

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

**RSA No.1555 of 1991
Date of decision:05.02.2018**

State of Punjab and others

... Appellants

Vs.

Bhag Singh (deceased through LRs) and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Akanksha, AAG, State of Punjab
for the appellants.

Mr. Ashok Kumar Bazaz, Advocate
for the Municipal Corporation, Ludhiana.

Mr. M.L.Saggar, Senior Advocate with
Ms. Armaan Saggar, Advocate
for respondent No.2.

AMIT RAWAL J.

The appellants-State of Punjab are in Regular Second Appeal against the judgment and decree dated 14.11.1986, whereby, the suit for possession, mandatory and permanent injunction preferred by the respondent-plaintiffs, has been decreed and appeal filed thereto, has been dismissed, vide judgment and decree dated 11.01.1990.

Before I could advert to the arguments of learned counsel for the parties, it would be in the fitness of things to give preface of the matter for adjudication of the dispute.

Bhag Singh, Nohar Singh, Jagir Singh (since deceased), Harbans Lal and Dharam Pal alleged to be resident of Dholewal, Tehsil and

District Ludhiana in their representative capacity filed a suit seeking following relief:-

“Suit for possession of land measuring 1 8-14 B, 16 B comprised in khewat no.949, khatauni no.1344/4, khasra nos.2345/422, situated in village Dholewal, Tehsil and District Ludhiana and mentioned in the Jamabandi of the year 1969-70 and bounded as under:-

North : Railway Line,

South: G.T.Road

East: Abdul Chani Dar Indian Oil Co.

West: Balwant Kaur,

and also shown red in the plan attached and for mandatory injunction directing the defendants not to change the user of the land as cremation grounds in any way and in revenue the super structures illegally constructed thereon and also for permanent injunction restraining the defendants from interfering in the use of the land as a cremation ground by the plaintiffs and Hindu residents of village Dholewal and from changing the use of this land in any way.”

on the premise that they being residents of village Dholewal and were professing Hinduism. They and their ancestors had been cremating the dead-bodies on the land in dispute from the time immemorial. Initially, the proprietors of the village Dholewal reserved the land measuring 2B-3B-4B comprised in khasra nos.422 and 2344/422 by dedicating the same for the

purpose of cremation. In the revenue record, it was recorded as '*Marghat*' and in the column of possession as '*Ahle Hanood*', whereas, in the column of ownership, it was written as '*Shamlat Deh*'. After the enactment of the Punjab Village Common Land Regulation Act, 1961 (in short "1961 Act"), it was reflected to be ownership of 'Gram Panchayat'. However, entry in the column of possession remained the same. Village Dholewal came within the municipal limits of Municipal Committee, Ludhiana. Out of the land described above, PWD Department acquired 0B-8B-8B area for the construction of a road and a separate *khasra* number was allotted to this portion as *khasra* no.2344/422, whereas, the remaining land measuring 1B-14B-16B continued to remain in possession of Hindu residents of village Dholewal and was being used as cremation ground. However, a police post was forcibly established in the room which had been reserved for storage and keeping the ashes of the dead-bodied and other purposes.

Notice was served upon the defendants but they rather constructed one room 30'x12' on the adjoining property in the illegal possession of Balwant Kaur. They also demolished the Shiv Mandir. A telegram was sent to the S.H.O, P.S. Division No.6, Industrial Area, Ludhiana but to no effect. It is in this background of the matter, the suit aforesaid was filed.

The suit was contested by the appellant-defendants by taking various preliminary objections with regard to *res judicata*, *locus-standi* and by further stating that a similar suit filed by one Vashisht Dev Sharma and others was pending adjudication in the Court of Sub-Judge Ist Class,

Ludhiana and therefore, the suit was liable to be stayed. Even the objection with regard to non-service of the defendants under Section 80 of Code of Civil Procedure, much less payment of Court fee, was also taken.

On merits, it was stated that land measuring one bigha of land of *khasra* number was recorded as *Banjar Kadeem* while 0B-14B-16B was recorded as *Marghat* but it was never used for cremation of dead-bodies. The factum of land being owned and possessed by Gram Panchayat Dholewal and vesting within the limits of Municipal Corporation, Ludhiana was not denied, rather it was stated that it was transferred to the State of Punjab for the purpose of construction of police station. Though the construction at one point of time was stopped under the orders of Sub-Judge Ist Class, Ludhiana but later on, the said order was vacated in appeal. Municipal Corporation also contested the aforesaid suit and had taken the objection of non-service under Section 396 of Punjab Municipal Corporation Act which was mandatory requirement of law.

On merits, the *locus-standi* of the plaintiffs in filing the suit in representative capacity was assailed/challenged. It was stated that land in dispute was owned and possessed by Gram Panchayat of village Dholewal but the cremation ground had already been shifted near the bye-pass on Ambala Road for the last 10-15 years and the portion which was reserved as cremation ground was lying vacant and thus, belonged to Municipal Corporation, Ludhiana. In fact, they denied the right of the plaintiffs to use the suit land as cremation ground. It was also stated that earlier the plaintiffs had filed a suit titled as “ *Tarak Singh and others Vs. M.C.Ludhiana* ” which

was dismissed by the Court of Shri H.P.Handa, Sub-Judge, Ist Class, Ludhiana. The factum of forcible possession was denied.

On the preponderance of evidence, the trial Court decreed the suit and appeal filed thereto has been dismissed as noticed above.

Ms. Akanksha, learned Assistant Advocate General, Punjab appearing on behalf of the appellants-State submitted that the plaintiffs had no *locus-standi* to file the suit as no documentary evidence has been placed on record with regard to the residents of village, much less any list to show that they were the proprietors of the village. The grievance, if any, could have been of the proprietors of the Gram Panchayat, who did not come forward. Even the suit was not maintainable in the absence of impleadment of Gram Panchayat. The Courts below have committed illegality and perversity in not noticing the fact that the land had vested in the Municipal Corporation and the cremation ground had already been shifted long time ago. It was the Municipal Corporation which was the owner and the same was never challenged, thus, the suit *prima facie* in the absence of challenge of ownership as only relief of possession and mandatory injunction, was not maintainable. Even the respondent-plaintiffs could not take the benefit of Article 300-A of the Constitution of India and thus, urged this Court for setting aside the findings under challenge.

Mr. Ashok Kumar Bazaz, Advocate for the Municipal Corporation, Ludhiana adopted the arguments of Ms. Akanksha, AAG, Punjab.

Mr. M.L.Saggar, learned Senior Counsel assisted by Ms. Armaan Saggar, Advocate appearing on behalf of respondent No.2 submitted that the judgments and decrees of the Courts below are based upon the appreciation of revenue record, i.e., *jamabandi* for the year 1909-10 (Ex.P3), wherein, *khasra* no.422 was recorded as '*gair mumkin masan*' and in column of possession was entered as '*Ahle-Hanood*'. Even the *jamabandi* for the year 1959-60, out of the total area 2B-3B-4B, 0B-8B-8B was taken out for the construction of the road and the remaining continued to be shown as *Banjar Qadim* to the extent of one *bigha* and '*gair mumkin marghat*' to the extent of 0B-14B-16B. The aforementioned entries remained un-changed in the subsequent *jamabandis* for the years 1963-64 and 1969-70 (Ex.P2). *Jamabandi* for the year 1974-75 showed that one Rakha Singh came to in possession of one biswa of land and Bant Singh in possession of 0B-3B-16B. *Jamabandi* for the year 1979-80 (Ex.P95) also showed 1 Bigha 10 Biswas as '*gair mumkin*' while Rakha Singh and Banta Singh continued to be shown in possession. He submitted that the concurrent findings of facts and law cannot be interfered until and unless there is gross illegality and perversity. With regard to the maintainability of the suit, he submitted that since the respondent-plaintiffs were professing Hinduism and belonging to a particular sect and community can always espouse the cause by filing a suit in representative capacity and urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the impugned judgments and decrees of the Courts below and of the view that

there is force and merit in the submissions of Ms. Akanksha, AAG, Punjab and Mr. Ashok Bazaz.

From the evidence noticed above, it was Rakha Singh and Banta Singh, who were shown in possession of the suit property but not the respondent-plaintiffs. It was incumbent upon the plaintiffs to place on record the material to show that they were the residents of the area and have been performing the last rites of their ancestors, much less near and dear ones for the purpose of overcoming objection of locus standi.

It is settled law that on promulgation of the municipal area, the land belonged to Gram Panchayat vested in it. Though certain parameters have been laid down with regard to the payment of compensation to the proprietors, in view of the judgment rendered by Full Bench of this Court in **Suraj Bhan and others Vs. State of Haryana and another 2017(2) RCR (Civil) 934** while interpreting the provisions of Haryana Municipal Common Lands (Regulation) Act, 1974 and Punjab Village Common Lands Regulation Act 1961 as applicable to Haryana.

There would have been some force in the submissions of learned counsel for respondent no.2, had the proprietors come forward challenging the aforementioned vesting of the property. Thus, the ownership of Municipal Corporation remained un-assailed. The factum of cremation ground having been shifted long time back at a distance place, i.e., Ambala Road has not been denied. No evidence has been placed on record whether the dead bodies were cremated as alleged, whereas, as per submission of

Mr. Bazaz, PS Division No.6, Industrial Area, Ludhiana is in existence and carrying out the activities.

I am of the view that both the Courts below have abdicated and committed illegality and perversity in not noticing the aforementioned facts and evidence and wholly swayed away with the revenue record which would have no effect upon the adjudication of the lis as it remained oblivious of the *locus-standi* of the plaintiffs to espouse their claim.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case

(supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to

such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

As an upshot of my findings, the judgments and decrees of both the Courts below are set aside and suit is dismissed. Resultantly, the decree is ordered to be prepared. The appeal stands allowed.

(AMIT RAWAL)
JUDGE

February 05, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No