

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

CR no.3882 of 2018 (O&M)

Date of Decision: 08.03.2019

Sukh Ram and others

...Petitioners

Vs.

Gram Panchayat Indri and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. J.S. Hooda, Advocate,
for the petitioners.

Amol Rattan Singh, J (Oral)

1. By this petition, the petitioners challenge the order of the learned appellate court dated 04.05.2018 (the District Judge, Mewat), by which their appeal against the judgment and decree of the learned Civil Judge (Sr. Divn.) Nuh, dated 06.10.2010, has been dismissed on the ground of delay, the appeal having been filed 7 years and 7 months after the judgment and decree passed by the learned trial court.

2. The petitioners had instituted a suit seeking a declaration with a consequential relief of permanent injunction also sought, the declaration sought being to the effect that the *Jumla Malkan* (proprietors) of Village Indri be declared to be the owners of the suit land, which was otherwise shown to be in the ownership of the Panchyat Deh, though certain parts of the suit land were shown in the possession of different persons (even as per the *Jamabandi* (records of right) for the year 1965-66, a certified copy of which has been placed on record today).

It was further prayed in the suit that the revenue entries showing the suit land to be in the ownership of the Gram Panchayat be

declared to be null and void, ineffective, inoperative and therefore not binding upon the rights of the plaintiffs and other proprietors of the village.

In the suit filed, the learned trial court, after a written statement had been filed by the Gram Panchayat, as also State of Haryana (impleaded through its officer, defendants no.2 to 4 in the suit), framed the following issues:-

- “1) Whether the plaintiff is entitled to declaration sought? OPP
- 2) Whether the plaintiffs are entitled to the permanent injunction sought? OPP
- 3) Whether the plaintiff suit is not maintainable? OPD
- 4) Whether the plaintiff has no cause of action to file the present suit? OPD
- 5) Relief.”

Though the plaintiffs examined one of the plaintiffs as PW-1, with the defendants in fact not having led any evidence as per the judgment of the trial court (copy Annexure P-3), that court went on to hold that no document had been produced or proved to show the list of the proprietors of the village or to show as to what the suit property actually was and therefore, the mere oral testimony of one witness was not sufficient to prove the case of the plaintiffs (present petitioners).

Consequently, holding that as no documentary evidence at all had been led in support of the pleadings, the suit was dismissed.

3. In the order now impugned, the learned appellate court noticed the contention raised by counsel for the present petitioners (appellants before that Court) in their application seeking condonation of delay, to the effect that their counsel never informed them about the day to day proceedings and had in fact not even informed them about the judgment and decree of the trial court and only when the plaintiffs put pressure upon the counsel, he had disclosed that the suit had been dismissed, pursuant to

which they engaged a new counsel in the month of March 2017, who advised them to obtain a certified copy of the judgment and decree, after which the appeal was filed, with a delay of 7 years and 7 months having taken place in between.

After noticing the above, the appellate Court, after citing judgments from various courts including the Supreme Court and this Court, held that the delay being far too much, there was no ground to allow the application seeking condonation thereof, or to entertain the appeal.

Consequently, it was dismissed.

4. When this petition came up for hearing initially on July 18, 2018, upon learned counsel for the petitioner having submitted that the fault in filing the appeal after such a long delay was that of their counsel, for which the petitioners should not be made to suffer, the suit land never having been utilized for any common purposes, this Court had directed him to first place on record the judgment and decree of the learned Civil Judge, after which on July 31, 2018, the following order was recorded:-

“CM No. 14992-CII-2018

Pursuant to the order dated 18.07.2018, learned counsel for the applicants-petitioners has placed on record a copy of the judgment of the learned Civil Judge (Senior Division), Nuh, dated 06.10.2010, by which the suit of the petitioners-plaintiffs, was dismissed essentially on the ground that the plaintiffs failed to prove documents to show the list of proprietors of the village, or to show as to what in fact was the suit property, the suit land contended to be land falling in the category of '*Jumla Mushtarka Malkan*'.

The application is allowed and the aforesaid judgment of the learned Civil Judge is ordered to be taken on record as Annexure P-3 with the accompanying petition, subject to all just exceptions.

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Since the contention of learned counsel is that no documents as were given by the plaintiffs to their counsel before the learned Civil Judge, were actually produced by way of evidence, and that

the counsel misled them about the outcome of the case for 7 long years (as contended), the revenue record that the petitioners wished to rely upon in the suit, to prove their possession over the land, also showing the nature thereof, be placed on record by learned counsel for the petitioners by the next date of hearing.

Adjourned to 20.08.2018.”

