent injunction restraining the Panchayat from interfering in the ownership and possession of the appellants over the suit land whereas the Panchayat claimed otherwise. The Court found from the deposition of PW4 Krishan Kumar, Patwari Nehri, called by the plaintiffs, who deposed in his cross-examination admitting that before 2007-08, Nehri Girdawari was not in the

name of the appellants but in the name of the village Panchayat. There is no evidence on record as to how the appellants had taken possession of the suit land from the village panchayat and on the basis of any legal instrument. Therefore, the decision in *Uday Singh's* case [supra] relied upon by the plaintiffs was not applicable to the facts and circumstances of the case because there the plaintiffs had constructed a house in the suit property whereas the suit land is agricultural land with no evidence of any construction on it. The Court reasoned after appreciating the evidence that the question of vesting or non-vesting of the suit land in the village was involved in the suit. Therefore, the jurisdiction of the Civil Court is barred. In reaching the conclusion, the Court relied on the rulings in **Amar Singh v. Waryam Singh**; 1994 PLJ (P & H) 539, **Jai Pal Singh v. Ram Dhan Saini and another**; 2003 (1) Civil Court Cases (P & H) 142, **Ram Kumar alias Onkar v. Gram Panchayat Village Nangal Katha**; 1987 PLJ (P & H) 235 and **Ujagar Singh v. Gram Panchayat Ballon, through Tara Singh, its Sarpanch** 1994 PLJ (P & H) 604. The appeal was dismissed on 18th July, 2013.

13. Heard the learned counsel for the parties at length.

14. Having regard to the Full Bench decision of this Court in **Parkash Singh and others v. Joint Development Commissioner, Punjab and others**; 2014 (2) RCR (Civil) 721 : 2014 (3) PLR 543 and earlier Full Bench decision in **Jai Singh v. State of Haryana**; 2003 (2) RCR (Civil) 578, it can be easily concluded with reference to the evidence in this case by applying the law laid down in *Parkash Singh's* case [supra] that *Jumla*

Mushtarka Malkan Land is not included in the *shamlat deh* and, therefore,

the provisions of 1961 Act including the provisions of Section 11 that empower the Collector to decide the dispute regarding title would not apply if the land is *Jumla Mushtarka Malkan*.

15. The legal position obtaining in Haryana is somewhat different to that of Punjab which has been noticed in para. 61 in *Parkash Singh's* case [supra]. Section 2 (g) (6) introduced by amendment of the Act in the State of Haryana, declares land reserved for common purposes during consolidation, qualifies as *Jumla Mushtarka Malkan* which shall be included in *Shamlat Deh*. The State of Punjab has not enacted any such provision as in Haryana. The legal position obtaining in Punjab has been culled out in *Parkash Singh's* case [supra] where the Full Bench held without hesitation that the land described as *Jumla Mushtarka Malkan* is not *Shamlat Deh*, but vests in the Gram Panchayat for management and control alone and any dispute with respect to any right, title or interest in this land, cannot be decided under any of the adjudicatory provisions of the 1961 Act much less by the Collector exercising power under Section 11 of the 1961 Act. In reaching this conclusion, in para. 62 of *Parkash Singh's* case [supra], the Full Bench apprised itself of the provisions of analogous laws enacted in Punjab Gram Panchayat (Common Purposes Land Eviction and Rent Recovery) Act, 1976 and the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973. The Court held : -

“The question that now remains is to identify the forum, a person who raises a plea that the land is not "Jumla Mushtarka Malkan" or that it was created by applying an illegal pro rata cut or that the land was not reserved for common purposes during consolidation, would be required to approach. After due consideration of the entire matter, we

find no provision in the 1961 Act, the 1976 Act or the Consolidation Act that provides a forum to a person who raises such a plea and, therefore, in the absence of any fora for deciding such a dispute a person may have to approach a Civil Court but Section 44 of the Consolidation Act prohibits a Civil Court from entertaining any matter which the State Government or any officers are empowered by the Consolidation Act to determine or dispose of. Section 44, however, cannot be read to prohibit Civil Courts from deciding a question of title relating to "Jumla Mushtarka Malkan" as what is prohibited by Section 44 is matters that fall to the jurisdiction of State Government or to any officer duly empowered by the Consolidation Act to decide. The Consolidation Act does not confer power whether on the State Government or the officers empowered thereunder to decide a question of title. The jurisdiction of a Civil Court to entertain a dispute regarding "Jumla Mushtarka Malkan" is, therefore, not barred by Section 44 of the Consolidation Act. The only forum available to a person, who raises a dispute regarding title in "Jumla Mushtarka Malkan" is the principal Court of civil jurisdiction having jurisdiction in the matter, as provided by Section 9 of the Code of Civil Procedure, i.e., a Civil Court.

Thus, where a party seeks to raise a plea that the land is not "Jumla Mushtarka Malkan" etc., he shall be obliged to approach a Civil Court, exercising jurisdiction in accordance with Section 9 of the Code of Civil Procedure till such time as the State does not provide an appropriate forum. The first question is answered accordingly.

The second and third questions posed in the reference are as follows:-

(2) If answer to the first question is in the negative, then whether an order passed by a Director Consolidation, determining ownership of a Gram Panchayat, affirmed by the High Court and the Supreme Court operates as res-judicata in a subsequent petition, filed under Section 11 of the Act?

(3) Whether Section 13-B of the Act empowers the Collector, exercising jurisdiction under Section 11 of the

Act, to disregard an order passed by the Director Consolidation, that has been affirmed by the High Court and the Hon'ble Supreme Court."

16. Brother S.S.Saron, J. in his separate but concurring opinion brought to focus the true position of *Shamlat Deh* land that such land owes its origin primarily to the regular land settlements that were carried out in Punjab initially under the old Land Revenue Act (XXIII of 1871) known as 'Bandobasts'. Certain lands were carved out for common purposes in some revenue estates; mostly from out of the shares of the proprietors; besides, the proprietary body of a village also left out certain lands for common purposes which were to be used by the proprietors of land. The proprietors of land in an estate had a share in the land to the extent of their holdings in the revenue estate which is recorded in the revenue record by entries such as 'Hasab Rasad Zare Khewat' or to the extent of land revenue being paid by the proprietors, such as 'Hasab Rasad Mal Guzari', 'Hasab Rasad Paimana Malkiat' and 'Hasab Rasad Raqba Khewat'. The said terms were only indicative of the extent of the share of the proprietors in the common lands of the village known as 'Shamlat deh.' These are village common lands which have to be stoutly protected by the Courts against encroachments as pointed out by brother S.S.Saron, J. in para. 106 of the report which can profitably be read over and over again to put the issue in its historical frame:-

“Punjab being an agricultural State its economy is dependent on its agriculture. Prices of agriculture land have risen manifold in the recent past. There has been an endeavour to encroach upon the Shamlat lands and Jumla Mushtarka Malkan lands by various persons. At times the intending purchasers are unaware of the nature of such

lands or are allured by the land dealers to purchase such lands little knowing the consequences and the effect of the transactions that they are entering into. Nature of the disputes that arise from such transactions and the legal position that may arise are not known. Therefore, to clarify this position, a distinction between the two kinds and nature of lands, which has been duly considered and elaborately dealt with in the preceding judgment prepared by my brother, is being elaborated.”

17. In this line of historical research, the learned Judge sketched the law opining that 'Shamlat land' vests completely in the Panchayat with all rights of ownership falling in place in accordance with Section 4 of the 1961 regulatory Act. The ownership and management vests in the panchayat and it should utilize the land in accordance with the provisions of 1961 Act and the rules framed thereunder.

18. **Jai Singh v. State of Haryana** case [supra] is specific to the State of its origin and dealt directly with the Haryana Amendment Act, 1992.

19. The Full Bench held in para. 62 on the subject matter in relation to the State of Haryana as follows : -

“62. In view of the discussion made above, we hold that:-

- i) Sub-section (6) of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 and the explanation appended thereto, is only an elucidation of the existing provisions of the said Act read with provisions contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948;
- ii) the un-amended provisions of the Act of 1961 and, in particular, [Section 2\(g\)\(1\)](#) read with [Sections 18](#) and [23-A](#) of the Act of 1948 and Rule 16(ii) of the Rules of 1949 cover all such lands which have been specifically earmarked in a consolidation scheme prepared under [Section 14](#) read

with Rules 5 and 7 and confirmed under [Section 20](#), which has been implemented under the provisions of [Section 24](#) and no other lands;

iii) the lands which have been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under [Section 14](#) read with Rules 5 and 7 and entered in the column of ownership as Jumla. Mustarka Malkan Wa Digar Haqdarani Hasab Rasad Arazi Khewat and in the column of possession with the proprietors, shall not vest with the Gram Panchayat or the State Government, as the case may be, on the dint of Sub-section (6) of [Section 2\(g\)](#) and the explanation appended thereto or any other provisions of the Act of 1961 or the Act of 1948;

iv) all such lands, which have been, as per the consolidation scheme, reserved for common purposes, whether utilised or not, shall vest with the State Government or the Gram Panchayat, as the case may be, even though in the column of ownership the entries may be Jumla Mustarka Malkans Wa Digar Haqdarani Hasab Rasad Arazi Khewat etc.”

20. When the deposition of PW4 Krishan Kumar, Nehri Patwari in his cross-examination admitted that before 2007-08, Nehri Girdawaris were not in the name of the plaintiffs but in the name of the defendant Panchayat the testimony based on record remains un-controverted, then it cannot be held that the plaintiffs were in actual possession of the suit land by lawful means and any legal instrument. In the absence of any cogent and probative evidence adduced by the plaintiffs to show on file as to how they entered possession over the suit land, then it would be difficult to hold that permanent injunction can be issued in favour of the appellants based on possession.

21. Therefore, I do not find any infirmity in the findings of fact recorded in the judgment and decrees of the courts below which appear to be well reasoned on appreciation of the evidence on record and it is not for this Court to interfere or tinker in the second appeal side under Section 100 CPC to take a different view on the evidence. There has been no error of jurisdiction, or of fact or law, in the courts holding that the suit was barred by Section 13 and 13-A of the Act. Moreover, in the revenue records, the appellants are shown to be in joint possession of the suit land and the learned District Judge, Ambala was not incorrect in observing that until and unless the specific possession of the appellants is established over the suit land, permanent injunction cannot be granted in their favour. It is often said that possession is the position of the foot. I find no permanent footprints of the appellants on the suit land to enforce by an injunction.

22. No question of law, much less a substantial one arises in this appeal. The same is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

July 20, 2015
Paritosh Kumar