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

**RSA No. 2186 of 2007 (O&M)
Decided on: 28.07.2017**

Shivala Vakya Gram Rania

.....Appellant

versus

Devi Lal and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Amarjit Markan, Advocate &
Mr. K.S.Boparai, Advocate
for the appellant.

Mr. Sandeep Punchhi, Advocate
for the respondents.

Rajbir Sehrawat, J.(Oral)

1. This case is heard as a part of a bunch of cases, i.e. RSA No. 2186 of 2007, RSA No. 3133 of 2001, CWP No. 4764 of 2001, CWP No. 4352 of 2001 and CWP No. 5033 of 2001. These cases have been heard together since one of the party i.e Shivala, claiming to be the owner of the land in question in all the cases, is the same in all the above-said cases and the remaining parties are either, admittedly, the tenants under that party or the Municipal Committee who claims its ownership over a part of land; on the ground that it became owner subsequently because it is so recorded in the revenue records.
2. However keeping in view the nature of the proceedings availed by the parties the appeals are being decided separately and the writ petitions are being decided separately.
3. Although cases are being decided separately however it is beneficial to mention some common facts in each of the judgments.
4. Undisputedly the Shivala is a religious institution. This religious institution was

given land measuring 100 *Bigha Pukhta* by the British Government of India vide order dated 08-03-1842; by way of grant in perpetuity. In the year 1954 this land was mutated in the name of Gram Panchayat Rania, (Now in District Sirsa) in the column of ownership but in the column of cultivation Shivala was entered as occupant of land as “Muafidar Bai-Tamam Puran Gir Chela Nand Gir”. Since on the basis of this change of entry the status of the Shivala as owner was sought to be disputed, therefore, The Shivala filed a civil suit against Gram Panchayat Rania for the declaration of its status as “Pattedar Doami” (Perpetual Lessee). The suit filed by Shivala was decreed on 29-10-1964 and this decree attained finality. Vide this decree, the Shivala was declared as “Pattedar Doami” (Perpetual Lessee) over the entire land (Measuring 97 Bighas Pukhta – as it measured on the date of filing the suit).

5. In the meantime the Consolidation proceedings took place in the village. During the Consolidation the entire land measuring 97 Bigha Pukhta (291 *Bigha Kacha*) was converted into land measuring 471 Kanal 18 Marla. This fact is not disputed by either party. Hence, the present proceedings relate to, in total, the land measuring 471 Kanal 18 Marlas, although individual cases involve different parcels of land out of this total land.

6. In the meantime, The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952 had come into being. Under this Act, the tenants who were having long possession and were not paying any rent beyond the land Revenue were declared to be owners of the land on which they were the tenants. Since, the Shivala was declared to be perpetual lessee over the entire land and it was not required to pay even the land revenue being *Muafidar*, besides not paying any rent to anybody, therefore, on the basis of the above-said decree dated 29-10-1964, the Shivala moved an application before the revenue authorities for entering its name as

owner of the land in question under Sections 3 to 5 of the above-said Punjab

Occupancy Tenants (Vesting of Proprietary Rights) Act 1952. Accordingly the revenue authorities entered Mutation No. 3614 sanctioned on 08-03-1967; entering the Shivala as the owner of the land and all the private parties in the present proceedings were recorded as tenants under the Shivala.

7. However, although the above-said decree dated 29-10-1964 was regarding the entire land measuring 471 Kanal 18 Marlas and the status of this entire land was also the same, however, while entering the aforesaid mutation of ownership; the Shivala was recorded as owner only qua the land measuring 376 Kanal 16 Marlas. Resultantly, the land measuring 95 Kanal 2 Marlas remained recorded under the ownership of the Gram Panchayat. No reason is discernible from the record as to why this land measuring 95 Kanal 2 Marlas was not mutated in the name of Shivala when the remaining entire land was mutated in its name.

8. Feeling aggrieved by the incomplete mutation of ownership by revenue authorities, the Shivala filed another Civil Suit for further declaration that entry regarding 95 Kanal 2 Marla in the name of Gram Panchayat was wrong and was liable to be corrected in favour of Shivala. The suit was decreed on 30-08-1968 and a direction was issued to correct the entries in Jamabandis by entering the name of Shivala in place of the Gram Panchayat in the column of ownership regarding this land measuring 95 Kanal 2 Marlas as well. This decree attained finality as none of the parties challenged it in appeal. Mutation of this land was also entered in the name of the Shivala on 25-05-1970. However this Mutation was also entered as 'Pattedar Doami' instead of absolute owner.

9. Despite above-said decree and mutation in favour of the Shivala, the revenue authorities, while preparing Jamabandi of the land in question in the year 1972-73 entered the name of Gram Panchayat Rania in the column of ownership and the Shivala was entered in the column of cultivation.

10. On the basis of these entries the Gram Panchayat Rania filed an eviction

application under Section 7 of the Punjab Village Common Lands Act 1961 against the Shivala. However, that application was dismissed by the Assistant Collector I Grade vide order dated 15-12-1992.

11. Thereafter, the area of Gram Panchayat Rania was converted to Municipal Committee Rania. Hence Municipal Committee Rania again filed eviction petition against Shivala under Sections 4, 5 and 7 of the Haryana Public Premises Act 1972. Some of the private parties in the present bunch of cases had also filed such petitions against Shivala. These petitions filed by Municipal Committee Rania and also others were dismissed by Collector Ellenabad vide order dated 12-05-1994. The appeal filed by Municipal Committee Rania was also dismissed by the Commissioner on 14-12-1994.

12. Therefore, feeling constrained by repeated harassing proceedings against it, the Shivala filed Civil Suit No. 19-C dated 26-03-1996 challenging all the revenue entries in favour of the Gram Panchayat since 1969-70 till-date; regarding the abovesaid land measuring 95K-2M and claimed their Corrections. That suit was dismissed on the ground of limitation. The Shivala preferred appeal against this dismissal of its suit. That Civil Appeal No. 114 of 1999 was also dismissed by lower appellate court vide the judgment and decree date 04-05-2001. Hence the **RSA No. 3133 of 2001** has been filed by the Shivala.

13. Since the Shivala had also filed eviction petitions before revenue authorities against the tenants sitting on the other lands regarding which it had been entered as the owner, therefore, one **Ramjas** filed another Civil Suit No. 295 dated 31-05-1996 against the Shivala to the effect that he was in possession of land measuring 87K-7M (This is the land other than 95K-2M abovesaid) mentioned in the plaint for long time and the decree dated 29-10-1964 had declared the Shivala only as a Pattedar Doami and not the owner and that the mutation dated

08-03-1967 was wrongly entered showing it to be owner and that the Shivala had no right to get the plaintiff evicted by moving the authorities in Form K-1 under Punjab Security of Land Tenures Act. The Trial Court dismissed the suit on 29-07-2003 holding that the Shivala has been rightly entered as owner of the land in the impugned mutation since the Shivala had all the attributes of an owner. The plaintiff in that suit challenged the decision of the trial court in appeal before the Additional District Judge, Sirsa. The lower Appellate Court allowed the appeal on 16-05-2007 holding that the Shivala was held to be a Pattedar Doami and not an owner by the decree dated 29-10-1964. Therefore, the mutation dated 08-03-1967 and subsequent revenue entries showing the Shivala to be the owner are wrong. To challenge this judgment and decree of the Additional District Judge, Sirsa the **Shivala** has filed the **RSA No. 2186 of 2007**.

14. In the meantime, as stated above, the Shivala filed application for eviction against abovesaid Ramjas son of Purkha on Form-K-1 (as provided under Section 9 of Punjab Security of Land Tenures Act). That application was allowed on 14-10-1997 and the eviction order was passed against Ramjas, by the Assistant Collector. These persons filed appeal challenging the order of Assistant Collector but the same was also dismissed by the Collector on 10-11-1998. In these proceedings the further Revision of these persons was dismissed by Commissioner on 10-05-2000 and the ROR was dismissed by the Financial Commissioner on 13-01-2001. So the **CWP No. 4352 of 2001** had been filed by above-said **Ramjas** Challenging the order of the revenue authorities ordering their eviction from the land of Shivala. After his death his legal representatives i.e., Devi Lal etc. are continuing that Civil Writ Petition.

15. Lachhman Singh etc. had also filed Civil Suit No. 561-C dated 24-10-1996 against Shivala for declaration that the Shivala was not the owner of the land

measuring 97K-2M which was under their possession and that the mutation dated 08-03-1967 on the basis of the decree dated 29-10-1964 (the first decree obtained by the Shivala) and the subsequent entries showing the Shivala as owner in the revenue records are wrong and that Shivala had no right to seek any ejectment proceedings against them. This suit was dismissed on 30-09-2002. The said Lachhman Singh etc. filed Civil Appeal No. 90 dated 12-11-2002 before the District Judge. However the same was also dismissed on 11-01-2005. Lachhman Singh etc. preferred **RSA No. 1023 of 2008**. However, even that RSA has been dismissed by this Court on 11-11-2009.

16. In the meantime, the Shivala had filed application for ejectment against Lachhman Singh etc., on Form-K-1 (as provided under Section 9 of Punjab Security of Land Tenures Act). That application was allowed on 14-10-1997 and the eviction order was passed against Lachhman Singh etc., by the Assistant Collector. These persons filed appeal challenging the order of Assistant Collector but the same was also dismissed by the Collector on 10-11-1998. In these proceedings, further Revision of these persons was dismissed by Commissioner on 10-05-2000 and the ROR was dismissed by the Financial Commissioner on 13-01-2001. So the **CWP No. 4764 of 2001** has been filed by **Lachhman Singh etc.** challenging the order of the revenue authorities ordering their eviction from the land of Shivala.

17. Similar ejectment proceedings were filed by the Shivala against **Ram Karan etc.** regarding land measuring 95K-2M and these proceedings ended against Ram Karan etc. in the same manner as against other abovesaid tenants. So they have filed similar **CWP No. 5033 of 2001**. However they never filed Civil Suit Challenging ownership of Shivala like other persons.

18. One more fact needs to be noticed that in the meantime the writ petitioners had

moved the revenue authorities claiming that the land with the Shivala was Surplus Land and it be declared as such. Since the Shivala was not a religious institution, therefore it could not claim exemption from the Surplus Law. On these proceedings, the learned Commissioner, Hissar passed the final order dated 14-02-2005 holding the Shivala to be a religious institution and held that the land with Shivala was not surplus land and that the Shivala; as an owner; was entitled to hold the entire land.

19. In view of the above-said factual perspective the respective cases are to be considered. Since in appeals, the decrees would be required to be passed, therefore the Regular Second Appeals shall be taken taken up separately. The Writ Petitions involve the same points to be considered by this court, therefore, the Writ Petitions shall be taken up collectively.

RSA No. 2186 of 2007

1. As mentioned above this appeal is filed by the Shivala and this arises from the judgment of reversal against the Shivala; in the proceedings initiated by the Ramjas, through the Civil Suit No. 295 dated 31-05-1996; which was filed by him challenging the revenue entries qua the suit land in the favour of 'Shivala'.
2. The brief facts of the case are that the predecessor-in-interest of the respondent/Ramjas filed a suit for declaration to the effect that the present appellants 'Shivala' is not the owner of the suit land measuring 87K-7M, described in the head-note of the plaint and further that the Mutation No. 3614 dated 08-03-1967 on the basis of the decree dated 29-10-1964 and the subsequent record i.e. the Jamabandi and Khasra Girdawaris showing the appellant 'Shivala' to be the owner are against the law, against the facts, without authority and without jurisdiction. Still further, the declaration was sought that the appellant 'Shivala' had no right to initiate the proceedings action against the plaintiff who is in possession of the suit land. Still further an injunction was

sought by the respondent against the appellant 'Shivala' against interfering in the possession of the respondent.

3. It was pleaded in the suit that the 'Shivala' had filed a civil suit No. 817 of 1963 against Gram Panchayat Rania in which the decree dated 29-10-1964 was passed by the civil Court declaring the 'Shivala' as pattedar doami (perpetual lessee) and not the owner of the suit land. It was further pleaded that on the basis of the said judgment and decree, mutation No. 3614 was sanctioned on 08-03-1967, which was wrongly entered as owner; as the same is liable to be entered in the name of the defendant only as a lessee. Mutation as owner is totally false, wrong against the law. It was still further claimed that the subsequent Jamabandi and Khasra Girdawries are therefore liable to be set-aside. The entry of the 'Shivala' is liable to be corrected as perpetual lessee and not as the owner. The further pleading of the plaintiff was that since the 'Shivala' itself is a tenant, therefore it has no right to eject another tenant, that is, the plaintiff. However about a month back the plaintiff came to know that the defendant had filed an application for eviction on form K-1 against the plaintiff before the Court of Assistant Collector 1st Grade Ellenabad, claiming it to be owner of the suit land. The defendant is bent upon to oust and to dispossess the plaintiff from this land, illegally and forcibly. Hence the suit for declaration and injunction was filed.

4. On being put to notice, the present appellant 'Shivala', defendant in the suit, appeared and filed the written statement asserting that the defendant is the owner of the suit land and the plaintiff is only in cultivating possession of the suit land as a tenant on payment of one third Batai under the defendant. It was further pleaded that the ejectment order has already been passed against the plaintiff by Assistant Collector 1st Grade Ellenabad and even the appeal filed against that order by the plaintiff has also been dismissed. It was further claimed that being

perpetual lessee, the defendant was rightly recorded in the record as the owner by operation of law. It was further pleaded that the defendant was not paying any land revenue being grantee of the perpetual lease by the then Govt. since 1842. It was further claimed that the perpetual lessee has all the trappings of an owner. Therefore 'Shivala' had become owner of the suit property. Hence in accordance with the judgment and decree dated 29-10-1964 the present appellants/ 'Shivala' was rightly entered as owner and this entry was rightly continued in the subsequent records.

5. Parties led their respective evidence.

6. After hearing the parties and appreciating the evidence, the Trial Court dismissed the suit filed by the plaintiff. While dismissing the suit, the Trial Court held that it is the admitted fact that the plaintiff is the tenant under the defendant 'Shivala'. Therefore the plaintiff is estopped from questioning the title of the defendant 'Shivala'. The Trial Court further held that the record shows that the Gram Panchayat and subsequently the Municipal Committee had taken steps to get the 'Shivala' evicted from the suit land but their proceedings were dismissed treating the defendant 'Shivala' as the owner of the suit land. Otherwise also, the Trial Court held, since the defendant 'Shivala' has been shown as 'Muafidar', therefore, it has all the characteristics of an owner. Therefore the 'Shivala' has rightly been entered as the owner of the suit claimed in the revenue records. Still further the Trial Court held that the suit filed by the plaintiff was otherwise also not maintainable because the tenant cannot question the title of the person under whom he entered as a tenant and therefore, the plaintiff could not have filed suit for correction of entries against the defendant. Still further on the question of limitation; the Trial Court held that the mutation No. 3614 was entered on 08-03-1967 whereas the present suit has been filed only on 31-05-1996. No explanation has been given by the plaintiff as to why the entries were not challenged earlier.

Hence the cause of action had accrued to the plaintiff much earlier. However, the plaintiff has filed the suit after a lapse of 32 years, which is much beyond the limitation. Hence the suit filed by the plaintiff was also held to be time barred. Against this judgment and decree passed by the trial Court, the appeal was filed by the plaintiff before the lower appellate court.

