

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4019 of 2011(O&M)
Date of Decision:3.10.2018

Gram Panchayat of village Bhartana

---Appellant

vs.

Sunehri and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.S.S.Duhan, Advocate
for the appellant

Mr. Varun Jain, Advocate
for the respondents

Rekha Mittal, J.

The present appeal directs challenge against the judgment and decree dated 30.8.2010 passed by the District Judge, Jind whereby the appeal preferred by the respondent-plaintiff represented through his LRs was allowed, judgment and decree dated 14.2.2009 passed by the trial court were set aside and suit filed by the respondent-plaintiff was decreed with costs.

The facts relevant for disposal of instant appeal are that the respondent-plaintiff filed suit for declaration that he being Biswedhar and co-sharer is owner in possession of the agriculture land measuring 16 kanal 4 marlas comprised in Khewat No. 302 min/167-280 khata No. 411 Rect. No. 64 killa No. 4/2/1 (2-15) khata No. 413 Rect. No. 64 killa No. 4/2/2 (4-

12), 7(8-0), 14/1 (0-7) situated in the revenue estate of village Bhartana, Tehsil Safidon as per jamabandi for the year 1999-2000. Further challenge has been laid to orders dated 3.9.2001 passed by the Collector Ist Grade, Safidon, dated 16.12.2003 by Collector, District Jind and dated 3.7.2006 by Commissioner, Hisar Division, Hisar being illegal, null and void. He also prayed for consequential relief restraining the appellant-defendant from interfering in peaceful possession of the respondent over suit land and executing the impugned orders dated 3.9.2001, 16.12.2003 and 3.7.2006 forcibly and illegally with a prayer for mandatory injunction directing the revenue authorities for correcting the revenue entries.

The plea of the respondent-plaintiff is that Deiya son of Harnam Singh being Bisweddar of village Bhartana was in actual physical possession of suit land as gair marusi since the time of his father Harnam Singh. Deiya father of the plaintiff died and the plaintiff stepped into shoes of said Deiya and he is in actual physical possession of suit land being Bisweddar and co-sharer. Possession of the plaintiff, his father and grand father is recorded in the jamabandi of 1947 and even prior to consolidation. On 31.12.1966, the appellant filed an application under Govt. Public Premises and Land Eviction Recovery Act, 1951 against Deiya before the Collector, Jind which was dismissed vide order dated 21.7.1967. The appellant again filed a petition on 27.11.1975 and the same was dismissed on 29.4.1976 by the Assistant Collector Ist Grade, Jind. The appeal filed by the appellant against order dated 29.4.1976 was dismissed on 23.8.1976 by the Collector, Jind. The gram panchayat also filed a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (as

applicable to Haryana) (in short “the Act”) before Assistant Collector Ist Grade, Jind which was decided on 28.2.1966, order dated 28.2.1966 was set aside by the appellate authority i.e. Deputy Commissioner and Collector, Sangrur vide order dated 29.7.1966. The appellant again filed an application under Section 7 of the Act with regard to suit land before the Assistant Collector Ist Grade, Safidabad which was decided on 3.9.2001. Appeal filed before the Collector, Jind was dismissed vide order dated 16.12.2003. The respondent filed second appeal before the Commissioner, Hisar which was dismissed on 3.7.2006. The impugned orders are without jurisdiction and illegal being barred under the principle of *res judicata*.

The appellant-defendant filed the written statement and raised preliminary objections inter alia that the suit is not maintainable; the plaintiff has no cause of action and locus standi to file the suit; the suit is bad for want of notice under Section 205 of the Haryana Panchayati Raj Act; the plaintiff is estopped by his act and conduct from filing the suit. On merits, it is averred that the appellant is in unauthorised possession of suit land. The suit land was reserved for welfare and benefit of inhabitants of village Bhartana. The suit land is Shamilat land and falls within definition of Shamilat deh under Section 2(g) of the Act. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

The controversy between the parties led to framing of following issues:-

1. Whether the plaintiff is entitled to the declaration as alleged?

OPP

2. Whether the plaintiff is entitled to the injunction as prayed

for? OPP

3. Whether the suit land of the plaintiff is not maintainable in the present form? OPD
4. Whether the suit is bad for want of notice under Section 205 of the Haryana Panchayati Raj Act? OPD
5. Whether the suit is hit by principles of res judicata? OPD
6. Relief

The parties were permitted to adduce evidence in support of their respective contentions. To prove his case, the respondent-plaintiff examined Chhota Ram PW1, Sultan PW2, Kartar Singh PW3 and Satyawar PW4. Counsel for the respondent-plaintiff tendered documents Ex. P1 to P24/T. To rebut evidence of the plaintiff, the appellant examined Kelo Devi DW1.

The sole submission made by counsel for the appellant is that the civil court has no jurisdiction to entertain and try the present suit, therefore, the judgment and decree passed by the Court in Appeal are liable to be set aside. It is argued that a specific contention was raised before the trial court that the civil court has no jurisdiction to sit in judgment over concurrent findings of revenue courts whereby application for eviction filed under Section 7 of the Act was allowed vide order dated 3.9.2001 and the same was affirmed upto the Court of Commissioner, Hisar vide order dated 16.12.2003.

Counsel representing the respondent/plaintiff, on the contrary, would argue that as the application filed by the appellant under Section 7 of the Act seeking eviction is barred by the principle of res judicata in view of

earlier decision on the issue of eviction of the respondent-plaintiff, the civil court has the jurisdiction to decide the controversy as second application under Section 7 of the Act is not maintainable and Assistant Collector has no jurisdiction to pass order in second application in view of earlier order passed under Section 7 of the Act. In support of his contention, he has relied upon judgment of this Court **Inder Singh vs. Gram Panchayat, Achal 1986 (1) PLR 379.**

Perusal of pleadings of the parties particularly the facts set up in the plaint coupled with relief for declaration prayed for makes it evident that by filing the instant suit, the respondent-plaintiff has sought declaration of two reliefs namely that he is owner in possession of agriculture land measuring 16 kanal 4 marlas, detailed in para 1 (unnumbered) of judgment of the trial court being Biswedhar and co-sharer of village Bhartana and secondly the orders dated 3.9.2001, 16.12.2003 and 3.7.2006 passed by the Collector Ist Grade, Safidon, Collector Jind and Commissioner Hisar Division, Hisar in an application under Section 7 of the Act filed by the gram panchayat are illegal, null and void. He also sought consequential relief for grant of permanent and mandatory injunction, noticed hereinbefore.

Perusal of the judgment passed by the trial court would reveal that counsel for the appellant raised an issue with regard to the civil court lacking jurisdiction to decide the question of correctness of the impugned orders passed by the authorities under the Act. Section 13 of the Act deals with bar of jurisdiction. A relevant extract therefrom reads as follows:-

“No civil court shall have jurisdiction--

- (a) to entertain or adjudicate upon any question whether-
 - (i) any land or other immovable property is or is not Shamilat 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; or
- (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.”

Perusal of the aforesaid extract makes it crystal clear that civil court does not have jurisdiction to entertain or adjudicate upon any question whether any land or other immovable property is or is not Shamilat deh and 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. The respondent-plaintiff sought declaration that he is owner in possession of suit land being Biswedhar and co-sharer of village Bhartana. The appellant-defendant raised a plea that the suit land is Shamilat deh and the respondent cannot claim right of ownership therein. In view of clear and unambiguous provisions of clause (a) of Section 13 of the Act, the civil court lacks inherent jurisdiction to decide the question whether suit land is or is not Shamilat deh and further whether the same vests or does not vest in the panchayat. The Court in Appeal has failed to appreciate provisions of the Act in right perspective and therefore, committed a serious error by decreeing the suit seeking declaration qua ownership of the land in question.

The respondent-plaintiff has challenged the orders passed by the authorities empowered by/or under the Act. Section 7 of the Act empowers the Assistant Collector Ist Grade to eject any person who is in wrongful or unauthorized possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in the panchayat under the Act and put the panchayat in possession thereof. He may also exercise the powers of a revenue court in relation to execution of a decree for possession of land under the Punjab Tenancy Act, 1887. Clause (c) of Section 13 of the Act bars jurisdiction of civil court to entertain upon any question pertaining to legality of any action taken or matter decided by any revenue court, officer or authority empowered to do so under this Act.

Counsel for the respondent has relied upon judgment of this Court in **Inder Singh's case (supra)** by contending that as the application for eviction, subject matter of order dated 3.9.2001 is barred by the principle of res judicata in view of earlier application for the same relief filed under Section 7 of the Act has already been decided against the panchayat, order passed by the Assistant Collector allowing the application for eviction amounts to review of earlier order, therefore, the civil court has the jurisdiction to examine legality and correctness of the orders impugned. A relevant extract from para 5 of the cited judgment, reads as follows:-

“After hearing the learned counsel for the parties and going through the case law cited at the Bar, I am of the considered view that the order of the Collector Exhibit P.10 being without jurisdiction, the jurisdiction of the civil court was not barred to

entertain the suit and declare the same as illegal and without jurisdiction. The impugned order Exhibit P.10 could not be said to be an order passed under the Act because the Collector had no jurisdiction to pass an order in view of the order passed under Section 7 by the then Assistant Collector on July 18, 1968, whereby Inder Singh was found to be the owner of the suit land. It was held by the Division Bench of this Court in the case reported in Jee Ram's case (supra) that if an earlier order under Section 7 has become final between the parties, no fresh application under Section 7 was maintainable and it amounts to review of the earlier order. Similar view was taken in **Sahaj Ram v. Chhaju Ram and others, 1985(1) Cur. L.J 36; 1985 RRR 344**, wherein it was held that the civil Court jurisdiction cannot be passed by the Assistant Collector.”

Perusal of the records would reveal that counsel for the respondent-plaintiff got recorded his statement dated 18.12.2008 and 2.1.2009 whereby he tendered documents Ex. P1 to P19 vide statement dated 18.12.2008 and P20/T to P24/T vide statement dated 2.1.2009. Documents Ex. P1 to P3 are copies of revenue record. Documents Exs. P4, P5 and P5/T are copies of certain orders but the same are not admissible in evidence for want of producing certified copies thereof. As per the settled position in law, mere marking of a document will not dispense with its proof in accordance with law. On the contrary, perusal of document Ex. P6 i.e. impugned order dated 3.9.2001 passed in application seeking eviction of the respondent from land comprising khasra no. 64/4/2/1

measuring 2 kanal 15 marlas would show that the application was allowed while rejecting plea of the respondent that petition for eviction in respect of land measuring 2 kanal 15 marlas is barred by principle of res judicata on the basis of documents Exs. R4 to R7 with the observations that those orders do not tally with the facts involved in the petition filed under Section 7(2) of the Act that culminated in order dated 3.9.2001 and affirmed by the appellate and revisional authorities.

Counsel for the respondent has failed to point out any document on record that has been proved in accordance with law sufficient to show that prior to filing of petition for eviction in respect of land measuring 2 kanal 15 marlas comprising khasra No. 64/4/2/1, the appellant-panchayat filed eviction application qua that land and had been decided against the gram panchayat or constitutes res judicata in the present proceedings or amounts to review of earlier order in the light of judgment in **Inder Singh's case (supra)**. In this view of the matter, it can safely be held that jurisdiction of the civil court to examine legality or otherwise of the impugned orders is clearly barred under Section 13 of the Act. Resultantly, as the orders passed by the authorities with regard to eviction of the respondent under Section 7 of the Act cannot be challenged before the civil court and the same have attained finality for want of challenge before a competent Forum, the authorities under the Act cannot be restrained to recover possession of land subject matter of impugned orders, in accordance with the procedure prescribed under the Act.

For the foregoing reasons, the appeal is allowed, impugned judgment and decree passed by the Court in Appeal are set aside. Suit filed

by the respondent-plaintiff for declaration and injunction is dismissed leaving the parties to bear their own costs. However, nothing stated hereinbefore, shall cause prejudice to the respondent-plaintiff to take recourse to remedy in law seeking adjudication of title to the suit property, in appropriate proceedings.

(Rekha Mittal)
Judge

3.10.2018
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No