

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

101

RSA No.175 of 1989 (O&M)

Date of decision:3.12.2018 (O&M)

Lal Singh

... Appellant

versus

Kanhaya and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Umesh Aggarwal, Advocate,
for the appellant
Mr.Som Nath Saini, Advocate,
Amicus Curiae
...

AMOL RATTAN SINGH, J. (Oral)

1. This is the second appeal filed by one of the two defendants in a suit filed by the respondent-plaintiffs seeking a decree of mandatory and prohibitory injunction against the present appellant-defendants as regards land situate in the revenue estate of Village Bhagal, Tehsil Guhla, (then District Kurukshetra), the mandatory injunction being that the suit land occupied by the appellant-defendants having been reserved for the purpose of *charand* (grazing of cattle), be restored to its original status, with the appellant-defendants further restrained from interfering in the common use of the said land by all inhabitants of the village for whom it had been reserved.

2. Notice having been issued in the suit, the two defendants, in their written statement contended that they are owners of the suit land and are in separate and exclusive possession thereof to the extent of the land described in first paragraph of the plaint, and further, that the suit was not

maintainable. It was further contended that the respondent-plaintiffs were not co-owners of the suit land.

Other pleas, with regard to the suit being bad for multifariousness as also on the ground of lack of jurisdiction of the civil Court, were also taken.

3. A replication having been filed by the respondent-plaintiffs, the following issues were framed by the learned trial Court:-

- “i) Whether the plaintiff along with the defendants are the joint owners of the land detailed and described in para no.1 of the plaint? OPP
- ii) Whether the land mentioned in issue no.1 has been reserved by its owners as *charand* for the proprietors of the *Patti* Mango? OPP
- iii) Whether the defendants no.1 and 2 have changed the user of the land detailed in para 1-A and 1-B of the plaint without the consent of other co-owners? OPP
- iv) Whether the defendants are threatening to change the user of the land detailed in para no.1-C of the plaint? OPP
- v) Whether the defendants no.1 and 2 are exclusive owners of land detailed in para no.1-A and 1-B of the plaint? OPD
- vi) Whether the description of the land detailed in par no.1-C is not correct? OPD
- vii) Whether this court has no jurisdiction to try this suit?

OPD

viii) Whether the suit is not maintainable in the present form?

OPD

ix) Whether the suit is bad for multifariousness by cause of action? OPD

x) Relief.”

4. Upon evidence having been led by both sides, the learned trial Court came to a finding of fact that the appellant-defendants could not prove their exclusive ownership over the suit land whereas the respondent-plaintiffs proved that they were co-owners thereof along with all others as formed a part of the *patti* in the village, for all of whom it had been reserved for the purpose of grazing of cattle.

5. The record of rights (*jamabandi*) for the year 1978-79, annual records (*khasra girdwaries*) up till the year 1983 and for the years 1983-84, as also a copy of *nazul araz* were examined as had been led by way of evidence by the respondent-plaintiffs, for the trial Court to come to that conclusion. It was also found by the learned trial Court as a finding of fact, that no evidence had been led to show that the suit land was ever partitioned to enable the appellant-defendants to prove their exclusive possession over it.

Thus issues no.1 and 5 were decided in favour of the respondent-plaintiffs, with issue no.2, on whether the land had been reserved for the purpose of *charand*, also decided accordingly on the basis of the copy of the *wajib-ul- araz*, as was exhibited as Ex.P-4 before that Court.

6. On the issue of lack of jurisdiction with the civil Court, i.e. issue no.7, it was found that it was the admitted case even of the appellant-defendants, that the suit land was in fact reserved for the purpose of *charand* and that being so, it would vest in the Gram Panchayat; but even so, the suit being one seeking injunctions only (mandatory and prohibitory), and not one seeking a declaration of title in favour of the respondent-plaintiffs, it was held to be maintainable, with the learned trial Court relying upon a judgment of this Court in Bhagu vs. Ram Sarup and others, 1985 PLJ 366.

7. On the aforesaid findings, the suit of the respondent-plaintiffs was decreed in their favour with the injunctions sought thereby issued.

8. Both the defendants having filed an appeal against that judgment and decree, the learned Additional District Judge, upon considering the evidence led before the learned trial Court, also eventually came to the same conclusion, that the suit land having been reserved for the purpose of *charand*, vested in the Gram Panchayat, with the appellant-defendants not able to prove their exclusive possession over it by way of any record and consequently, essentially on the same reasoning as given by learned trial Court, the first appeal was dismissed, leading to the filing of this second appeal, by one of the two defendants only.

9. Before this Court, though at the time of filing of the appeal in the year 1989, no question of law had been framed, however, subsequently vide CM No.14569-C of 2018 filed on 14.9.2018, the following questions of law, described to be substantial questions, have been framed by learned counsel for the appellant:-

- i) Whether the civil Court has the jurisdiction to entertain a civil suit with regard to *shamlat deh*? OPP
- ii) Whether the judgments passed by both the learned Courts below are illegal or without any jurisdiction? OPP
- iii) Whether the judgments passed by both the learned courts below are based upon complete misreading of facts and evidence? OPP”

Essentially in fact, it is only the first question which is actually a substantial question of law, with the other two questions wholly being based upon an alleged misreading of evidence by learned Courts below, which I find no ground to interfere with, nothing having been pointed out to this Court from the records already summoned that there was actually any misappreciation of the evidence led before the trial Court.

Hence, the question of jurisdiction of a civil Court to entertain a suit seeking a mandatory and prohibitory injunction instituted by co-sharers of land reserved for a common purpose of the village, is the only question which requires adjudication by this Court.

10. Learned counsel for the appellant has submitted that the suit land admittedly being in the nature of *shamlat deh* reserved for common purposes, if at all any one was aggrieved of any alleged misuser thereof by any of the co-sharers, it would be the Gram Panchayat and not the respondent-plaintiffs and that in any case, even in terms of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana), it would only be the revenue authorities that would have

jurisdiction to entertain such a suit, and not the civil Court.

In this context, he relies upon a judgment of this Court (this very Bench) in Dharam Singh and others vs. Gram Panchayat of Village Joshi Chauhan and others, 2017(1) RCR (Civil) 409, wherein this Court had held that where *shamlat* land vests in the Panchayat, the civil Court would have no jurisdiction to entertain a suit seeking any declaration of title qua the suit land.

11. It is to be noticed that none having appeared for the respondent-plaintiffs after 13.12.2011, in this appeal pending since 1989, eventually on the last date of hearing, i.e. 26.11.2018, this Court had requested Mr.Som Nath Saini, Advocate, to assist this Court as *amicus curiae* and learned counsel has very ably done so and brought to the notice of this Court the following judgments of this Court, as also one of the Patna High Court:-

- i) Sher Singh and anothr vs. Murti Mahadev and others, 1987 PLJ 299;
- ii) Mitta Ram vs. Sant Ram, 1975 PLJ 243;
- iii) Sant Ram vs Dharam Chand, 1991 PLJ 322;
- iv) Bani Singh vs Rattan Singh, 1986 PLJ 577;
- v) Bhagu vs Ram Sarup and others, 1985 PLJ 366; and
- vi) Meghu Mian vs Kishun Ram and others, AIR 1954 (Patna) 477.”

From the aforesaid judgments, Mr.Saini points specifically to paragraph 4 of the judgment in Sher Singhs' case which reads as under:-

“4. The next submission of the learned counsel is that since

the encroachments were admitted, the plaintiff could file a suit for possession of the land allegedly encroached upon and the suit for a mandatory injunction was not maintainable. This contention is simply to be noticed and repelled. Respondent no.1 is not claiming exclusive possession of the property encroached upon by the defendants. The claim of Madho Dass as a Mahant of the Mandir is for removal of encroachments from the land which otherwise is treated to be in the joint possession of the entire body of the proprietors of the village. As is evident from the revenue record, the land in suit is owned by *Mushtarka Malkan* and is shown to be in possession of Murti Mahadev. No proprietor can claim a right to exclusive possession of such a land jointly owned by the proprietary body of the village or obstruct its user for the common purposes of the village for which it is reserved. A suit for mandatory injunction for removal of encroachment by one of the persons interested in the common property of the village without claiming exclusive possession thereto is maintainable.”

Mr.Saini further submits that the respondent-plaintiffs having been found to be co-sharers in the suit land, no doubt along with the appellant-defendants, and they having simply sought a decree of mandatory and prohibitory injunction (not a declaration of title), such injunction being with regard to preventing a change in the nature of the land reserved for common purposes, there would be no reason to oust the jurisdiction of the civil Court even in terms of the ratio of the judgment aforesaid.

He further refers to a judgment of a Division Bench of this Court (as was also referred to by the trial Court) in Bhagus' case (supra), wherein it was held to the following effect:-

“5. In the light of S.9 of the Civil P. C., a litigant having a grievance of a civil nature undoubtedly has, independently of any statute, a right to institute a suit in some Court or the other unless its cognizance is either expressly or impliedly barred. Though the proposition of law that in interpreting a statute barring the jurisdiction of the civil court one should not necessarily make an attempt to abridge its operation or cut down or modify the objectives with a view to give effect to the rule of interpretation that the ousting of jurisdiction should not be readily inferred is well settled, yet equally well established is the principle that a statute ousting the jurisdiction of a Civil Court must be strictly construed (See AIR 1966 SC 1718). It is in the light of these principles that the scope and content of S. 13 of the Act needs to be examined. The need for the substitution of the present section vide Haryana Amending Act No. 2 of 1981 is stated in the following words in the Statement of Objects and Reasons:-

"In many places the Shamlat Deh has been occupied unlawfully by unscrupulous persons, acting sometimes in collusion with the representative of the Gram Panchayats. To combat this evil certain amendments were made to the Punjab Village Common Lands

(Regulation) Act, 1961, in 1974. However, when tested in the High Court of Punjab and Haryana, certain of these provisions were struck down,--vide judgment of the court. The present Bill seeks to remedy the infirmities found by the High Court. It also proposes to make some incidental changes to the Punjab Village Common Lands (Regulations) Act, 1961, to make some of its provisions more explicit so as to ensure more effective implementation".

This amendment was apparently brought about with a view to save and protect Panchayat lands from collusive decrees or to prevent usurpation of *Shamilat* lands. Further, in order to achieve this object rather quickly or in the shortest possible time, the Legislature thought it proper to exclude the jurisdiction of the Civil Court to try questions stated in Cls. (a) and (b) of this section. What sort of adjudication is envisaged by this section is also well indicated by the next following S. 13-A. It is clearly discernible from a combined reading of these two sections that the jurisdiction of the Civil Court is excluded from entertaining or adjudicating upon the questions stated in S. 13 when the lis is between a private person and the Panchayat. In other words, it is only when the contest is between the Panchayat and a private person for the determination or adjudication of the questions specified in Cls. (a) and (b) of S. 13 that the jurisdiction of the Civil Court is

barred. It is obvious that the right, title or claim of a private person to a particular land or immoveable property vis-a-vis the Gram Panchayat cannot factually and effectually be settled in the absence of the Panchayat being impleaded as a party to the litigation.”

12. Having thus considered the matter, I find no reason to interfere with the judgments of the learned Courts below, firstly with regard to the fact that the land was reserved for the common purposes of grazing of cattle (*charand*), which in any case is not a fact disputed even by the appellant-defendant, the contention of the defendants only being that they were in exclusive possession of the suit property as co-sharers. Therefore, the first contention has to be rejected also in the face of the finding of fact recorded by both the Courts below, not shown to be perverse in any manner before this Court, with no such exclusive possession proved from the revenue record.

Further, once the suit land had been shown to be reserved for common purposes, naturally the appellant-defendants would have no right to change the nature thereof.

[Also, even though no such argument had been raised at any stage, it is considered necessary by this Court to specifically notice that no plea of any adverse possession was ever taken by the appellant-defendants.]

13. Coming to the issue of jurisdiction, Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961, as applicable to Haryana, reads as follows:-

“13. Bar of 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;
- (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 aforesaid provision has been duly considered, along with Section 13-A, by the Division Bench as is obvious from what has been reproduced herein above from the judgment in Bhagus' case, with coordinate Benches also having taken the same view, that jurisdiction of a civil Court would not be ousted where, firstly, the suit in question seeks only a decree of injunction as opposed to any declaration of title etc., and secondly, where the dispute as regards the injunction sought, is between two private parties, even with the Gram Panchayat not impleaded in the suit (reference the judgment of the Division Bench of this Court).

14. In view of the above, I find no reason to entertain this appeal, which otherwise has remained pending for the past almost 30 years.

Consequently, it is dismissed with costs throughout.

The assistance rendered by Mr.Som Nath Saini, *Amicus Curiae*,
is highly appreciated by this Court.

3.12.2018
pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No