7. The lower Appellate Court accepted the appeal and ordered that the suit of the plaintiff be decreed. While decreeing the suit, the Lower Appellate Court held that since the earlier decree in favor of 'Shivala' was also passed only to declare it as a perpetual lessee, therefore, entry in the revenue record on the basis of this decree; as owner was not legally sustainable. It was further held that if the 'Shivala' wanted to acquire the ownership of the suit property then it shall have to file suit for declaration as owner. The lower appellate court further held that in none of the documents/decisions in the litigation between the Gram Panchayat, Municipal Committee and the 'Shivala', the 'Shivala' has been declared to be owner. Otherwise, the lower Appellate Court held, since the 'Shivala' was declared as perpetual lessee it is clearly a tenant within Section 4 (5) of the Punjab Tenancy Act and it cannot be a land owner under Section 3 (2) of the Punjab Land Revenue Act. It was further claimed that a lessee cannot take benefit of Section 14 of the Punjab Security of Land Tenures Act to eject his tenant. Hence, the findings of the trial court were reversed. However, the finding regarding the limitation recorded by the trial court was not even touched by the lower Appellate Court.

8. Aggrieved against the judgment and decree passed by the lower Appellate Court the 'Shivala', defendant in the suit has filed the present appeal. To support the appeal the learned counsel for the appellant has relied upon judgments passed by this Court in the cases of **1981 PLJ 447** titled as ***Baba Badri Dass Versus Sh.***

Dharma and others and ***2009(1) RCR (Civil) 208*** titled as ***Jodh Singh and another versus Smt. Shanti Bai***. On the other hand, the counsel for the respondents/plaintiff has repeated his argument that the earlier decree passed in favour of 'Shivala' was regarding declaring it to be a perpetual lessee and not as an owner, therefore, the entries in the revenue record showing the 'Shivala' to be the owner are not legally sustainable.

9. Having heard the counsel for the parties, this Court is of the considered opinion that the argument of the learned Counsel for the appellant deserves to be sustained. Admittedly and as proved on record, the appellant 'Shivala' is recorded as a 'Perpetual Tenant' in the revenue records without payment of any rent to anybody. Even the earlier decree of the civil Court was there to declare the status of the 'Shivala' as the perpetual lessee. It is not liable even to pay the land revenue being 'Muafidar Bai Tamam' under the Grant of the land in its favour. Under section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952 a 'Perpetual Tenant' becomes the owner by operation of the statute. A Division Bench of this Court has held in the case of **Baba Badri Dass (Supra)** that a 'Perpetual Tenant' partakes the characters of an 'Occupancy Tenant'. It is held in this case that the concept of 'Perpetual Tenant' has become non-existent with coming into force of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952. This Act came as an agrarian reform to remove the intermediaries. Hence a 'Perpetual Tenant' is made and becomes owners of the land on which he is a perpetual tenant. This judgment was further followed by a Single Bench of this Court in case of ***Jodh Singh and another (Supra)*** where it was held that under the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952 a 'Perpetual Tenant' automatically becomes owner of the land by operation of law. Hence the appellant / defendant

‘Shivala’ became the owners of the suit land. Hence Ld. Trial Court had rightly dismissed the suit filed by the respondents herein. The finding recorded by the lower appellate Court in this regard is set aside and the finding recorded by the Trial Court in this regard is upheld.

10. Another reason for the appellant to be held as an owner is that this court has already upheld the claim of ownership of the appellant ‘Shivala’ regarding the land received under the same Grant in the same capacity, in ***RSA No. 1023 of 2008, Lachhman Singh and another versus Shivala Vakya Gram Rania and others***, decided on 11-11-2009. This decision has already attained finality since it has not been challenged by anybody.

11. Otherwise also the Trial Court had held the suit filed by the respondents to be time barred. That finding has not even been challenged by the respondents before the lower Appellate Court. Even the lower Appellate Court has not set aside the finding recorded by the Trial Court regarding the suit being time barred. Hence the finding recorded by the Trial Court regarding limitation deserves to be upheld.

12. No other argument was raised by the learned counsel for the parties.

13. In view of the above circumstances, the judgments and decrees passed by the Lower Appellate Court are set aside. The judgment and decree passed by the Trial Court are upheld and the suit filed by the respondents is ordered to be dismissed.

28th July, 2017

shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes