

**RSA Nos.343 & 510 of 1985 (O&M) and
CR No.1538 of 1987 (O&M)**

1

301

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

Date of decision : 20.08.2018

1. RSA No.343 of 1985 (O&M)

Phul Singh (deceased) through LRs and others

... Appellants

Versus

Ram Dei and others

... Respondents

2. RSA No.510 of 1985 (O&M)

Ram Dei and others

... Appellants

Versus

Phul Singh (deceased) through LRs and others

... Respondents

3. CR No.1538 of 1987 (O&M)

Phul Singh (deceased) through LRs and others

... Petitioners

Versus

Ram Kishan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellants in RSA No.343 of 1985 and
for the petitioners in CR No.1538 of 1987 and
for the respondents in RSA No.510 of 1985.

Mr. Ravi Kapoor, Advocate
for the appellants in RSA No.510 of 1985.

Mr. Sanjay Mittal, Advocate
for respondent No.29 in RSA No.343 of 1985.

**RSA Nos.343 & 510 of 1985 (O&M) and
CR No.1538 of 1987 (O&M)**

2

AMIT RAWAL, J.

This order of mine shall dispose of the aforementioned two regular second appeals and one revision petition.

RSA No.343 of 1985 titled as ***“Phul Singh (deceased) through LRs and others V/s Ram Dei and others”*** has been preferred by the defendants, arising out of civil suit No.140 of 1982, which was decreed by the trial Court by negating the plea of the defendants of having become owner by way of adverse possession, however, in appeal, the lower Appellate Court rendered the finding on Issue No.8A and 8-B by relying upon the provisions of Section 4 of the Punjab Village Common Lands Regulation Act, 1961 (in short 'the 1961 Act'), as applicable to Haryana and upheld the judgment and decree of the trial Court viz-a-viz the possession of the vacant land, but declined the relief with regard to the constructed portion. It is, in these circumstances, the other regular second appeal bearing ***RSA No.510 of 1985*** titled as ***“Ram Dei and others V/s Phul Singh (deceased) through LRs and others”*** has been preferred by the plaintiffs.

CR No.1538 of 1987 has also been preferred by Phul Singh (deceased) through LRs and others, the defendants in the aforementioned suit, against the order dated 17.02.1984, dismissing the civil miscellaneous application No.4/6 of 1983 filed under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure for setting aside the order dated 18.07.1978, whereby the suit claiming declaration with consequential relief of possession in alternative, which was dismissed on 08.02.1966, but in second appeal, the matter was remitted to the trial Court and after remand, it

**RSA Nos.343 & 510 of 1985 (O&M) and
CR No.1538 of 1987 (O&M)**

3

was dismissed vide order dated 18.07.1978 by invoking the provisions of Order 17 Rule 3 CPC. The appeal preferred against dismissal of the application before the District Judge was also dismissed vide order dated 23.01.1987.

Since the parties to the *lis* in all the aforementioned cases, much less, the properties, in dispute, are identical, therefore, all the case are being decided by a common judgment.

Plaintiffs instituted the aforementioned suit for possession of agricultural land measuring 7 bighas 12 biswas comprised in Khewat No.267 Khatauni No.553 to 555, Khasra Nos.1819 to 1828 and 1830 to 1837 situated in Village Beri Khas, as per the jamabandi for the year 1958-59 and in exchange after consolidation of holdings, new Nos. Rectangle No.71 Killa No.26 (1-6), 27 (1-12), 28(0-13), 29 (0-8), 30 (0-6), 31 (0-6), 32 (0-8), 33 (35-12) situated in Village Beri Khas, Tehsil Jhajjar, on the premise that the aforementioned land was allotted during consolidation of holdings and had been in cultivation of defendant Nos.1 to 4 as tenants *gair marooshi* (without rent) under the plaintiff and defendant No.5 and their ancestors. The plaintiff and defendant No.5 as well as their ancestors filed a suit for ejectment against defendant Nos.1 to 4, which was, vide order dated 08.09.1952, decreed by the Collector, Rohtak. In the proceedings taken for execution of the aforementioned order, the plaintiff, defendant No.5 and their ancestors had taken the possession on 11.12.1964, but thereafter defendant Nos.1 to 4 filed a suit bearing No.449 for declaration and permanent injunction against the plaintiffs, which was dismissed on 08.02.1966. Appeal against the same was also dismissed on 05.05.1967,

**RSA Nos.343 & 510 of 1985 (O&M) and
CR No.1538 of 1987 (O&M)**

4

however, in regular second appeal, this Court vide order dated 11.03.1977, dismissed the suit in respect of the cultivated land and remanded the case in respect of the land under the house. As indicated above, the suit was dismissed vide order dated 18.07.1978 under the provisions of Order 17 Rule 3 CPC, but in the meantime, as per the averments in the plaint, the defendants forcibly and illegally had taken the possession of the suit land and unauthorizedly constructed two *kothas*, therefore, a cause of action arose to file the suit.

Defendant No.5 was served, but did not appear and proceed *ex parte*. However, defendant Nos.1 to 4 contested the suit and denied the factum of the land having been allotted mentioned in para No.2 in lieu of the land mentioned in para 1 of the plaint and allegations, that the plaintiffs and defendant No.5 are owners in possession thereof and it was averred that that they were not tenants under the plaintiff or defendant No.5 or their ancestors, but have been in continuous possession as owner prior to the year 1887, since the time immemorial. Decree of the Revenue Court was at the back of defendant Nos.1 to 4, therefore, was without jurisdiction as it was contrary to the provisions of Sections 9, 23 and 14-A of the Punjab Security of Land Tenures Act, 1953 (in short 'the 1953 Act'). Even the factum of filing of suit bearing No.449 by the defendants was denied. Since they had been in peaceful possession as owners of the suit land openly and the entries in the revenue record were contrary to the facts. It was alleged that the suit land was *shamlat pana baithan*. The suit was also stated to be barred by law of limitation, for, defendant Nos.1 to 4 had become owners by way of adverse possession owing to the efflux of time. The defendants had also

**RSA Nos.343 & 510 of 1985 (O&M) and
CR No.1538 of 1987 (O&M)**

5

taken the plea of having become owner with regard to the constructed portion henceforth.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether the plaintiffs were owners in possession of the property fully described and detailed in para 1 of the plaint? OPP*
- 2. Whether the property detailed in para 2 of the plaint allotted in lieu of the land described in para 1 of the plaint, in the process of consolidation of holdings? OPP*
- 3. Whether the defendants No.1 to 4 are owners in possession of the property before the settlement of 1887 as alleged? OPD*
- 4. Whether the decree of the court dated 8.9.1952 is void, illegal and without jurisdiction as alleged? OPD*
- 5. Whether the suit is beyond time? OPD*
- 6. Whether the suit is not maintainable in view of additional plea No.2 of the W.S.? OPD*
- 7. Whether the plaintiffs are estopped from filing the suit for the reasons mentioned in additional plea No.3 of the written statement? OPD*
- 8. Whether the defendants have become owners of the property by adverse possession as alleged? OPD*
- 9. Relief.*

Both the parties in support of their respective case led evidence. The plaintiff brought on record (Ex.P1 to P-4) i.e. revenue record to show the allotment of land and exchange, as well as judgment dated 05.05.1967, whereby the suit and the appeal of the defendant herein were dismissed. On the other hand, the defendants in support of their pleas brought on record

**RSA Nos.343 & 510 of 1985 (O&M) and
CR No.1538 of 1987 (O&M)**

6

various documents.

The trial Court on the basis of the evidence by rejecting the plea of having become owner by way of adverse possession decreed the suit. Defendants preferred the appeal before the lower Appellate Court. During the pendency of the appeal, the lower Appellate Court in view of the fact that parties to the *lis*, had taken the stand with regard to the provisions of 1961 Act, framed the additional issue Nos.8-A & 8-B and sought the report from the trial Court. For the sake of brevity, the additional issues read as under:-

"8-A Whether the defendant-appellants had constructed houses in the land in dispute and if so when and to what extent of area covered underneath the house? OPD

8-A If issue No.8-A is proved, what is the effect of Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961."

The trial Court vide order dated 13.08.1984 rendered the finding on the aforementioned issues against the defendants.

On consideration of the evidence and the order on the additional issues, the lower Appellate Court modified the decree of the trial Court with regard to the possession of only the land without construction, but rendered the finding in favour of the defendants by protecting their possession of the area shown in Ex.D.W.R3/1 (site plan/map), which formed part of the decree sheet. It is, in these circumstances, as noticed above, two regular second appeals have been filed.

Mr. Amit Jain, learned counsel appearing on behalf of the appellants-defendants in RSA No.343 of 1985 and respondents in RSA No.510 of 1985, submitted that long and continuous possession of the

**RSA Nos.343 & 510 of 1985 (O&M) and
CR No.1538 of 1987 (O&M)**

7

defendants had been proved through the documentary evidence. The possession of the appellants-defendants had been exclusive and to the knowledge of the entire world, much less, that of the plaintiff, therefore, the ingredients of *animus possidendi* have been proved to the hilt. In other words, the plaintiffs had extinguished the right in the property as per the provisions of Section 27 of the Limitation Act. The decree of the Collector dated 08.09.1952 was illegal and in effective. The plaintiffs miserably failed to prove, that they had, in pursuance to the decree of the Collector, taken the possession of the suit land on 11.12.1964 as alleged. The suit was barred by law of limitation. The plaintiffs miserably failed to prove that the land, in question, was allotted during the consolidation proceedings. There is a misreading and misinterpretation of the jamabandis and khasra girdawaris. The suit land was *shamlat pana baithan* and therefore, in view of the provisions of 1961 Act, the plaintiffs had no right or *locus standi* to institute the suit.

While opposing the plea of the plaintiffs in RSA No.510 of 1985 viz-a-viz the finding rendered on Issue Nos.8-A and 8-B against the plaintiffs supported the judgment of the lower Appellate Court by relying upon the provisions of Section 4 (1) (b) of the 1961 Act, to contend that owing to non-obstante clause, any agreement, instrument, customs or usage or the decree or order of the Court will not affect the right, title and interest in the land, which is situated within or outside the *abadi deh* of a village and is under the house owned by a non-proprietor, which even on commencement of *Shamilat* law shall deem to have been vested in such non-proprietor.

**RSA Nos.343 & 510 of 1985 (O&M) and
CR No.1538 of 1987 (O&M)**

8

In alternative, it was submitted that in case, this Hon'ble Court does not agree with the contentions of the plaintiffs viz-a-viz the findings on issue Nos.8A and 8B, the revision petition bearing CR No.1538 of 1987 claiming relief of declaration on the same point as on which the issues, aforementioned, have been framed would be rendered infructuous.

Mr. Ravi Kapoor, learned counsel appearing on behalf of the appellant(s)-plaintiff(s) in RSA No.510 of 1985 and Mr. Sanjay Mittal, learned counsel appearing on behalf of respondent No.29 in RSA No.343 of 1985, submitted that their interest in the suit property is identical and common. The possession of the defendants cannot be protected as per the provisions aforementioned, as it applies to the non-proprietor. The issue with regard to the proprietorship and non-proprietorship was never raised by the defendants. Their possession is illegal and unauthorized, therefore, could not be retained, even if, they had constructed the house. In other words, it was contended that the defendants miserably failed to prove the ingredients of adverse possession by bringing the case within the provisions of Article 65 of the Limitation Act. By taking the plea of adverse possession, the defendants had admitted the title and ownership of the plaintiffs and therefore, they cannot be permitted to take this plea, moreover, the factum of allotments and exchange of land during the consolidation proceedings was also not emphatically denied, therefore, all the averments made in the corresponding paragraph of the plaint deemed to be admitted. In such circumstances, the plaintiffs cannot be held liable for not leading evidence. The suit area cannot be considered as *shamlat deh* as it was outside the *abadi deh*, since 1947 and had been in cultivation

**RSA Nos.343 & 510 of 1985 (O&M) and
CR No.1538 of 1987 (O&M)**

9

possession of the plaintiffs and therefore, the provisions of Section 4(1)(b) of the 1961 Act, cannot be pressed into service. The lower Appellate Court did not comprehend the law, but rendered finding merely on point as the 1961 Act only applies to *shamlat deh*, whereas the suit land was/is admitted *shamlat pana baithan* as evident from the jamabandis (Ex.P1 and Ex.P2). The defendants failed to lead any revenue record to show that the suit area was ever reduced. Their status was of tenants at will and any tenant cannot assume the status of owner by efflux of time, therefore, question of vesting of the house to non-proprietors within municipal area does not arise, thus, urges this Court for setting aside the findings of the lower Appellate Court on Issue Nos.8A and 8B.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that there is no merit and force in the submissions of Mr. Amit Jain and Mr. Ravi Kapoor viz-a-viz the findings rendered by the lower Appellate Court, granting decree of possession in respect of land other than mentioned in the site plan/map (Ex.D.W.R-3/1).

It would be apt to reproduce the provisions of Section 4 of the 1961 Act, which reads thus:-

"Section 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 interest whatever in the land:-

**RSA Nos.343 & 510 of 1985 (O&M) and
CR No.1538 of 1987 (O&M)**

10

(a) Which is included in the Shamilat deh of any village and which has not vested in a Panchayat under the Shamilat law shall at the commencement of this Act vest in a Panchayat constituted for such village, and where no such Panchayat has been 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 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 interests 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, Basikhopohus, Saunjidars, Muqarrirdars;

(ii) rights of persons in cultivating possession of Shamilat deh, for more than twelve years 1[immediately preceding the commencement of this 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."

**RSA Nos.343 & 510 of 1985 (O&M) and
CR No.1538 of 1987 (O&M)**

11

On plain and simple reading of the aforementioned provisions of the 1961 Act, as applicable to Haryana, decree and the order of the Court will not take away right, title and interest of the land situated within or outside *abadi deh* of a village and which is under house owned by a non-proprietor. Admittedly, the defendants, as per the pleadings of the plaintiffs, had raised two *kothas*, after having allegedly taken forcible possession.

Now the question to be determined by this Court as to whether the aforementioned provisions of the 1961 Act would apply or not?

To answer the question, posed hereinabove, on plain and simple perusal of the copy of the jamabandis (Ex.P1 and Ex.P2), status of the land was/is *shamlat pana baithan*.

Concededly, as per the decree of Collector dated 08.09.1952 (Ex.P3 to Ex.P5), defendant Nos.1 to 4 were ordered to be ejected in the capacity as tenants, but the possession of the land including the constructed portion derived from 1967-68 had been shown in favour of the defendants, but of course not forcible. The defendants have proved on record the site plan (Ex.D.W.R.3/1 to Ex.D.W.3.R/5) relating to the same land, showing the construction, but not its age and period. The site plan (Ex.DWR3/1) was submitted before the Municipal Committee, Beri, for approval, which showed that some more construction than the one as alleged in the plaint, has been raised. The plain and simple reading of the provisions of the 1961 Act reveals that non-proprietor can retain the possession. There is no force in the arguments of Mr. Kapoor that the provisions of the 1961 Act would not apply.

**RSA Nos.343 & 510 of 1985 (O&M) and
CR No.1538 of 1987 (O&M)**

12

As an upshot of my observations, I am of the view that the judgment and decree of the lower Appellate Court, granting the decree of possession in favour of the plaintiffs, by protecting the possession of the defendants as per site plan, does not call for any interference. Accordingly, both the appeals are dismissed.

As the consequential effect of the decision of the aforementioned appeals, revision petition bearing CR No.1538 of 1987 arising out of the order, as noticed above, has been rendered infructuous, accordingly, the same is also disposed of having become infructuous.

20.08.2018
Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned

✓
Yes/ No

Whether Reportable

✓
Yes/ No