

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

317

RSA No.2389 of 1988.
Date of Decision: 15.03.2018.

State of Punjab and another

....Appellants.

Versus

Mahesh Kumar

....Respondent.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Rajesh Bhardwaj, Senior Deputy Advocate General, Punjab
for the appellants.

None for the respondent.

Shekher Dhawan, J.

Present Regular Second Appeal is directed against the concurrent findings of both the Courts below, whereby, suit filed by the respondent-plaintiff for permanent injunction was decreed by the Court of first Instance vide judgment and decree dated 23.04.1987. The appeal filed by appellants-defendants was also dismissed by learned Additional District Judge, Bathinda vide judgment and decree dated 25.05.1988.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that the plaintiff filed a suit for permanent injunction restraining the defendants from assessing, levying or recovering a sum of Rs.23746.32P. as royalty on the brick earth. The notice dated 14.01.1985 demanding this

amount issued by defendant No.2 is under challenge being void and illegal. As per plaintiff, he was running a brick kiln in the revenue estate of Burj Kishan Singh Wala while the earth used for manufacturing bricks was taken from the land of Bhucho Mandi owned by private person. The brick was being made from the earth of other persons on payment of price. The demand notice made by defendant No.2 for the recovery of royalty is illegal.

4. The defendants contested the suit taking various preliminary objections. It was asserted that the vessel of brick kiln is installed in Burj Kalan Singh Wala and the excavation of brick earth was also carried out from the land of that village. The Government has a right to charge royalty over brick earth even if the Government is not owner of the land. The plaintiff is bound to pay the amount demanded by the defendants.

5. On the basis of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the assessment of royalty made by the defendants on the brick earth is void, illegal on the grounds alleged in the plaint? OPP.
2. Whether the jurisdiction of this court is barred under Section 158 of the Punjab Land Revenue Act? OPD.
3. Whether the suit is barred under Section 41(4) of the Specific Relief Act? OPD.
4. Whether the suit is barred on the principles of resjudicata? OPD.
5. Whether the suit is not maintainable for want of notice under Section 80 CPC? OPD.
6. Whether the plaintiff is entitled to the injunction prayed for? OPP.
7. Relief.

6. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance decided issues No.1 and 2 in favour of the plaintiff and issues No.2 to 5 against the defendants and, consequently, the suit of the plaintiff was decreed.

7. The defendants remained unsuccessful as their first appeal was dismissed by the learned Additional District Judge, Bathinda on 25.05.1988. Hence, this Regular Second Appeal.

8. The submissions made by learned counsel for the appellants State of Punjab have been considered and record of the case has been perused.

9. When the appeal was admitted, though no substantial question of law was framed, however, during the course of arguments, the following substantial questions of law arise for consideration:-

“1. Whether brick earth excavated from private land would vest in State by virtue of notification dated 01.06.1958?

2. Whether the State is entitled to claim royalty on the brick earth extracted by brick kiln owner?”

10. The matter in controversy has been recently decided as per judgment from Hon'ble the Supreme Court in case of **State of Punjab Vs. M/s Vishkarma and Co., 1993(1) JT 448** and it was held as under:-

“Brick-earth with which we are concerned in the present appeals, is a minor mineral was not disputed, although it is not any of the mines or minerals corned by Section 41 of the Revenue Act as would make it become the property of the State. If the owner of such brick-earth is the State of Punjab, liability to pay royalty for removal of such brick-earth and to obtain

permit or licence for such removal necessarily arises because of the operation of the Act and the Rules. But the courts below have concurrently found that the present appeals have arisen in lands which formed the estates of the private owners and as such the same belonged to such land-owners. It is so found on their reading of the entries in Wajib-ul-arz pending to the concerned estates. Wajib-ul-arz is a document included in the record-of-rights cannot be disputed since it contains the statements on matters envisaged under clauses (a) and (b) of subsection (2) of section 31 of the Act. According to the courts below Wajib-ul-arz document being record-of-rights of estates completed after 18th day of November, 1871, and there being nothing expressly stated in them that the forest or quarry or land or interest in the estates belong to the Government, the lands in such estates including brick-earth in them shall be presumed to belong to the concerned land-owners as is declared in sub-section (2) of section 42 of the Revenue Act.”

11. Learned Senior Deputy Advocate General appearing for the appellant-State of Punjab has not disputed the fact that after passing of the judgment by the learned Appellate Court, the controversy has been set at rest as per judgment from Hon'ble Supreme Court.

12. The plaintiff had produced Ex.P2 Wajib-Ul-Arz for the year 1962. Undisputedly, the same was prepared after 1871. In that way, sub Section (2) of Section 42 of the Land Revenue Act would be applicable. If the ownership of the State Government regarding brick has not been specifically mentioned, it has to be presumed that the same belongs to the land owner. The entry in Wajib-Ul-Arz Ex.P2 reads as under:-

“At the present there is no Nazul land, forest stones, kankaar mine etc. in the land. However, in future if any such things is discovered it would be owned by the Govt.”

13. Admittedly, the brick earth has been declared as minor mineral vide notification dated 01.06.1958. It is also an admitted fact that the land from which brick earth has been excavated belongs to private owner and plaintiff is lessee thereon. In such circumstances, provisions of Section 42 of the Land Revenue Act become relevant to determine whether brick earth vests in State or landowner. Section 42 of the Punjab Land Revenue Act is reproduced below:-

“42. Presumption as to ownership of forests, quarries and waste lands:-

(1) When in any record-of-rights completed before the eighteenth day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied, deserted or waste land, spontaneous produce or other accessory interest in land belongs to the land-owners, it shall be presumed to belong to the Government.

(2) When in any record-of-rights completed after that date it is not expressly provided that any forest or quarry or any such land or interest belongs to the Government, it shall be presumed to belong to the land-owners.

(3) The presumption created by sub-section (1) may be rebutted by showing

(a) from the records or report made by the assessing officer at the time of assessment; or

(b) if the record or report, is silent, then from a comparison between the assessment of villages in which there existed, and the assessment of village of similar character in which there did not exist, any forest or quarry, or any such land or interest.

that the forest, quarry, land or interest was taken into account in the assessment of the land-revenue.

(4) *Until the presumption is so rebutted, the forest, quarry, land or interest shall be held to belong to the Government.”*

14. Further, Hon'ble Division Bench of this Court in case **State of Punjab and others Vs. M/s Ram Dass Bhagwan Dass, 2012(5) RCR (Civil) 280** while referring to the notification dated 01.06.1958, held that mere declaration of brick earth as minor mineral by way of notification in itself shall not create any right with the State Government to claim royalty because of the reason that ownership of the same will be vested in the landowners if there was no entry in the shariat-wajib-ul-arz to the contrary.

15. The law laid down in aforesaid thus provides clear answer to the question of law framed in this case. Brick earth excavated from private land would not vest in State. Mere entry that all types of minerals discovered in future shall vest in State is just a vague entry and cannot be used to defeat the non-rebuttable presumption of law created in favour of landowner under Section 42(2) of the Punjab Land Revenue Act, 1887.

16. In view of the above, the findings recorded by the learned trial Court on Issues No.1 and 6 and remaining issues, are hereby affirmed. Resultantly, the present Regular Second Appeal is dismissed and the judgment and decree passed by the learned Additional Senior Sub Judge, Bathinda dated 23.04.1987 and judgment and decree passed by learned Additional District Judge, Bathinda dated 25.05.1988 are upheld.

(SHEKHER DHAWAN)
JUDGE

15.03.2018

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No