

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

RSA No.1798 of 2014 (O&M)

Date of decision: 4.3.2016

Narayan Dass and another

... Appellants

Versus

Gram Panchayat Khanpur

... Respondent

CORAM: HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.J.S.Hooda, Advocate,
for the appellants

...

AMOL RATTAN SINGH, J.

1. This 2nd appeal has been filed against the judgments of the learned Courts below, dismissing the suit and appeal which the appellants-plaintiffs had instituted against the Gram Panchayat, Khanpur, (hereinafter referred to as the defendant), seeking a declaration that the order dated 11.1.1995 passed by the Assistant Collector Ist Grade, Nuh, and the order dated 26.6.1995 passed by the District Collector, Gurgaon, be declared to be illegal, null and void and consequently, the appellants be allowed to continue in undisturbed possession of the suit land.

2. The suit property consists of agricultural land bearing Khewat/Hatoni no.67/102, Rectangle No.5, Killa no.17 (6-0), 24 (6-0), 24/1 (6-19) totaling 12 Kanal 19 marlas situated within the revenue estate of village Khanpur, Tehsil Nuh, District Mewat. The plaintiffs claim that the suit land was Shamlat Deh, owned by the proprietors of village Khanpur.

The proprietors gave the suit land to the ancestors of the plaintiffs and the intention of the proprietors was that the land will not be taken back from the plaintiffs or their ancestors. The father of the plaintiffs, Sital Dass son of Roop Dass alias Roop Chand, was Dholidar in possession vide jamabandi for the year 1969-70.

3. Thus the appellants-plaintiffs claimed to be in possession of the suit land by virtue of a 'dholi' having been granted to their father and predecessor-in-interest, Sital Dass, by the proprietors of the village, in earlier years. No specific date of the grant of such 'dholi' was given and no 'dholi' deed or mutation register was led in evidence before the Courts below, to show the terms and conditions on which the dholi was granted.

However, a passbook issued by the revenue department, with regard to the land holdings of the village, was produced as Ex.P-4, a perusal of the attested copy of which, shows that in Khewat No.67/102, Khasra Nos.5/17 and 24/1, the appellants' father, Shital Dass, was shown to be in cultivating possession, with the ownership of the land shown to be that of the 'Shamlat Deh'.

4. It was further averred in the plaint that the defendant Gram Panchayat filed a petition under Section 7 of Punjab Village Common Land (Regulation) Act, 1961 (hereinafter referred to as the Act of 1961), before the court of AC First Grade, Nuh. The said petition was allowed vide order dated 17.07.1989 and an ejectment order against Sital Dass and Yadram was passed. However, the appeal against the said order was accepted vide order dated 21.11.1989 by the Collector, and it was held that the AC First Grade had no jurisdiction to decide as to whether the rights of the Dholidar stood

extinguished or not, on account of the lease of land made by him in favour of Yadram.

4-A. The defendant Gram Panchayat thereafter filed an ejectment application bearing no.71/SDO/1993. The said petition was allowed vide order dated 11.01.1995. The appeal against the said order was dismissed vide order dated 26.06.1995 and it was held that the late Sital Dass was a Dholidar and as such not competent to lease out the suit land to Yadram. The defendant tried to take possession from Shital Dass and a Rapat Roznamcha dated 18.08.1995 was got entered to that effect. It was, however, averred that the said proceeding of delivery of possession was merely a paper transaction and no possession was taken from the plaintiffs.

It was further averred that the order of the AC First Grade, Nuh, dated 11.01.1995 and the order of the District Collector, Gurgaon, dated 26.06.1995, are null and void and that proceedings recorded in ROR No.96, dated 18.08.1995, are also illegal.

It was also contended in the plaint, that even if the lease is held to be illegal, the possession of the suit land should go to the lessor (plaintiffs) and not to the defendant Panchayat. As such the appellants-plaintiffs had prayed for a decree of declaration, that the orders dated 11.01.1995 and 26.06.1995 and Rapat Roznamcha entry No.96, dated 18.08.1995, are null and void. They also sought the consequent relief of permanent injunction, restraining the defendant from leasing out the suit property.

5. On notice, the defendant Gram Panchayat filed its written statement taking preliminary objections of lack of cause of action,

maintainability, locus standi and concealment etc.

On merits, it was stated that the ejectment order was perfectly legal and that presently, the defendant was owner in possession of the suit land. It was further stated that the defendant had filed an ejectment petition and Sital Dass and Yadram were ejected from the suit land by a competent court of law. Thereafter, the plaintiff has no concern with the suit land.

It was also averred that the civil Court has no jurisdiction to try the suit, which was also hopelessly time barred. Controverting the rest of the averments made in the plaint, dismissal of the suit was prayed for.

6. No replication having been filed, the following issues were framed by the learned Civil Judge:-

- “i. Whether the ejectment order dated 11.01.1995 and 26.06.1995 and Rapat No.96 dated 18.08.1995 are null and void and liable to be set aside on the grounds mentioned in the plaint? OPP
- ii. Whether the suit is not maintainable in the present form? OPD
- iii. Whether the plaintiffs have no cause of action or locus standi to file the present suit? OPD
- iv. Whether the plaintiffs have not come to the court with clean hands and if so, its effect? OPD
- v. Relief.”

7. The learned Additional Civil Judge (Senior Division), Nuh, first held that the suit having been instituted on 15.09.2006, was beyond limitation as the impugned orders dated 11.01.1995 and 26.06.1995, as also the Roznamcha entry dated 18.08.1995, were very much within the knowledge of the appellants, even as per their own admission in cross-

examination, since 1998 at least.

Other than that, on the basis of evidence led, the Court found that it was not the appellants-plaintiffs who were in possession of the suit land, but initially it was one Yad Ram and after dispossession of Yad Ram, the Gram Panchayat was either cultivating the suit land on its own, or had been leasing it out on different occasions. Hence, it was held that the appellants-plaintiffs not being in possession, the act of the Gram Panchayat in allegedly threatening to lease out the suit land, would not give cause of action to the appellants-plaintiffs, even to seek injunction, they having already lost possession.

The suit was, consequently, dismissed.

8. In the appeal filed by the plaintiffs (present appellants), the learned first appellate Court held that the ancestors of the appellants-plaintiffs were given the suit land for reason of 'Punnarth', which that Court described as a gift. Holding that the suit land was not being used for the purpose for which it was granted to Shital Dass (father of the appellants), ejection of the appellants-plaintiffs from the land, vide order of the AC Ist Grade, Nuh, dated 11.1.1995, and the dismissal of the appeal by the District Collector, Gurgaon, vide order dated 26.6.1995, were not found to be erroneous. However, the appeal (before the learned Ist appellate court), was actually dismissed holding that the finding of the learned Civil Judge, that the suit was filed beyond limitation was correct, as the orders dated 11.1.1995 and 26.6.1995 had been challenged by filing the suit on 15.9.2006, though such orders were very much in the knowledge of the appellants-plaintiffs, as could be seen from the cross-examination of

appellant No.1, Narayan Dass, who admitted that an ejectment order had been passed against his father.

The finding of the learned Civil Judge with regard to the appellants-plaintiffs not being in possession and consequently, there being no question of granting an injunction in their favour, was also upheld by the learned lower appellate Court.

That Court also held that the question of inheritance of 'dholi' rights in favour of the appellants-plaintiffs did not survive, because they were granted land by the proprietors of the village for 'Punnarth'/religious purpose and as such, it could not be leased out by the 'dholidar'. Consequently, the land would revert back in favour of the Gram Panchayat or the proprietors.

9. In short, the Courts below, while dismissing the suit on the ground of limitation, also went on to hold that the 'dholi' having been given to the father and predecessor-in-interest of the appellants on the condition of continued religious service, and the suit land itself having been leased out to one Yad Ram, continued religious service by the appellants was not proved, and therefore, the appellants had no right or title to be in possession, especially as even their possession itself was no longer proved, with the Gram Panchayat stated to have taken over such possession and leased out the land to different lease holders, from time to time.

10. Though the above reasoning of both the Courts below may be a matter of debate, because whether the land was leased out by the appellants, or was used by themselves, would, in the *prima-facie* opinion of this Court, be immaterial, provided they continued to fulfill the condition of the 'dholi',

by providing continuous religious service.

Yet, that question is not being gone into in these proceedings, for the reasons given hereinafter.

11. First, at the outset, learned counsel for the appellant disclosed that against the orders of the Assistant Collector and the Collector, dated 11.01.1995 and 26.06.1995 respectively, the father of the appellants, i.e. Shital Dass, alongwith his lessee, Yadram, have filed CWP No.12603 of 1995, which has been admitted to regular hearing and is to be adjudicated upon by this Court.

This Court had, therefore, called for the case file of CWP No.12603 of 1995, a perusal of which reveals that at the time when notice was issued in that petition, on 28.08.1995, by a Division Bench, dispossession of the petitioners therein, i.e. Yadram and the present appellants' father, Shital Dass, had been stayed.

Thereafter, the District Collector and Assistant Collector were ordered to be proceeded against *ex parte*, with the Gram Panchayat duly represented in the writ petition. It was eventually admitted to regular hearing, making the interim order absolute, vide an order dated 04.12.1996.

It needs to be noticed again that the suit out of which the present appeal arises was instituted by the appellants and their mother on 15.09.2006. A perusal of the plaint, from the records of the learned lower Courts, reveals that the factum of the order challenged in the suit, having been also challenged by way of CWP No.12603 of 1995 was not disclosed to the learned Civil Court.

It is further seen from a perusal of the written statement filed

by the Gram Panchayat, in reply to the plaint, that even therein, the fact that the aforesaid writ petition had been filed by the appellants' father and Yadram, was not disclosed.

Obviously, had that fact been brought to the notice of the learned Civil Judge, the suit (out of which these proceedings arise), having been filed about 11 years after the filing of CWP No.12603 of 1995, challenging the same orders as are subject matter of challenge in the writ petition, the Civil Court would probably not have proceeded with the suit, on grounds of maintainability alone.

The filing of the writ petition not having been disclosed by the parties to the *lis*, resulted in that fact not finding any mention in the judgments of the Courts below, which proceeded to dismiss the suit and the appeal, on merits.

Hence, for the reason that the orders impugned in the suit out of which this appeal eventually arises, being subject matter of CWP No.12603 of 1995, filed prior to the filing of the suit, the suit itself was not maintainable and therefore, the correctness and validity of the orders dated 11.01.1995 and 26.06.1995, would not be gone into by this Court, in these proceedings.

12. Secondly, as a matter of fact, the very maintainability of the suit before the Civil Court, on the ground of jurisdiction alone, was also an issue that should have been gone into by the Courts below, in view of the bar laid down in Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana), the suit land actually being 'Shamlat Deh' land, stated to be given by way of a 'Dholi' to the father

of the present appellants-plaintiffs.

Section 13 of the Act of 1961 reads as under:-

“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;
- (b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or
- (c) 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.”

The other relevant provision of the Act of 1961 would be Section 4, the relevant extract of which is to the following effect:-

“4. Vesting of rights in Panchayat 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 interests whatever in the land,-

- a) which is included in the shamilat deh of any village and which has not vested in a Panchyat under the Shamilat law shall, at the commencement of this Act, vest in 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 Panchyat 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 shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a Panchayat under the shamilat 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 Dholidars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqarrirdars;”

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13. Thus, with the suit land admittedly shown to be Shamlat land, even in the revenue record relied upon by the appellants before the Courts below, a civil suit to declare the orders of the revenue authorities, passed under Section 7 of the aforesaid Act of 1961, ordering ejectment of the appellants, would be barred in terms of Section 13 thereof, even if the appellants-plaintiffs claimed to be 'Dholidars' to whose predecessor 'Shamlat Deh' land had been gifted by way of a 'Dholi'. In other words, for any determination of title to 'Shamlat Deh' land, the jurisdiction to determine such right is only conferred upon revenue authorities, to the exclusion of the Civil Court, by the Act of 1961.

14. In this context, Section 7 of that Act is also relevant, which stipulates as follows:-

“7. Power to put Panchayat in possession of certain lands.-

(1) An Assistant Collector of the first grade having jurisdiction in the village may, either suo motu or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in the panchayat under this Act and put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887:

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.

(2) That Assistant Collector of the first grade shall by an order, in writing, require any person to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or unauthorised possession, at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum, having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as arrears of land revenue.

(3) The procedure for deciding the question of title under

proviso to sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908.

(4) If any person refuses or fails to comply with the order of eviction passed under sub-section (1), within ten days of the date of such order, the Assistant Collector of the first grade may use such force, including police force, as may be necessary for putting the panchayat in possession.

(5) Any person who is found in wrongful or unauthorised possession of the land or other immovable property in shamilat deh and is ordered to be ejected under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years.”

Hence, a reading of these provisions shows that it is very obvious that even where a question of title is involved, jurisdiction in respect of land shown to be Shamlat Deh in the revenue record, does not lie with the Civil Court but with the Assistant Collector under the proviso to Section 7(1), against which an appeal would lie to the Collector under Section 13-B.

15. It is not in dispute that the orders which were sought to be set-aside by way of declaration, in the suit out of which this appeal arises, were orders passed by revenue authorities, under Sections 7 and 13-B of the Act of 1961 (as applicable to Haryana), the former of which relates to ejectment proceedings from 'Shamlat' land.

Thus, the only remedy against the aforesaid orders passed by the revenue authorities, was to challenge them by way of a writ petition before this Court, which remedy the appellants-plaintiffs' father and his lessee have already availed of.

Learned counsel for the appellant, when queried by this Court,

on the aforesaid provisions of the Act of 1961, though he attempted to, could not refute the legal proposition.

16. Thirdly, the appellants-plaintiffs having concealed the fact that their father and predecessor-in-interest, alongwith Yadram, had already filed Civil Writ Petition No.12603 of 1995, challenging the very same orders, the appeal in any case deserves to be dismissed on that score alone. The fact that the learned counsel was obviously instructed by the appellants that there was a writ petition pending in this Court, on the same cause of action, obviously means that the appellants were aware of its filing. Hence, that fact having been withheld from both the Courts below, the second appeal is to be dismissed on that short ground alone, even though it has been held by this Court to be not maintainable on the other grounds given hereinabove, in any case.

17. Consequently, this appeal is dismissed, even while setting aside the findings given on merits by the learned Courts below, on the validity of the orders dated 11.01.1995 and 26.06.1995. The validity of those orders, being subject matter of CWP No.12603 of 1995, would naturally, be adjudicated upon in that proceeding.

18. For having concealed the fact that CWP No.12603 of 1995 has been filed, the appellants are also saddled with costs of Rs.10,000/-, to be paid to the Haryana Legal Services Authority.

A copy of this order be placed on the case file of CWP No.12603 of 1995, so as to apprise the hon'ble Court hearing that writ petition, of the factum of this appeal having been filed by the successors-in-interest of Sital Dass, who is one of the petitioners in that writ petition.

Naturally, whatever has been observed by this Court hereinabove, is only in relation to the non-maintainability of the suit out of which this appeal arises, and not with regard to the merits of the orders passed by the revenue authorities, which are subject matter of CWP No.12603 of 1995.

4.3.2016

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(AMOL RATTAN SINGH)
JUDGE