Thereafter, on August 20, 2018, learned counsel for the petitioners had also been directed to place on record the plaint filed by the petitioners, showing therein the detailed description of the suit land, in order to “match” it with the revenue record.

Thereafter, a copy of the plaint had been placed on record, after which on September 28, 2018, an appropriate application had been directed to be filed placing on record the revenue record since 26.01.1950, including record pertaining to utilization of the land in consolidation proceedings, with permission granted at that stage to file such record even in its vernacular form, with certified copies thereof.

It is to be noticed here that the date 26.01.1950 was referred to by this Court in view of the fact that in sub-clause (iii) of Clause (g) of Section 2 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana), land described to be *Shamlat Deh*, does not include such land as has been partitioned and brought under cultivation by an individual land holder before 26.01.1950.

Eventually learned counsel had placed on record photocopies of the *Jamabandis* (records of right) for the years 1963-64 and 1965-66, with those not being fully legible and in any case they not being certified copies, in vernacular (some in the *Devnagri* script and some partly in the *Persian* script). He had therefore been directed to place on record translated copies, certified by the Assistant Collector 1st Grade, of the said documents.

It is to be noticed that even though this is a revision arising eventually out of a suit which was dismissed on the ground that no documentary evidence whatsoever was led in support of the pleadings in the plaint, though the order immediately impugned in the present petition is one dismissing the appeal on grounds of a very long delay, the aforesaid documents were directed to be placed on record in view of the fact that the learned counsel for the petitioners had submitted that since some of the proprietors were in possession of the land for the past 40-50 years, it would result in complete failure of justice, if the order dismissing the suit on the ground of delay was allowed to stand (as recorded in the order of this Court dated December 20, 2018).

Today, learned counsel having sought to place on record the certified copies of the *Jamabandis* for the years 1963-64 and 1965-66 (vide CM no.5580-CII of 2019), it is seen that as per the first *Jamabandi* for the year 1963-64, the name of the owner of (what is contended to be the suit land), is shown to be the *Jumla Malkan Digar Haqdaran Hasab Rasad Kabza Arazi*, with the name of the cultivator described as *Makbuja Jumla Malkan*.

One Chandu however is seen to be shown in possession in that *Jamabandi* in certain parts of the land as is contended to be the suit land (reference page 9 and 10 of the aforesaid application), with another person, Sri Chand, also shown to be in possession of some other part thereof.

As per the *Jamabandi* for the year 1965-66, it shows the ownership of the land to be in the name of the *Panchayat Deh*, with the column pertaining to cultivation showing the *Panchayat* to be in possession of most of the land (described as *Khudkasht*), though thereafter some persons whose names are given against various *khasra* numbers, are shown

to be in possession of that part of the land.

Very obviously, the petitioners are not shown to be in possession of the suit land, as per the revenue record shown to this Court (even though it was not led by way of evidence before the trial court).

Mr. Hooda submits that as a matter of fact, along with the appeal filed by the petitioners, they had also filed an application under Order 41 Rule 27 of the CPC, seeking to substantiate their pleadings by way of documentary evidence, but with the application seeking condonation of the delay itself having been dismissed, and the appeal along with, that application was never adjudicated upon by the appellate court.

Having considered what has been discussed herein above, it is first to be now noticed that the petitioners herein in any case, even in the revenue record sought to be placed on record in this petition, are not shown to be in possession of any part of the suit land.

Hence, simply because some other persons who are stated to be the proprietors of the village (as per learned counsel), are shown to be in possession of some part of the land since 1963-64/1964-65, I see no ground to entertain this petition and reverse the order of the learned appellate court dismissing an appeal filed 7 years and 7 months after the dismissal of the suit filed by the present petitioners, such suit also having been dismissed on the ground that no documentary evidence whatsoever was led by the petitioners in support of their pleadings.

Consequently, despite the fact that documents had been called for by this court to determine whether the petitioners would indeed suffer from a miscarriage of justice, I find no ground to even observe to that effect.

Hence, finding no merit whatsoever in the petition, it is dismissed *in limine*.

Naturally, if the petitioners have any right to the suit laid in terms of the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana) they would always be at liberty to approach the competent authority under Section 13B of the said Act, and upon any such petition/application being filed (filing of which is anybody's prerogative), the concerned authority would deal with it wholly on its merits on all aspects, including on the issue of limitation if such question arises.

Nothing stated hereinabove shall be taken to be an observation by this court on the merits of the case of the petitioners either for or against them, and if any proceedings are brought by them under the Act of 1961, they would, as already said, be dealt with wholly on the merits thereof by the authority concerned.

08.03.2019
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : no