

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

RSA-2359 of 2016 (O&M)

Date of decision: 11.05.2016

Manmohan

...Appellant

Versus

Gram Panchayat, Mundra and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. B.R. Gupta, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

The suit for mandatory injunction and recovery of licence fees/damages filed by the plaintiff/appellant (for short 'the appellant') was dismissed by the trial Court vide judgment and decree dated 16.11.2013.

2. Aggrieved against the findings of trial Court, the appellant filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree dated 25.01.2016.

3. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the

oral as well as documentary evidence on record, hence, the instant appeal at the behest of the appellant.

4. The brief facts of the case are that the appellant had purchased the suit land measuring 24 kanals 18 marlas, vide sale deed dated 21.11.2007 from his vendor Rafiq Afzal Khan, Javed Afzal Khan and Nazim Afzal Khan sons of Sher Afzal Khan, who were biswadars of village Mundra. The suit land was allotted to Sher Afzal Khan by the Govt., of Haryana, vide warrant of Tehsildar, Rohtak dated 15.10.1974. The appellant has continuously cultivated the suit land on behalf of the vendors and his name stood mentioned in the revenue record, however, Tehsildar Kosli has wrongly incorporated the name of the Gram Panchayat, Mundra in the revenue record instead of the appellant without affording any opportunity to his vendor. The appellant has requested repeatedly to deliver the vacant possession of the suit land to him but in vain which had necessitated the filing of the suit.

5. Defendant-Respondent No.1 (for short 'R No.1) contested the suit controverting the averments made in the plaint. It is denied that Sher Afzal Khan was ever allotted any land by Govt. order, thus his sons were not entitled to execute the sale

deed in favour of the appellant. It is pleaded that suit land earlier was 'Gau Charagh' and since 1980, R No.1, the Gram Panchayat has been giving the same on lease. The khasra girdawari entries were wrongly recorded in the name of Hari Mohan, who is the real brother of the appellant, were got corrected as per rules which have now attained finality as no appeal/revision whatsoever has been preferred against the said order of correction.

6. Defendant-R No.2 (for short 'R No.2') in its separate written statement admitted the claim of the appellant in toto.

7. After considering the rival contentions of the parties and evaluating the material on record, the learned trial Court non-suited the appellant by holding that he has failed to establish the title of his vendors and thus acquisition of the title by him becomes doubtful. It was further held by the learned trial Court that suit is barred under Section 13 of the Punjab Village Common Land (Regulation) Act, 1961 (for short 'the Act') and as such suit is not maintainable before Civil Court.

8. The 1st appeal was also dismissed as mentioned above. Hence, the present Regular Second Appeal on behalf of the appellant.

9. On behalf of the appellant, it is contended that both the Courts have gravely erred in dismissing the claim of the appellant. No opportunity for producing evidence was afforded to the appellant, despite allowing the application for additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, vide order dated 25.01.2016, passed by the learned lower Appellate Court, which has caused great prejudice to the appellant. On the one hand, the Appellate Court has allowed the application for producing documentary evidence and on the other hand, the appeal was also dismissed on the same day. Both the Courts have failed to consider the jamabandis for the year 1989-90 and 1984-85 which show that the suit land was owned by Sher Afzal Khan and was under the cultivation of the appellant as 'gair marusi'. The suit land was allotted to the vendors of the appellant by the custodian department. Undoubtedly, vide order dated 08.06.1995 (Ex.P9), the girdawari in favour of Gram Panchayat was corrected, however, neither the appellant nor his vendors had been impleaded as party in those proceedings. It is further contended that both the Courts below have not appreciated the documentary evidence i.e. Sanad taksim (Ex.P2) and Arazi matrooqa (Ex.P3), which shows that the land

measuring 2.10 acres being evacuee property was allotted to Sher Afzal Khan and the disputed property is a part thereof as the killa numbers mentioned therein are also clearly depicted in the jamabandi for the year 1984-85 (Ex.P3).

10. Heard, the learned counsel for the appellant and perused the record carefully.

11. The onus to prove his case is upon the appellant. The appellant in support of his claim has examined PW-1, Satbir Singh, deed writer of the sale deed, Ex.P1, PW-2 Raj Kumar, stamp vendor and PW-3, the attesting witness. The appellant himself appeared as PW-4 to prove his case. The case of the appellant is that the suit land was given to him by his vendors Rafiq Afzal Khan, Javed Afzal Khan and Nazim Afzal Khan sons of Sher Afzal Khan, who were biswadar of village Mundra. He alleged that the suit land was allotted to Sher Afzal Khan by the Govt., of Haryana, vide warrant of Tehsilar, Rohtak dated 15.10.1974. The appellant has claimed that he is cultivating the suit land on behalf of the vendors. From the perusal of the record, it reveals that the appellant has failed to establish his title over the suit land as his vendors had not been examined to prove the assertion of the appellant. The appellant has claimed that the

