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

RSA No. 178 of 2016 (O&M)
Date of decision: 16.5.2018

Amar Singh and another **… Appellants**

Versus

Gora and others **… Respondents**

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Ramender Chauhan, Advocate
for the appellants.

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ARUN PALLI, J. (Oral)

The suit filed by the appellants-plaintiffs was dismissed by the trial court, vide judgment and decree dated 28.2.2012. As even the appeal preferred against the said decree failed, and was dismissed on 4.12.2013, they are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs prayed for possession of an agricultural land measuring 25K-15M, situated in the revenue estate of village Kaluwas, Tehsil and District Bhiwani, and assailed mutation Nos. 1054, 1075, 1076, 1077 and 1174 as regards the sale of a part of the suit property in favour of defendants No.9 to 12, and Risal Singh, (their father). Likewise, mutation No. 1402 regarding exchange, and mutation Nos. 1451 and 1498, sanctioned in favour of defendants No. 1 to 8 qua the suit land, was also challenged being wholly illegal, null and void.

Briefly, the case set out by the plaintiffs was that originally the suit land formed part of *Shamlat Deh Hasab Rasad Rakba Khewat* and belonged to the village proprietary body. The proprietors of the village had given the land measuring 15K-12M to the predecessor-in-interest of defendants No. 13 to 30 on Dohli for construction of talab and a garden. As per the terms of Dohli, the Dohlidars were prohibited to alter/change the nature of the suit land or even alienate the same. To begin with, Harish Chander son of Shalag Ram; Gokal Chand, Hukam Chand, Din Dayal, sons of Kishan Sahai; Shyam Lal, Phool Chand, sons of Kanshi Ram, and Parkash son of Nanki Dass, were the Dohlidars. The entry in the revenue record showed the Dohlidars as Marusian Dohlidars, though they were not the tenants under Sections 5 and 8 of the Punjab Tenancy Act. However, the predecessors-in-interest of defendants No. 13 to 30 got a mutation No. 496 entered in their favour, pursuant to a letter No. 864/53 dated 21.10.1952, and converted the Dohli into their absolute ownership without any notice to the proprietors. In fact, the letter dated 21.10.1952 was issued by the Government to confer ownership rights upon the tenants who were cultivating the land on a nominal rent. Thus, mutation No. 496, converting the Dohli into ownership, was absolutely illegal. Post death of the original Dohlidars, the suit property was inherited by defendant Nos. 13 to 30 being their legal heirs. Thereafter, defendant Nos. 29 and 30 sold a part of the suit land in favour of defendant Nos. 9 to 12, and defendant No. 13 had also sold a part thereof to defendants No. 8 to 12, vide two sale deeds dated 28.6.1989. Likewise, defendants No. 15 to 18 and 22 to 28 sold a major part of the suit land, vide three sale deeds, two of which were executed on 14.12.1989 and the third on 18.10.1989 in favour of Risal Singh (father of defendant Nos. 9 to 12). And, post death of Risal Singh, his estate was inherited by his heirs, i.e. defendant Nos. 9 to 12. The Dohli tenure was further alienated by defendant Nos. 9 to 12 in favour of defendants No. 1 to 8, vide sale deed dated

8.3.2004 for a valuable consideration. For, the purpose of Dohli tenure was frustrated, the same stood repudiated. Thus, any sale, in the interregnum, was wholly illegal and void, and the suit property had to be reverted to the proprietors of the village.

In the written statement filed on behalf of defendant Nos. 5 to 7, it was pleaded that Risal Singh son of Nathu Ram cultivated the suit land as *Gair Marusi* tenant and his name was entered as such in the revenue record, and even after his death, the suit land was mutated in the names of his legal representatives. A part of the suit land was purchased by the defendants from the legal representatives of Risal Singh, who also delivered possession thereof to the defendants. For the said land was situated within the *Lal Dora*, the defendants carved out plots and sold the same to different vendees, like Vijay Pal, Alpna etc., who even constructed their houses. Thus, the suit was liable to be dismissed.

In a separate written statement filed by defendant Nos. 9 to 12, a similar stand was set out by them.

Defendant Nos. 13 to 30 did not choose to appear and were, thus, proceeded ex-parte.

On a consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that the plaintiffs, in para Nos. 2 and 3 of the plaint, had specifically pleaded that the suit property measuring 15K-12M was given on Dohli to the predecessor-in-interest of defendant No. 13 to 30. And, in response thereto, the defendants in their written statement had maintained that prior to 1952, the Dohlidars were considered as *Gair Marusi* tenants, resultantly, vide letter dated 21.10.1952, their predecessors-in-interest acquired ownership of the suit property. Thus, the defendants admitted that predecessors-in-interest of defendant Nos. 13 to 30 were not *Gair Marusi tenants* and were rather Dohlidars. Further, mutation No. 469, dated 21.10.1952 (Ex. PW3/A), revealed that Hari Chand etc., who were predecessors-in-interest of defendant Nos. 13 to 30, were conferred ownership rights, pursuant to a letter No. 10312-R-521652. However, a perusal of the said letter showed that the same was applicable only on the occupancy tenants, and in terms thereof, all the rights and interest of the landlord qua the land held by the occupancy tenants stood extinguished from 15.6.1952. Thus, as the predecessors-in-interest of defendant No. 13 to 30 were not *Gair Marusi* tenants, their names could never have been reflected in the column of ownership. Apparently, the letter dated 21.10.1952 was misinterpreted and misconstrued by the concerned officials. Further, if the Dohlidar failed to render the requisite services for which the Dohli was created, the Dohli rights got extinguished, and the Dohli reverted back to the proprietors. However, the suit property no longer remained in the hands of Dohlidars or even their successors, and rather changed many hands, owing to multiple alienations from time to time. Defendant Nos. 1 to 12 had purchased the suit land, for their vendors were duly recorded in the record of rights as owners. The ownership of the suit property was acquired by the predecessor-in-interest of defendants No. 13 to 30, pursuant to an order of the State Government in the year 1952. The vendees, at best, were expected to examine the revenue record of the recent years. Thus, there was hardly any occasion for them to have scrutinised the records even prior to the year 1952. The evidence led by the defendants proved that they had made due and possible enquiries as regards title of the suit land, and for, records consistently showed defendant Nos. 13 to 30, and before them their predecessors-in-interest, to be the owners in possession, they purchased the suit property. Thus, the defendants No.1 to 12 were, indeed, the bonafide purchasers for a valuable consideration. Further, the suit filed by the plaintiffs was hopelessly time barred, as the mutation No. 496, that was sought to be cancelled, was sanctioned on 21.10.1952. Mutation Nos. 1054, 1075, 1076, 1077 and 1174 were sanctioned, pursuant to the several registered sale deeds executed in favour of different vendees from 1986 onwards. Significantly, plaintiff-Partap Singh conceded in his cross-examination that he happened to be one of the witnesses to the sale deed, dated 28.6.1989 (Ex.D1), which was executed in favour of his relative. That being so, it could not be believed that factum of mutation No. 496 (Ex.PW3/A) would not have come to the knowledge of the plaintiffs. So, even if not from 21.10.1952, when mutation No. 496 was sanctioned, the plaintiffs could not deny knowledge at least from the year 1986, when a part of the suit property was sold for the first time. Whereas, the plaintiffs filed the suit in February 2007, which was apparently time barred. Not just that, plaintiff-Partap Singh (PW2) admitted in his cross examination that the suit property had since been constructed and there existed 5 to 6 houses therein. Still further, the plaintiffs filed the present suit claiming themselves to be the proprietors and Numberdars of the village, but they failed to lead any cogent evidence to substantiate their claim. They were rather required to prove on record the pedigree table, showing that they, indeed, happened to be the proprietors of the same village. Neither in the plaint nor even in the evidence, plaintiffs disclosed their respective shares in the suit land. Amar Singh (PW1) admitted in his cross examination that the proprietors of the village belonged to Thakur community, and the plaintiffs did not belong to any such community. Thus, the only and the inevitable conclusion that could be reached: the suit filed by the plaintiffs was liable to be dismissed.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions arrived at by both the courts were either contrary to the record or suffered from any material illegality. No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

16.5.2018 **(ARUN PALLI)**
AK Sharma **JUDGE**

Whether speaking / reasoned: YES
Whether Reportable: