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

CWP No.21493 of 2015

Date of decision: May 17, 2016

Mangtu @ Mintlal and another

.....Petitioners

Versus

Commissioner, Rohtak Division, Rohtak
and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Mr. Chanderhas Yadav, Advocate
for the petitioners.

Mr. Ramanbir Garg, Advocate for
Mr. Ashwani Bakshi, Advocate
for respondent No.5.

Mr. Arvind Kashyap, Advocate
for respondent No.12.

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT, J. (Oral)

The petitioners seek quashing of orders dated 21.02.2007, 05.07.2013 and 26.03.2015 whereby they have been ordered to be evicted on the premise that the land under occupation is *Shamlat Deh* and vests in the Gram Panchayat. The subsequent appeal and revision petition have also been dismissed. These orders have been passed by the authorities under the Punjab Village Common Lands (Regulations) Act, 1961 (for short 'Act') as applicable to the State of Haryana.

[2] The short question that arises for consideration is whether the petitioners or their predecessors had acquired rights of 'occupancy tenants'

in the subject land and consequently, whether, they are entitled to seek declaration of ownership qua such land in view of the provisions of the Punjab Occupancy Tenants (Vesting of Property Rights) Act, 1953?

[3] The status as 'occupancy tenants' and declaration of their proprietorship qua the suit land was granted in favour of the petitioners by the civil Court, Jhajjar by way of an *ex parte* judgment and decree dated 17.03.2009. The said suit was filed by petitioners against the Gram Panchayat seeking a declaration of proprietorship under the 1953 Act. The civil Court, after noticing the fact that the Gram Panchayat did not come forward to contest the claim, made reference to the entries in the revenue record since the year 1940 onwards and decreed the suit thereby granting the declaration of proprietorship in favour of petitioners.

[4] Regardless of the declaration granted by civil Court, the Gram Panchayat filed eviction proceedings against the petitioners under the 1961 Act and vide impugned orders, the claim of Gram Panchayat has been accepted.

[5] The petitioners relied upon the civil Court decree but the same was ignored and brushed aside by the authorities under the 1961 Act on the plea that the land in dispute is *Shamlat Deh* and vests in Gram Panchayat and a title dispute regarding such land cannot be decided by the civil Court as its jurisdiction is expressly barred under Section 13A of the 1961 Act. A pointed reference has been made to Section 13B of the Act whereunder, notwithstanding anything contrary in any law or any agreement, instrument, custom, or usage or any decree or order on any court or other authority, the vesting of *Shamlat Deh* in the Gram Panchayat shall remain unaffected.

[6] There is no gain saying that after enforcement of Section 13B

of the Act w.e.f. 01.12.1980, a decree of civil Court deciding title dispute between Gram Panchayat and a proprietor of the village is liable to be overlooked provided that such decree does not pertain to the recognition or conferment of rights created or vested under a Special Statute.

[7] In the case in hand, the concept of “tenants having right of occupancy” originated under Chapter II of the Punjab Tenancy Act, 1887 and such rights were allowed to ripen into full ownership under the special legislation of the 1953 Act, referred to above.

[8] Section 3 of the 1953 Act expressly vests ownership rights in favour of an occupancy tenant subject to fulfillment of the eligibility conditions. The provision reads as follows:-

“3. Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords –
Notwithstanding anything to the contrary contained in any law, custom or usage 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 or usage for the time being in force and including the share in the Shamilat with respect to the land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances if any, created by the landlord:

Provided that the occupancy tenant shall have the option not to acquire the share in the Shamilat by giving a notice in writing to the Collector, within six months of the publication of this Act or from the date of his obtaining occupancy rights whichever is later;

(b) the landlord shall cease to have any right to collect or receive any rent or any share of the land revenue in respect of such land and his liability to pay land revenue in respect of the land shall also cease;

(c) the occupancy tenant shall pay direct to the Government the land revenue accruing due in respect of

land;

(d) the occupancy tenant shall be liable to pay, and the landlord concerned shall be entitled to receive and be paid, such compensation as may be determined under this Act.”