suit land was allotted to his vendors by the custodian department but no record has been summoned to prove the above fact. The perusal of record further reveals that the suit land was meant for cattle grazing free of cost in Wazib-ul-Arj and nothing was charged by the gram panchayat from the villagers, thus the entire land of village Mundra was allotted to panchayat deh, whereby in the column of cultivation makbuja panchayat deh was recorded, which is clearly evident from jamabandi for the year 1961-62, Ex.D9/A. The suit land is being managed by the gram panchayat since 1980 by leasing out to villagers for the development work of the village. The gram panchayat is shown to be the owner in possession of the suit land as per jamabandis 1961-62 and 1969-70. Moreover, the rapat No.47 dated 15.10.1974, whereby Sher Afzal Khan through the present appellant is shown to be in possession of the suit land, had already been set aside, vide order dated 25.11.1976. The appellant has failed to prove the title of his vendors and his possession over the suit property.

12. From the above, it is clear that there was a direct conflict between Section 8(2) of the Central Act of 1950 and Section 3 of the Punjab Act, 1953 on the question of vesting of

evacuee property the question which arises is as to which of these two Acts would prevail. The apex Court relying upon Ranjit Singh Vs. State of Punjab, AIR 1965 SC 632, observed that this Court was also right in its view that the proposed changes in the shamlet deh and abadi deh were included in the general scheme of planning of rural area and the productive utilization of vacant and waste lands. In the instant case, the suit land was declared evacuee property and then allotted to Sher Afzal Khan, the list of allottee dated 08.07.1949 is on record.

13. In jamabandi for the year 1984-85 Ex.P3, Hari Mohan s/o Man Singh shown to be in cultivating possession as gair marusi under the ownership of Sher Afzal Khan on batai tihai and this entry was in jamabandi 1980-90 Ex.P2 but in next jamabandi 1994-95, in the column of cultivation, gram panchayat through patadar is recorded in cultivating possession and if jamabandi 1994-95 is read coupled with jamabandi 1956-57 Ex.P16, 1961-62 Ex.D9/A wherein shamlat deh is shown owner as well as in cultivating possession, as per column of cultivation the suit land was shown common land thus the question arise how and when Sher Afzal Khan took the possession from the gram panchayat. Except two entries of jamabandi 1979-80 and 1984-85 Sher Afzal Khan is not

recorded as owner in possession. Though learned counsel for the appellant has stated that Sher Afzal Khan has been delivered possession by virtue of rapat no.47 dated 15.10.1974 Ex.D9 but it shows that he was given possession of 54 kanal 18 marla land which he has already sold, learned counsel for the appellant has not given any specific date of alleged delivery of possession to Sher Afzal Khan but during argument it is contended that gram panchayat taken the possession from Sher Afzal Khan in 1995 by virtue of order dated 08.06.1995 Ex.D1 and prior to that Sher Afzal Khan was cultivating the suit land through Hari Mohan but this submission is devoid of merit because there is ample evidence on record in the form of lease register for the year 1990-91, 1991-92, 1992-93, 1994-95 and 1995-96 vide which Gram Panchayat Mundra used to lease out suit land on annual lease to its villagers for cultivation in an open auction thus taking possession by gram panchayat in 1995 from Sher Afzal Khan is falsified itself.

14. The argument that Sher Afzal Khan used to cultivate the land in dispute through Hari Mohan also lacks merit as Gram Panchayat Mundra filed an application against Hari Mohan seeking correction of khasra girdwari on the ground that in the column of cultivation name of Hari Mohan is wrongly

recorded whereas the suit land was in fact cultivated by gram panchayat through patadar. After giving notice to Hari Mohan the revenue officer visited the spot and found the possession of the Bheru and Bhagwana patadar through Gram Panchayat Mundra thus the application of Gram Panchayat was allowed. order dated 08.06.1995 of AC IInd Grade is on record. It is also mentioned in the order that Hari Mohan never resided in village Mundra. This order of correction of girdawar has never been challenged by Hari Mohan or Sher Afzal Khan thus attained finality.

15. In view of the above discussion, this Court finds that both the Courts below have rightly held that the appellant has no case at all. It has also been correctly held that the gram panchayat is in possession over the suit land and as such, suit is not maintainable under Section 13 of the Act. Keeping in view the above facts and circumstances of the case, this Court feels that there is no merit in the present appeal and the findings recorded by the Courts below neither suffer from any perversity or illegality nor any material point has been left un-addressed.

16. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present

appeal. Hence, no interference is called for. Dismissed in limine.

11.05.2016

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(JITENDRA CHAUHAN)
JUDGE