

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1639 of 1996 (O&M)

Date of decision: 04.04.2018

Chhinder Singh

..... Appellant

Versus

Nathu Ram and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. D.D. Gupta, Advocate
for the appellant.

Mr. Amit Jain, Advocate
for respondents No.1 to 5.

Mr. S.S. Sahu, Advocate
for respondent No.9-Gram Panchayat.

ANIL KSHETARPAL, J. (ORAL)

CM-936-C-2015

Application is for grant of injunction which shall stand
disposed of in view of the main judgment.

CM-70-C-1997

Prayer in the application is to allow the appellant to produce
the order passed by the Director, Consolidation upholding by way of
additional evidence. The application would be decided while writing the
main judgment.

Main Case

Defendant-appellant is in the regular second appeal against the
concurrent finding of fact arrived at by the Courts below. Learned counsel

for the appellant has proposed the following substantial questions of law:-

- “1. Whether findings returned by the Courts below, to the effect that the legal effect of Wajib-ul-Araz P/6 is so absolute and inviolate that it must remain intact for all times to come irrespective of the changes in the circumstances resultant due to development of Science and Technology, is in violation of Rule of law laid down in AIR 1998 SC 602, 1931 Madras 213 and 1979 (4) SCC, 642?*
- 2. Whether custom/usage contained in Exhibit P-6 is ultra vires Articles 14 and 19 of the Constitution of India and as such, is void under Article 13 of the Constitution of India?*
- 3. Whether the judgment and decree Ex.P-16 and P-17 operate as res-judicata when constitutional validity of Wajib-ul-Arz P-6; on the basis of which the aforesaid judgment and decree were rendered, is under challenge?*
- 4. Whether the oral and documentary evidence regarding the changes in the circumstances rendering the Wajib-ul-Arz a dead letter have been ignored on flimsy grounds?”*

Plaintiffs filed a suit in a representative capacity seeking decree of permanent injunction restraining the defendants from re-claiming the land or interfere with the rights of the plaintiffs over a pond situated in the village. Dispute between the parties is whether the pond is spread over in an area of 96 kanal as claimed by the plaintiffs or it is confined to only 6 kanal as claimed by the defendants. It would be significant to note that previously also a suit was filed with respect to the land under a pond. The previous suit was decreed after returning a finding that the pond is for common use of the residents and is spread over an area of 96 kanal. It is admitted fact that the predecessor-in-interest of the defendant No.1 was party defendant in the suit. Kartar Singh, defendant No.2 herein was the defendant in the aforesaid suit also who is said to have sold the property in dispute to defendant No.1. Still further, shart-wajib-ul-arz clearly proves

that the pond is in an area of 96 kanal. Even the defendants have produced on record copies of the Jamabandi for the year 1967-68, 1972-73. In both the Jamabandies, the pond is shown in an area of 90 kanal. The plaintiffs have produced on file Jamabandi for the year 1905-06 wherein the pond has been depicted. Shart-wajib-ul-arz was prepared in the year 1955-56. All this evidence proves that the land in dispute is being used as a pond by the residents of the village.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Even Gram Panchayat was impleaded as party in the appeal and the Gram Panchayat has also defended the present appeal. Although, learned counsel for the appellant had proposed questions of law, however, no argument was addressed on the questions proposed vide application dated 13.12.2001.

Learned counsel for the appellant has submitted that the learned First Appellate Court has misread the report of the Local Commissioner with regard to service of notice on the appellants. Learned counsel has further submitted that there is an order dated 20.07.1990 passed by the Director, Consolidation returning a finding that the Panchayat has nothing to do with the land.

A careful reading of the order dated 20.07.1990 make it clear that the predecessor-in-interest of the plaintiffs had filed an application which was dismissed by the learned Director. However, it made certain casual observations which cannot be treated as finding. Still further, the learned Director had no jurisdiction to decide the question of title. The

learned Director has already observed that the application filed under Section 42 is hopelessly time barred. Hence, the application for additional evidence is dismissed.

Next argument of learned counsel for the appellant is that the appellant is a bona fide purchaser and the property is a private property. In the considered opinion of this Court, this dispute can only be resolved when the appellant files a suit under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961. The present suit is only for grant of injunction. The question of title has not been gone into by the Courts.

Still further, the report of the Local Commissioner would not per se inadmissible in evidence on the ground that the appellant was not served with a notice when the Local Commissioner inspected the site.

Although an issue on appellant being bona fide purchaser was framed by the learned Courts below, however, this Court refrains from adjudicating the same as the question can only be decided in a regular suit to be filed by the party before the competent Court under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961. Section 13-A provides that any person or in case of Panchayat, the Panchayat or its Gram Sachiv can invoke the jurisdiction of the competent authority for deciding the question of title.

Although, no argument has been addressed on the questions of law proposed by learned counsel for the appellant in the year 2001, however, this Court has carefully read the questions of law. In the considered opinion of this Court, neither these questions arise for adjudication in the present appeal nor they are required to be adjudicated upon in a simpliciter suit for injunction particularly when the jurisdiction to

decide the question of title vests only with the authority constituted under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961.

In view of what has been discussed above, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed with cost of Rs.1,00,000/-.

04.04.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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