

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3490 of 2013 (O&M)

Date of decision: 06.05.2016

Dharam Singh and others

.....Appellants

Vs.

Gram Panchayat of Village Joshi Chauhan and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE AMOL RATTAN SINGH

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

Present:- Mr.Ashwani Gaur, Advocate,
for the appellants.

AMOL RATTAN SINGH, J.

This is the plaintiffs' second appeal after their suit seeking a declaration with a consequential relief of permanent injunction was dismissed by the learned Civil Judge (Jr.Divn.), Sonapat and the first appeal filed by them was also dismissed by the learned Additional District Judge, Sonapat.

2. The plaintiffs had contended in their suit that they are in physical cultivating possession of agricultural land measuring 18 kanals and 17 marlas, fully described in the plaint, situated in the revenue estate of Village Joshi Chauhan, Tehsil and District, Sonipat, since the time of their forefathers, without paying any rent, *lagan* etc., since before 1943-44, i.e. much before the enactment of the Punjab Village Common Lands Act, 1961. The ten plaintiffs contended that

they were co-owners of the suit land and had a share in the *shamlat* land of the village prior to enforcement of the aforesaid Act of 1961 and also 12 years prior to the enactment of the Punjab Occupancy Tenants (Vesting of Property Rights) Act, 1953.

They thus contended to be in continued peaceful possession of the suit land without interruption for more than 70 years and claimed to have become owners in possession thereof by acquiring occupancy right under Section 5 of the Punjab Tenancy Act, 1887, read with Section 3 of the Punjab Occupancy Tenants (Vesting of Property Rights)Act, 1953.

3. It was further stated in the plaint that the defendant Gram Panchayat had got entered a mutation in its favour after colluding with the revenue authorities, without giving any opportunity or notice to the plaintiffs and as such, they sought the setting aside of the said mutation on the ground that it was illegal, null and void, with subsequent entries thereafter also to be illegal and not binding on the rights of the plaintiffs.

It was still further contended that the land had not been leased out by the Gram Panchayat and was not being used for any common purpose of the village and simply on the basis of a wrong mutation and revenue records, the defendants were threatening to interfere in the peaceful possession of the suit property, forcibly and illegally.

It was therefore pleaded in the suit that the plaintiffs be

declared to be the owners in possession of the suit land, being occupancy tenants, after declaring mutation No.886 to be illegal, null and void and further, a decree restraining the defendants from interfering in the possession of the plaintiffs, be also issued.

4. It may be noticed here that the defendants impleaded in the suit were Gram Panchayat and its *Sarpanch*, the *Lambadar* of the village (by name), the residents of the village and all the proprietors of the village, in a representative capacity, through defendant No.4, Hari Singh, as one of the proprietors.

5. The first 2 defendants, i.e. the Gram Panchayat and its Sarpanch, were ordered to be proceeded against ex-parte by the learned Civil Judge, vide order dated 12.10.2006 (the suit having been instituted on 07.09.2006) and the proprietors in a representative capacity, i.e. defendant No.6, were also subsequently proceeded against ex-parte.

Defendants No.3, 4 and 5, i.e. the *Lambardar* and two proprietors, Hari Singh and Ram Kumar, appeared and admitted the contents of the plaint and consequently also did not lead any evidence.

The suit not having been contested, no issues were framed by the learned Civil Judge.

6. The first plaintiff, (presently the first appellant), Dharam Singh, testified as PW-1, in terms of the plaint with his testimony corroborated by PW-2 Anup, PW-3 Bhim and PW-Partap Singh.

7. The learned Civil Judge, upon appraisal of the plaint and the evidence led by the plaintiffs, found that as per the revenue record, i.e. jamabandi (records of rights) since the year 1931-32, the suit land was shown as *Shamlat Deh Hasab Rasab Raqba Khewat*. One Budh Singh was shown to be in possession of 2 marlas of the land, which was *gair mumkin* in nature. To similar effect was the jamabandi for the year 1939-40. Thereafter, in the jamabandi for the year 1943-44, Budh Singh was shown to be in possession as a *gair marusi*, on *batai- tihai* basis.

Thereafter, in the jamabandi for the years 1956-57, the Panchayat Deh was shown as the owner of the suit property and mutation No. 686 was sanctioned on 14.02.1955, showing that in furtherance of letter No.782, issued by “RC”, the Panchayat Deh had become owner of the suit property. The jamabandi and revenue records thereafter continued to show the Gram Panchayat to be owner thereof. However, the plaintiffs, who are the successor-in-interest of Budh Singh, (being his grand sons, i.e. sons of Kishan Lal) and the widow and daughters of a pre-deceased son of Kishan Lal), are shown to be co-sharer and *gair marusian*, on the property.

8. The learned Civil Judge, however, went on to discuss that though, before 1955, the Gram Panchayat was not shown to be the owner of the suit property, which is *shamlat deh* in nature, it still vested in the Panchayat in view of Section 4 of the Act of 1961, which

reads as follows:-

“ Vesting of rights in Panchayats and non-proprietors:- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any Court or other authority, all rights, title and interest whatever in the land:-

- (a) which is included in the *shamlat deh* of any village and which has not been vested in a panchayat under the shamlat law shall, at the commencement of this Act, vest in the Panchayat constituted for such village, and, where no such panchayat has been constituted for such village, vest in the panchayat on such date as a panchayat having jurisdiction over that village is constituted;
- (b) which is situated within or outside the *abadi deh* of a village and which is under the house owned by a non-proprietor, shall on the commencement of the shamlat law, be deemed to have been vested in such non-proprietor.

2. Any land which is vested in a panchayat under the shamlat law shall be deemed to have been vested in the panchayat under this Act.

3. Nothing contained in clause(a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the:-

- (i) *existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholdarts, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqararidars;*
- (ii) *Rights of persons in cultivating possession of shamlat deh for more than twelve years (immediately proceeding the commencement of*

the Act) without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950.”

9. It was held that even if the appellants were in possession of the suit land on payment of *batai/tihai* as reflected in the jamabandi for the year 1943-44, thereafter, the Panchayat was shown to be in ownership of the suit land and by virtue of the Act of 1961, the land came to vest in the gram panchayat.

Other than the above, it was however, held by the learned Civil Judge, that the proprietors of the village had been impleaded in a representative capacity under Order 1, Rule 8 CPC, through Hari Singh, whose name actually did not figure in the list of proprietors of the village and in his written statement as defendant No.4, Hari Singh admitted the claim of the plaintiffs (the implication being that he was in connivance with the plaintiffs).

It was further held that since the year 1955, when the Gram Panchayat came into existence and the land was transferred in its name, the plaintiffs could not prove that they were tenants under the Gram Panchayat and had occupied the land for 30 years in terms of Section 5 of the Punjab Tenancy Act, 1887.

Neither could they prove adverse possession against the Gram Panchayat.

Holding as above, the suit of the plaintiffs was dismissed.

10. The first appeal that the plaintiffs filed before learned Additional District Judge, was also dismissed, essentially on the ground that they could not prove themselves to be tenants in terms of the Section 5 of the Act of 1887 and also could not claim to be occupancy tenants under the provisions of Punjab Occupancy Tenants (Vesting of Property) Rights Act, 1953.

11. Learned counsel for the appellants, before this Court, submits that the Courts below have erred in not appreciating the fact that the entry of '*batai-tihai*' in the '*jamabandi*' for the year 1943-44 was a stray entry, and prior and after which, there is no entry showing any rent ever having been paid by the appellants or their predecessors-in-interest. Hence, he submits that one stray entry in the '*jamabandi*' for the year 1943-44, i.e. before 1949, would not affect the rights of the appellants, in any case. (The year 1949 assumes significance in view of the Punjab Village Common Lands (Regulation) Act, 1961, wherein, in clause (ii) of sub-section 3 of Section 4, it has been stated that rights of persons '*in cultivating possession of shamlat deh*' for more than twelve years immediately preceding the commencement of the Act, without payment of rent, or by payment of charges not exceeding the land revenue and cesses payable thereon, shall not be affected by anything contained in clause (a) of sub-section (1) and in sub-section (2) of the said provision, i.e. of Section 4).

12. However, without going into that issue, it is seen that the

learned Courts below have made a basic jurisdictional error in entertaining the civil suit, with no reference to Section 13 of the Act of 1961, which reads as follows:-

“13. Bar of jurisdiction in civil courts.- No civil courts shall have jurisdiction-

- (a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not shamilat deh vested or deemed to have been vested in a Panchayat under this Act; or
- (b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act; or
- (c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.”

Obviously, there is a complete bar on the jurisdiction of a civil Court under the said provision, from entertaining a suit in which the question of whether any land is or is not shamlat deh, arises. Thus, the only available fora are the authorities prescribed under the Act of 1961 itself and not civil courts.

13. Learned counsel, however, relies upon a judgment of a coordinate Bench of this Court in **Puran vs. Gram Panchayat, Hasanpur, Tehsil Palwal, 2003(1) RCR (Civil) 92**, to submit that,

though the regular second appeal even in that case was dismissed but

even while doing so, it was observed by the Court as follows:-

“7. However, I find no force in these submissions of the learned counsel for the appellants. It may be that under the provisions of Punjab Tenancy Act read with Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, the plaintiffs may be able to show that they had acquired ownership rights in respect of the suit property. However, since the dispute of the plaintiff is with the Gram Panchayat (in whom the suit land had vested), the provisions of Punjab Village Common Lands (Regulation) Act would also be relevant. Under Section 4(1) of this Act, it has been provided that notwithstanding anything to the contrary in any other law for the time being in force, etc., all rights, title or interest whatever in the land, which is included in the shamilat deh of any village and which was not vested in a Panchayat under the Shamilat Law, shall at the commencement of the said Act, vest in the Panchayat. Under sub-section (3), it is provided that nothing contained in sub-section (1) shall affect or shall be deemed ever to have affected the existing rights, title or interest of persons who are recorded as Dholdars, etc. and that the rights of the persons, who were in cultivating possession of the Shamilat Deh for more than 12 years immediately preceding the commencement of the said Act, without

payment of rent, etc.

8. From a perusal of the above, it would be clear that the rights of those persons, who are in cultivating possession of the Shamilat Deh for more than 12 years immediately preceding the commencement of the Punjab Village Common Lands (Regulation) Act, without payment or rent, etc., shall not be affected by the provisions of Section 4(1) of the said Act, whereby all rights, title or interest in the land, which is included in Shamilat Deh of any village, shall vest in a Panchayat. This would mean that only those persons who are found to be in cultivating possession of the Shamilat land 12 years prior to the commencement of the aforesaid Act, would be entitled to claim, under the general law, i.e. under the Punjab Tenancy Act read with Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, that they had become the owners of the property being the occupancy tenants. However, those persons, who are not in possession of the property 12 years preceding to the commencement of the Punjab Village Common Lands (Regulation) Act, 1961, shall not be entitled to claim that they were occupancy tenants and they had acquired occupancy rights. This is so because Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961, starts with the words “notwithstanding anything to the

contrary in any other law for the time being in force”.

Thus, the provisions of Section 4 of this Act would have precedence over the provisions of Punjab Tenancy Act, 1887 and Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953.”

Thus, the contention of the learned counsel is that this Court entertained a similar appeal and notwithstanding what was held on the merits of that case, the implication is that in such a situation, a civil Court has jurisdiction to entertain a suit and consequent appeals arising therefrom.

14. Though, as a matter of fact, on merits the above observations of the Court negate the contention of the appellants, to the effect that it is not the Act of 1887, or that of 1953, which would govern vesting of proprietary rights in land otherwise shown to be shamlat land or panchayat land, but it would be Section 4 of the Act of 1961, under which such rights are to be governed; however, as regard jurisdiction, obviously Section 13 of the Act of 1961 was not brought to the notice of the coordinate Bench. Still further, a judgment of a Division Bench of this Court, in **Bhagu Vs. Ram Sarup and others**, 1985 PLJ 366, was also not brought to the knowledge of that Bench. As per the Division Bench, also dealing with Section 13 of the Act of 1961 as applicable to Haryana, it was observed that:-

“So, in a nutshell the whole implication of

Section 13 of the Act is that the jurisdiction of the Civil

Court is taken away when the lis is between the Gram Panchayat and a private person and it relates to any of the questions specified in this section. It appears clear that the section would not be operative when the lis or the dispute is between two private individuals.”

Though in that case, since the dispute was between two private persons, their Lordships rejected the contention that the jurisdiction of the civil Court is barred, holding that if Section 13 is to be interpreted in a manner that even in private disputes not involving a Gram Panchayat, if some frivolous plea, simply alleging that the land is panchayat land or is a shamlat deh is taken, it would oust the jurisdiction of the civil Court which obviously cannot be; however, it was held where the Panchayat is a party to the lis, the jurisdiction of the civil Court is ousted by Section 13.

15. In that case (Bhagu, supra), the issue was with regard to a passage/“*Galli Sare-e-aam*”. In the present case, on the other hand, admittedly the land is shown to be in the ownership of the Gram Panchayat but under the cultivation of the appellants since long.

Hence, if they have to show such length of cultivation to bring their case within the parameters of Section 4 (3) (ii) of the Act of 1961, as applicable to Haryana, (or of any other provision of that Act, in their favour), then such plea has to be taken by the appellants before the competent authority under that Act.

noticed by the coordinate Bench in Purans' case (supra) and the observations of the Division Bench in Bhagus' case , also not having been noticed, in my opinion, the matter does not need reference to a larger Bench for the purpose of adjudication of whether or not the civil Court has jurisdiction over the matter, the judgment obviously having been rendered, with great respect, *per incuriam*.

It also needs to be said here that a Full Bench of this Court in **Shiv Charan Vs. Financial Commissioner, Haryana and others** (2004) (4) RCR (Civil) 543, has also held that despite the bar contained in Section 77 (3) of the Act of 1887, which stipulates that suits pertaining to the category given in the said provision, would only lie before revenue courts, a civil suit would still lie in respect of two types of occupancy tenants, i.e. (i) those who are recorded as such in the revenue record immediately before the commencement of the said Act, and (ii) those whose rights as occupancy tenants could be established by other evidence.

However, “*Shamilat*” land/land belonging to the *Panchayat*, was obviously not the subject matter of determination before the Full Bench, as there is no reference to Section 13 of the Act of 1961, in the said judgment.

Though an appeal filed by a Gram Panchayat is mentioned in the judgment and there is also a reference to “*Shamilat*” land, however, such reference is only with regard to extinguishment of the rights of landlords in favour of the occupancy tenants, even to the extent of the share of such landlords in such “*Shamilat*” land (commensurate with their extinguishment of rights in the land in dispute with occupancy tenants).

Thus, it would seem obvious, that with no reference to Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961, such lands, as were belonging to the *Panchayat* or vesting in the *Panchayat*, were obviously not the subject matter of the *lis* before the Full Bench

17. In view of all that has been discussed, this appeal is dismissed, but for a reason different to the ones given by the Courts below, i.e. this appeal is dismissed, holding that the suit out of which this appeal arises, could not have been entertained by a Civil Court, being beyond its jurisdiction, in view of the bar contained in Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana).

A decree sheet be drawn up accordingly.

18. In view of the inherent lack of jurisdiction, nothing held by the Courts below, or by this Court, shall be taken into consideration by the competent authority, if any proceedings are brought before it under the Punjab Village Common Lands (Regulation) Act, 1961, by any of the parties to this *lis*. Any such proceedings, if brought, would be decided wholly on their own merit, with all questions left open, to be decided by the authority concerned, as are raised before it, including the question of the suit land vesting, or not vesting, in the Panchayat, in terms of Section 4 (3) of the Act of 1961.

6.5.2016
pk

(AMOL RATTAN SINGH)
JUDGE