[9] It is pertinent to notice here that there is no adjudicatory mechanism created under the 1887 Act or the 1953 Act to decide in specific the ownership dispute of an “occupancy tenant” or his right to seek ownership of the land under tenancy. Section 77 of the 1887 Act though confers exclusive jurisdiction in a Revenue Court to decide various types of disputes enlisted in sub-section (3) thereof, including a dispute “by a tenant to establish a claim to a right of occupancy, or by a landlord to prove that a tenant has not such a right”. However, the Full Bench of this Court in **Shiv Charan versus Financial Commissioner, Haryana reported as (2004) 138 PLR 569** has held that only the Civil Court will have the exclusive jurisdiction to grant occupancy rights to a tenant under the Punjab Tenancy Act, 1877 and the Revenue Court has no jurisdiction to deal with such matters. It can thus, be safely inferred that the Civil Court alone has got the jurisdiction to resolve such like title dispute(s).

[10] This view of ours is further fortified by another decision of this Court in **Tara Chand and another vs Neonand @ Naunda and another, 2005(2) L.A.R. 625 (P&H)** which unequivocally acknowledges the jurisdictional competence of Civil Court to declare ownership rights of an 'Occupancy Tenant'. It further appears to us that the *ex parte* judgment and decree passed by the Civil Court in favour of petitioners does not pertain to the declaration of ownership of *Shamlat Deh* land but is essentially meant to decide their status as 'occupancy tenants'.

[11] Faced with this, learned counsel for the Gram Panchayat as

well as private respondents argue that the civil Court decree was obtained by the petitioners fraudulently and without bringing any material on record to substantiate their claim as 'occupancy tenants' over the suit land. We are afraid, such a question was neither raised nor has been adjudicated by the Collector or other superior forums in the collateral proceedings under the 1961 Act. At best, such a question can still be gone into by the civil Court provided that the Gram Panchayat initiates appropriate proceedings in this regard in accordance with law wherein all the pleas like lack of jurisdiction of civil Court, collusion or fraud etc. can be raised in accordance with law. Needless to say that the question of committing 'fraud' on court or the opposite party is also essentially a question of fact.

[12] It, however, must be clearly understood that 'collusion' and 'fraud' are neither synonymous nor interchangeable phrases. 'Collusion' is essentially play-acting by two or more persons for one common purpose, namely, a concerted performance which gives unreal and fictitious pretence of a contest by confederates whose game is the same. 'Collusion' in judicial proceedings is a secret arrangement between two persons that one should institute a suit against the other in order to obtain a decision of judicial Tribunal for some sinister purpose. [See: (i) **Gram Panchayat of village Naulakha vs. Ujagar Singh & Ors. (2000) 7 SCC 543**, (ii) **Nagubai Ammal and others vs. B. Shama Rao & Ors., AIR 1956 S.C. 593**].

[13] However, mere agreement of the defendant not to contest the claim of a plaintiff or not to defend himself per se is not sufficient to prove collusion. It is only if this agreement is done improperly with an intent to achieve a dishonest purpose that collusion can be said to have taken place.

[See: **Rup Chand Gupta vs. Raghuvanshi Private Ltd. & Others, AIR**

1964 S.C. 1889].

[14] As against it, 'fraud' is when the claim made is untrue but the claimant had managed to obtain verdict of the Court in his favour and against his opponent by practicing fraud on the Court. Such a proceeding is started with a view to injure the opponent and there can be no question of its having been initiated as the result of an understanding between the parties. It thus amounts to playing fraud with the Court also to get a real benefit [See: **Nagubai Ammal and others vs. B. Shama Rao & Ors., AIR 1956 S.C. 593**].

[15] That there was a collusion between the plaintiff(s) and the defendant(s) or that plaintiff(s) played a fraud on the defendant(s) as well as the Court are two distinct questions of facts. These are not only required to be averred but whosoever alleges 'collusion' or 'fraud' is under a heavy onus to prove their distinguishable ingredients as well.

[16] We have no reason to doubt that if the Gram Panchayat decides to institute appropriate proceedings, the civil Court shall resolve the same in accordance with law. Subject to the liberty aforementioned, the writ petition is allowed and Impugned orders dated 21.02.2007, 05.07.2013 and 26.03.2015 are hereby quashed.

[17] No order as to costs.

**[SURYA KANT]
JUDGE**

**[A.B. CHAUDHARI]
JUDGE**

May 17, 2016
mahavir