

In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 2195 of 2010 (O&M)

Date of decision: 8.1.2016

Vijay Singh and others

.....Appellants

Versus

Faridabad Municipal Corporation and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Jagdish Manchanda, Advocate,
for the appellants.

Mr. Mohnish Sharma, Advocate
for respondent No.1.

None for respondents No.2 and 3.

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?

Raj Mohan Singh, J.

1. Plaintiffs are in regular second appeal against the concurrent findings of the Courts below in a suit for declaration and consequential relief of permanent injunction.

2. Plaintiffs filed a suit on the ground that the suit land has not been vested in favour of defendants and the mutation No. 1082 in respect of change of ownership in favour of M.C.F. (previously known as F.C.A.) i.e. defendant No.1 is incorrect. Entries in the revenue record in favour of M.C.F. or in favour of defendants as owner in possession are illegal and not binding upon the rights of the plaintiffs as the plaintiffs claim themselves

to be owner in possession of the suit land bearing khasra No.117 or changed khasra No.117/1/1, total area 11 kanals 8 marlas situated in revenue estate of village Baselwa Tehsil and District Faridabad.

3. Plaintiffs sought the relief that defendants No.2 and 3 have no right in respect of suit land including old Mandir, which had not been acquired under the Land Acquisition Act and the notification for acquisition of suit land including Mandir had been de-notified by the Government in the notification dated 4.4.1985 in terms of Section 48 of the Land Acquisition Act. Plaintiff further sought a decree for mandatory injunction directing the defendants No.2 and 3 to return the vacant possession of the suit land to the plaintiffs, which remained un-acquired i.e. 11 kanals 5 marlas comprising in khasra No.117/1/1 with cost of construction of the house and shops etc.

4. Plaintiffs further claimed that they are proprietors of Thok Androon according to their share in the land situated in village Baselwa as per jamabandi for the year 1954-55 in which entries were "Androon Thok; Hasab Hisas Ba Soorat Andar Patti Hisis Malkiat" and "Shakti Ashram Baahtamam" i.e. under control and management of Sushri Shardha Mata Ji. Plaintiffs submitted that they are the owners/ Biswedars of the suit land and they have been performing the religious formalities of the Mandir as owners and have been managing the affairs of the

Mandir from the very beginning for the last more than 40 years. M.C.F. came into existence only in the year 1971, in which village Baselwa was included and ownership of the suit land is stated to have been transferred in favour of MCF by virtue of said act the word 'RAFAYAAM' was incorporated in the column of possession vide mutation No.1082 of the said village in khasra No.117/1 measuring 11 kanals 8 marlas. Thereafter, entries in the jamabandi for the year 1972-73 were changed by virtue of mutation No.1082. Plaintiff alleged that old Mandir is in existence in the suit land and the residential houses of the plaintiff have not been shown in mutation No.1082 and also in jamabandi for the year 1972-73 and, therefore, mutation as well as entries in the revenue record are claimed to be illegal.

5. On notice, defendants contested the suit on all customary pleas and prayed for dismissal of the suit. It has been claimed that the suit land along with big chunk of land was acquired by the State for development of Sector 19, Part-II, Faridabad and requisite Award No.4 dated 27.5.1959 was announced by the then Land Acquisition Collector and since then ownership and possession of the land in question was transferred to the answering defendants.

6. Trial Court framed issues and thereafter, both the parties led evidence in support of their case.

7. Suit filed by the plaintiffs was dismissed by the trial

Court, vide judgment and decree dated 28.3.1999 and the same was upheld in appeal vide judgment and decree dated 11.12.2009.

8. I have heard learned counsel for the parties and have gone through the record.

9. Both the Courts have dismissed the claim of the plaintiffs on the ground that plaintiffs have claimed themselves to be in possession of the suit land. Plaintiffs have produced the revenue record viz. jamabandi for the year 1982-83 to 2002-2003 Ex.PW2/9 to Ex.PW2/12. Award No.4 for the year 1989-90 Ex.D-1 proved that khasra No.117/1 was acquired in public interest and the construction made over this khasra number by plaintiff Balkishan was assessed as ₹ 45,800/-. Provision was made in the award that compulsory acquisition charges to the interested persons were to be given. Entry to this effect was made in the roznamcha and Khasra No.117/1/1 was acquired accordingly by the Land Acquisition Collector and award was announced. The aforesaid proceedings were done in public interest and for public purposes, namely, development and utilisation of land as residential Sector 18, part II, Faridabad under the Haryana Urban Development Authority Act, 1977. Now, it is Haryana Urban Development Authority, who is owner of the suit property for public purpose. Plaintiffs have neither challenged the award before any competent forum nor the

entries in the revenue record since 1972-73 have been assailed in any forum. Compensation has already been awarded in favour of rightful claimants. Plaintiffs have no right to challenge the award and claim their right over the property in question which already stood acquired by means of lawful procedure. Plaintiffs are not the owners of the suit property, rather the revenue record produced by them proves their possession only in the land which already stood acquired lawfully for public purpose after award of due compensation to the rightful claimants. Plaintiffs cannot claim their possession over the suit property by any stretch of imagination. Plaintiffs could not prove their title over the land. The trial Court dismissed the suit. Lower Appellate Court has also endorsed the findings recorded by the trial Court. This Court has also considered the issue in question. According to jamabandi for the year 1954-55 Ex.PW2/1, the land is recorded to be '*shamlat deh hasab hasis jehl*' and possessed by 'Shakti Ashram' or 'Mahatmaam Sushree Shardha Mata Ji Gair Mourusee'. These entries continued in subsequent revenue record of the year 1958-59 i.e. jamabandi Ex.PW2/3 and jamabandi for the year 1962-63 Ex.PW2/5. Thereafter, change was recorded as 'panchayat deh' instead of 'shamlat deh' and was left for 'Rafayam'. Thereafter, in the year 1972-73 in place of 'gram panchayat', Complex Administration Faridabad came to be recorded and the land was

shown as 'Rafayam'. Since jamabandi for the year 1971-72 till 2000-2003 entries remained the same vide Ex.PW2/2 to PW2/12, therefore, the land remained in possession of 'Shakti Ashram Mahatamam' administered by Sushree Shardha Mata Ji till 1962-63 and thereafter there is no entry of possession in favour of Shakti Ashram Mahatamam'. Plaintiffs have failed to show their locus and interest in Shakti Ashram Mahatamam'. No evidence has been led to show that as to when Sushree Shardha Mata Ji has given administration to run the temple to plaintiffs. Plaintiffs have failed to show that in which year they have constructed the house in the premises of the temple and since when shed etc. were constructed and are in existence. Only oral assertions are not sufficient to draw such presumption. The land is in possession of the Municipal Corporation, Faridabad since 1972. There are consistent entries in favour of Municipal Corporation as the land from the gram panchayat came to Faridabad Complex Administration and then to panchayat, which stood vested in Faridabad Complex Administration. The plea of adverse possession by the plaintiffs has to be negated in view of absence of necessary ingredients viz. "nec vi, nec clam, nec precario" i.e peaceful, open and continuous and it should be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner.

10. Having considered the issue in detail this Court does not feel that the findings recorded by both the Courts below concurrently on the issue need any re-appreciation at the hands of this Court.

11. The questions of law as formulated in grounds of appeal are the pure questions of fact. The very entry in the revenue record as *shamlat deh* succeeded by any other terminology i.e. *hasab hasis jehl* has to be tested at the threshold of the status of the parties as on 26.1.1950. Plaintiffs have miserably failed to show their status on the prescribed date in view of interpretation attached to Section 2 (g) of the Punjab Village Common Land (Regulation) Act, 1961. Since the possession of the plaintiffs could not be proved as on the prescribed date, therefore, the entry '*shamlat deh*' followed by any other terminology has to be presumed to be vested in panchayat as *shamlat deh* in terms of Section 2 (g)(1) of the Act. No such plea has been taken by the plaintiffs in the pleadings nor any evidence has been led. Therefore, the vesting of such land firstly in the gram panchayat and thereafter in Faridabad Complex Administration then to MCF is inevitable. Question No.2 does not arise at all. Once the plaintiffs is not entitled for any declaration, question of mandatory injunction does not arise. Both the questions as formulated by learned counsel for the appellants do not have any such background of consideration in

the light of facts on record.

12. Resultantly, this Court does not consider this case to be fit for interference in the regular second appeal. Hence, the appeal is dismissed.

(RAJ MOHAN SINGH)
JUDGE

January 08, 2016
anita