

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

LPA No.133 of 2018
Date of decision: 26.07.2018

Gram Panchayat Suthani, Tehsil Bawal, District Rewari

... Appellant

Versus

Jagbir Singh and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mr. J.P. Jangu, Advocate for the appellant.

ARUN PALLI, J. (Oral)

This is an intra-court appeal under clause X of the Letters Patent against an order and judgment dated 08.11.2017, rendered by the learned Single Judge, vide which the writ petition preferred by respondents No.1 & 2 had since been allowed.

The facts that are required to be noticed are limited.

Late Vijay Singh, predecessor-in-interest of respondents No.1 & 2, claimed to be the owner of 1/8th share in the land measuring 478 bighas 3 biswas, situated in village Suthani, District Rewari. He filed a suit for joint possession against Gram Panchayat Suthani (appellant herein), which was decreed vide an ex parte judgment and decree dated 30.05.1964. The appellant moved an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the said decree, which was dismissed on 02.08.1966. For, the said decree and the order were not challenged any

further, the same had since attained finality. Post consolidation proceedings in the village, for there was a variation in the rakba, Vijay Singh moved an application seeking partition of his 1/8th share from the joint khata measuring 541 kanals 4 marlas. Vide order dated 08.08.1969, Tehsildar Rewari ordered partition of the 1/8th share of Vijay Singh. The said order was assailed by the appellant before the Collector, who, vide order dated 31.10.1969, set aside the partition proceedings, for respondents No.1 & 2 were first required to get the question of title determined from the civil Court. The Commissioner Ambala vide order dated 07.04.1970, as also the Financial Commissioner vide his order dated 12.01.1971, affirmed the said order. It is not disputed that these orders were never questioned any further by respondents No.1 & 2. However, in the meantime as part of the joint holding was sought to be acquired in proceedings under the Land Acquisition Act, 1894 (for short, 'the Act'), late Vijay Singh received a notice under Section 9 of the said Act enabling him to submit his claim. It is not disputed either that pursuant to the award rendered by the Collector in those proceedings, the requisite compensation was disbursed to Vijay Singh. Likewise, even the Gram Panchayat was awarded compensation in proportion to its share in a joint khata. Later in an another acquisition in the year 2006, a part of the joint holding was again acquired. Vijay Singh passed away on 13.03.2012, whereafter on 01.05.2014 respondents No.1 & 2 moved an application seeking partition of the remaining land. And vide order dated 18.11.2016, although the Assistant Collector Ist Grade overruled the objection raised by the appellant that second application for partition was barred by principle of res judicata in the wake of the earlier orders passed by the revenue authorities and affirmed by the Financial Commissioner on 12.01.1971, but

the appellant was directed that in case there was actually any dispute qua title then it be got resolved from the civil Court within a specified time, failing which partition proceedings shall continue. As the appellant did not resort to any such proceedings, vide order dated 30.09.2014, its defence was struck off. However, in the revision petition filed by the appellant, the Financial Commissioner, vide order dated 13.01.2016, impugned in the writ petition, reached a conclusion that the order passed by the Assistant Collector requiring the Gram Panchayat to have the question of title determined within a specified time was erroneous, and so was the order whereby the joint holding of the parties was partitioned. Accordingly, it was observed that there indeed was a dispute qua title/ownership between the parties and, therefore, either of the parties could approach the Court of competent jurisdiction for determination of title. Being aggrieved by the said order (Annexure P30), respondents No.1 & 2 approached this Court vide a writ petition, referred to above, which has since been allowed.

Learned counsel for the appellant merely reiterates the submissions that were advanced before the learned Single Judge: that vide judgment and decree dated 30.05.1964, late Vijay Singh was held entitled to 1/10th share in the joint holding, whereas as per revenue record he was shown to be the owner of 1/8th share. Thus, there was a discrepancy and confusion as regards share of respondents No.1 & 2, which required determination by the civil Court. And unless title of the respondents was clearly established, there was no occasion to seek partition. It is urged that land belonged to shamlat deh, therefore, the civil Court lacked jurisdiction to pass the decree dated 30.05.1964, for, the only remedy that could be availed was in terms of Section 13 of the Punjab Village Common Lands

(Regulation) Act, 1961. Further, since the order passed by the authorities and the Financial Commissioner dated 12.01.1971, pursuant to the first application for partition, were never questioned, the same would operate as res judicata in the present partition proceedings.

