

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

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RSA No.3020 of 2017 (O&M)

Date of Decision : 16.4.2018

Hari Prasad (deceased) through his legal heirs

....Appellant

vs.

Smt. Kamla Sharma (deceased) through her LRs and others

...Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. R.N.Lohan, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing a suit filed by the appellant.

Admitted facts of the case are that Bishamber Dayal was the common ancestor who owned property in village Bawal. Admittedly after his death his agricultural land was divided equally between his two sons. The original appellant-Hari Prasad filed the instant suit claiming that he was the owner of the property of three plots in the Abadi deh of village Bawal and the respondents who were the legal representatives of the other son of Bishamber Dayal had no right, title or interest and had also challenged a sale deed made by the wife of other son of Bishamber Dayal (of the property in the Abadi deh). Interestingly, in his plaint he had not mentioned anything about Bishamber Dayal or about the fact he had died leaving behind two sons or that agricultural land was equally divided between those two sons.

In point of fact he claimed ownership of the plots in the Abadi deh on the basis of possession (since the other brother had shifted to Rajasthan). It was the respondents who confronted the appellants with the fact that they were also legal representatives of Bishamber Dayal and that their predecessor-in-interest had inherited half his property and it was the further case of the respondent that in fact the three plots in the Abadi deh were also owned by Bishamber Dayal and the construction made thereon had also been made by Bishamber Dayal and as such they also had equal share in the property in the Abadi deh in village Bawal. Both the Courts below having dismissed the suit the appellant is before this Court.

Learned counsel has argued that in Abadi deh title follows possession and once the appellant had shown that he had been in continuous and uninterrupted possession for last almost forty years, the suit should have been decreed. He has relied upon the decision of the Full Bench of this Court in the matter of “Prakash Singh and others vs. Joint Development Commissioner, Punjab and others”. That judgment incidentally was to decide the following questions:-

“1. Whether a Director Consolidation, exercising power under the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 can decide whether land vests or does not vest in a Gram Panchayat ?

2. If answer to the first question is in the negative, then whether an order passed by a Director Consolidation, determining ownership of a Gram Panchayat, affirmed by the High Court and the Supreme Court operate as res-judicata in a subsequent petition, filed under Section 11 of the Act.

3. Whether Section 13-B of the Act empowers the Collector, exercising jurisdiction under Section 11 of the Act, to disregard an

order passed by the Director Consolidation, that has been affirmed by the High Court and the Hon'ble Supreme Court.

4. Whether a plea that the order passed by the Director Consolidation was obtained by fraud can be raised after the order has been affirmed by the High Court and the Hon'ble Supreme Court.”

In paragraph No.20 of this judgment in one line the Full Bench has mentioned as follows :-

“20. At this stage, it would be necessary to clarify that, though, agricultural land of a revenue estate, was demarcated into khewats, khataunis and khasra numbers, the land that fell within the “Lal Lakir” and was called “Abadi Deh” (the residential area of a revenue estate) was, a “no mans land”, for a revenue officer. A revenue officer did not venture into the “Abadi Deh” situated within the “Lal Lakir”, or demarcate khewats, khatonies or khasra numbers. A single khewat, khatoni and khasra number was allotted to the “Abadi Deh”. The normal rule of ownership of land within “Abadi Deh” was and is even today that ownership, follows possession. However, paths, ponds, cremation grounds, graveyards, streets, chaupals, etc., used for common purposes by residents whether located within or outside the “Abadi Deh” were assigned separate numbers and as they were used for common purposes and were treated as “Shamilat Deh”.

The contention raised by the learned counsel is that this judgment is enough to prove the case of the appellant.

In my considered opinion, the particular line in paragraph No.20 to which attention has been drawn by the learned counsel is at best, obiter in view of the questions which were before the Full Bench. Further by using the expression 'the normal rule' the Bench itself qualified the statement. To my mind, even property in Abadi deh is capable of being

owned and passed on to the legal representatives. The question is whether the appellant was able to prove that he was the owner of the property. Once he is not in a position to deny that the entire property of village Bawal was owned by Bishamber Dayal, it is too much to stomach that though the agricultural property was owned by Bishamabar Dayal yet plots in Abadi deh were not owned by him.

In these circumstances, no fault can be found with the judgments of the Courts below. The appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

16.4.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No