We have heard learned counsel for the appellant and perused the record.

Ex facie, the conclusion arrived at by the Financial Commissioner in his order dated 13.01.2016: for there was a dispute qua title/ownership, the partition proceedings would not survive till the issue was determined by the civil Court, was erroneous. As comprehensively examined even by the learned Single Judge, late Vijay Singh was a co-sharer in the joint holding. Jamabandis for the years 1951-52, 1989-90 and 2004-05 recorded him to be the owner of 1/8th share in a joint khata. Concededly, the civil Court passed a decree for joint possession dated 30.05.1964 in favour of Vijay Singh holding that he had 1/10th share in the disputed land:

“I hereby pass an ex-parte decree for joint possession to the extent of 1/10th share in the land in suit, as per particulars given and described in the plaint, measuring 60 Bighas of land as prayed in the plaint. I further order that the relief claimed by the plaintiff for issue of a decree for permanent injunction as prayed in the plaint stands dismissed as there are no grounds for granting the said relief to the plaintiff.”

It was not in dispute that an error had crept in the decree dated 30.05.1964, as Vijay Singh was depicted to have 1/10th share, whereas as per

revenue record he possessed $1/8^{\text{th}}$ share in the khata. But as even in proportion to his $1/8^{\text{th}}$ share, he would have been entitled to 60 bighas only, something qua which the suit was decreed, the error that occurred in the decree was inconsequential. Even otherwise, throughout the proceedings respondents No.1 & 2 did not claim an area beyond 60 bighas. Further, as indicated earlier, for the said decree was not questioned by the appellant, it has since attained finality. That being so, one wonders as to how a dispute qua ownership or title could be said to exist.

The matter could be viewed from yet another perspective. A part of the joint holding was acquired by the State Government in two successive acquisitions. And predecessor-in-interest of respondents No.1 & 2 was awarded compensation in proportion to his $1/8^{\text{th}}$ share in the acquired land. Similarly, Panchayat too was disbursed compensation as per its $7/8^{\text{th}}$ share in the khata. Records show that both the parties had filed their respective objections under Section 18 of the Act seeking re-determination of compensation. At no stage, did the appellant raise any objection or disputed the ownership/title of Vijay Singh to receive compensation qua his $1/8^{\text{th}}$ share. Needless to assert that if at all there was any dispute as regards title or share of Vijay Singh in the joint holding, the appellant could always raise a dispute under Section 30 of the Act. Therefore, once even those proceedings had become final, the appellant could not question the title of respondents No.1 & 2 or the share they possessed in the joint khata.

Thus, in the given situation, the plea that the orders passed by the revenue authorities, pursuant to the first application seeking partition, would operate as res judicata also pales into insignificance, particularly in

the wake of the two subsequent acquisitions. Likewise, the argument that land in question belonged to shamlat deh, therefore, the civil Court had no jurisdiction to pass a decree dated 30.05.1964, also lacks merit. Suffice it to say: in the jamabandi for the year 1950-51, the land that was shamlat deh as also the land that belonged to the proprietors were recorded separately, in a separate khata, though both the khatas were part of the same khewat. Thus, the grievance of the appellant in this regard is ill-founded.

Before we conclude, it would be apposite to mention that pursuant to the order passed by the Assistant Collector, dated 30.09.2014, the mode of partition was finalized. *Naksha Bey* and *Sanad Taksim* were prepared on 18.11.2014 and 23.12.2014, respectively. Whereafter, even the parties were put in possession of the areas that had fallen to their respective shares in partition.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusion recorded by the learned Single Judge was either contrary to the record or suffered from any material illegality. Thus, the appeal being devoid of merit is accordingly dismissed.

(Krishna Murari)
Chief Justice

(Arun Palli)
Judge

26.07.2018
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO