In the High Court of Punjab and Haryana at Chandigarh

RSA No. 3334 of 1987 (O&M)
Date of Decision: February 26, 2019

Sheonath Chela Bhagirath (deceased) through his LRs.

... Appellant

Versus

Ramji Lal (deceased) through his LR and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Parwinder Singh, Advocate,
for the appellant.

Mr. Brijender Kaushik, Advocate,
for the respondents.

Amit Rawal, J.

Present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the plaintiff - Ram Charan Dass Chela Narain Dass Bhagirath Dass claiming himself and defendant no.8 – Sheo Nath Dass Chela Ram Charan Dass to be the owners in possession of agricultural land comprised in Khasra No. 54/4-10, 55/5-14, 161/6-19, 163/1-7, 164/1/44-13, 175/1/83-1, total measuring 201 bigha 4 biswa, situated in Village Rata Kalan, Tehsil Narnaul, as per jamabandi 1972-73 and challenge to the order of the Financial Commissioner, Haryana dated 12.02.1976 to be null and void has been dismissed by the trial Court and affirmed in appeal.

It was alleged that one Raghbir Dass Chela Budhar Dass Vairagi was the original owner of the suit land and the land revenue was exempted as it was the Mandir Balbhog. In fact, the Mandir Thakurji Maharaj was not the owner of the suit land. Plaintiff claimed to be the heir of Raghbir Dass. After the demised of Raghbir Dass, the suit land was mutated in favour of his Chela Jawahar Dass vide mutation No. 38 of 09.02.1959. It was averred to be in possession throughout his life time. After his death, the mutation of inheritance was sanctioned in favour of Ram Dass vide mutation No. 52 dated 02.01.1963. Bhagirath Dass succeeded Ram Dass vide mutation No. 121 dated 10.06.1977. He was succeeded by Narain Dass vide mutation No. 195 dated 07.05.1981. It was further alleged that mutation No. 323 was obtained by the defendants on 24.05.1951 on the basis of order to injur the rights of Narain Dass Chela Bhagirath Dass. On 07.06.1951, the said mutation, was rejected and Narain Dass continued to be the owner and in possession. Plaintiff further alleged that a mutation no. 565 dated 05.03.1973 was again entered by the defendants claiming that the suit land be entered as ownership of Mandir Thakurji Maharaj Muafidar Mohatmim Ram Charan Dass Chela Narain Dass. The aforesaid mutation was rejected on 03.07.1973. A petition of review preferred against the said order, was rejected on 10.09.1973 and thereafter, the appeal preferred before the Collector was also dismissed on 24.01.1974. Commissioner on 27.05.1974 also dismissed the revision petition. Revision petition preferred by the Murti Thakurji against the order of the Commissioner, was accepted by the Financial Commissioner vide order dated 12.02.1976 and ordered sanctioning of mutation no. 565 by rejecting Mutation No. 323. In lieu thereof, Mandir Thakurji be recorded as the owner of the suit land instead of Ram Charan Dass. The order of the Financial Commissioner was without jurisdiction and against the facts and law. It was further alleged that after the demise of Narain Dass, mutation No. 154 of his inheritance was sanctioned in favour of the plaintiff and he continued to be the owner in possession. 2/3rd share in the land comprised in khewat No. 148, Khatoni No. 214, measuring 306 kanals 1 marla was transferred by the plaintiff in favour of proforma defendant no.8 vide a registered *Tamliqnama* and mutation no. 522 was sanctioned on 04.06.1970.

The defendant opposed the suit by raising numerous pleas. It was alleged that Murti Mandir Thakurji Maharaj was the owner of the suit land and the plaintiff was only the Mohatmim of the Mandir. In fact, suit land was a `MUAFI' and mutation no. 565 was rightly sanctioned in favour of Murti Mandir Thakurji on the basis of a *Farman-i-shahi*.

On the basis of pleadings, the trial Court framed the following issues:-

"1. Whether the land in dispute was the personal property of Raghbir Dass Chela Gujar Dass and descended to plaintiff by inheritance? OPP

2. Whether the final order of Financial Commissioner dated 12.02.1976 is illegal, void and not binding on the grounds as alleged? OPP

3. Whether the suit is barred by limitation? OPD

4. Whether the plaintiff has got no locus standi to bring the suit? OPD

5. Whether the suit is not maintainable in the present form? OPD

6. Whether the civil court has got no jurisdiction? OPD

7. Whether the impugned property vests in Moorti Mandir Thakurji? OPD (objected to).

8. Relief."

The plaintiff in support of the afore-mentioned evidence, examined PW1 Nitya Nand Patwar Moharrir and himself appeared as PW2 and tendered into evidence Ex.P1 to Ex.P28 i.e. various jamabandis and mutations. On the other hand, defendant examined DW1 – Partap Singh, Patwari and DW-2 Chhailu Ram, retired Kanungo and brought on record the revenue records, mutations (Ex.D1 to D7), Wajib-ul-arz (Ex.D8), rapat Roznamcha of Hidayti (Ex.DW-2/A), copy of written statement filed by the plaintiff in various litigation (Ex.D-1), statement (Ex.D-2) and order dated 29.12.1969 passed by the then Senior Sub Judge, Narnaul (Ex.D-3).

The trial Court, on the basis of evidence, dismissed the suit which, as noticed above, was affirmed in the appeal.

Mr. Vikas Behl, learned senior advocate assisted by Mr. Parwinder Singh, learned counsel, appearing on behalf of the appellant, submitted that both the Courts below have erred in not granting the opportunity for proving the case, nor any issue was framed. *Farman-i-shahi* had no application as land was held as Maufi. Mutation No. 323 vide order dated 07.06.1951 was rightly rejected, it revealed that Ram Charan Dass Chela Narain Dass was the owner, therefore, the property cannot said to be in ownership of Mandir Murti Thakurji Maharaj. The previous litigation had no connection with the present suit. The suit was maintainable as involved the question of fact. The challenge to the order of the Financial Commissioner was consequential. The entire revenue record from the date when Raghbir Dass came to own the land proved that it was not the property of "Mandir Thakurji Maharaj" but of Raghbir Dass and thereafter, his chelas. The mutation of the property in the name of afore-mentioned mandir was not sustainable in the eyes of law. There is a stark difference between the words "*MAUFI*" and "*JAGIR*" holding the property to be *FARMAN-I-*

SHAHI was totally irrelevant and inapplicable as the term "*MAUFI"* referred to in the revenue record. In other words, it was submitted that the land never came to be recorded in ownership of temple viz. record of consolidation Ex.P19 Ram Charan – plaintiff from the year 1951 to 1973 reflected as owner of the land. During all this period, none of the villagers challenged the rejection of the original mutation entry Ex.P13. Mutation entries Ex.P2 to P9 revealed that the inheritance of mutation after the death of Raghbir Dass were attested in favour of his chela so on so forth. Defendants failed to establish on record the status of the earlier Mahant as Mohatmim. Reference of Dohlidar in the one column was irrelevant. In the absence of any Maufi, forfeiture of the grant, could not have arisen.

Per contra, Mr. Brijender Kaushik, learned counsel, appearing on behalf of the respondents supported the impugned judgments by submitting that the concurrent finding of fact cannot be interfered nor there is any gross irregularity or perversity. Manner and mode in seeking declaration was to be that the personal property of the Mahant was without any basis as no proof of Begh ceremony appointing of chela on the demise of the previous Guru was placed on record. The revenue record carried a presumption of truth but cannot confer title. The Mandir is to be run by some Mohatmim or the Pujari who cannot attain the title on the basis of long and settled possession. The suit was not maintainable in view of the embargo under Section 158 of the Punjab Land Revenue Act as proceedings of mutation upto the Financial Commissioner attained finality and urges for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book, record of the case and of the view the following substantial questions of law arises for determination:-

1. Whether the suit of the plaintiff, as framed above, was maintainable in view of bar under Section 158 of the Punjab Land Revenue Act?

2. Whether the long and settled possession of the plaintiff could convert into ownership?

It would be apt to reproduce Section 158 of the Punjab Land Revenue Act:-

> *"**158. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue-officers**: - Except as otherwise provided by this Act-*
>
> *(1) a Civil Court shall not have jurisdiction in any matter which the [State Government] or a Revenue-officer is empowered by this act to dispose of or take cognizance of the manner in which the [State Government] or any Revenue-Officer exercises any powers vested in it or him by or under this Act; and in particular-*
>
> *(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely: -*
>
> > *(i) any question as the limits of any land which has been defined by a Revenue-officer as land to which this Act does or does not apply;*
> >
> > *(ii) any claim to compel the performance of any duties imposed by this Act or any other enactment for the time being in force on any Revenue-officer as such;*
> >
> > *(iii) any claim to the office of kanungo, or village-officer, or in respect of any injury caused by exclusion from such office, or to compel the performance of the duties or a division of the emoluments thereof ;*
> >
> > *(iv) any notification directing the making or revision of a record-of –rights ;*

(v) the framing of a record-of-rights or annual record, or the preparation, signing or attestation of any of the documents included in such a record ;

(vi) the correction of any entry in a record-of-rights, annual record or register of mutations ;

(vii) any notification of the undertaking of the general re-assessment of a district or tehsil having been sanctioned by the [State Government] ;

(viii) the claim of any person to be liable for an assessment of land-revenue or of any other revenue assessed under this Act ;

(ix) the amount of land-revenue to be assessed on any estate or to be paid in respect of any holding under this Act ;

(x) the amount of, or the liability of any person to pay, any other revenue to be assessed under this Act, or any cess, charge or rate to be assessed on an estate or holding under this Act or any other enactment for the time being in force ;

(xi) any claim relating to the allowance to be received by a land-owner who has given notice of his refusal to be liable for an assessment, or any claim connected with, or arising out of any proceedings taken in consequence of the refusal of any person to be liable for an assessment under this Act ;

(xii) the formation of an estate out of waste-land ;

(xiii) any claim to hold free of revenue any land, mills, fisheries or natural products of land or water ;

(xiv) any claim connected with, or arising out of, the collection by the Government, or the

enforcement by the Government of any process for the recovery of land-revenue, or any sum recoverable as an arrear of land-revenue;

(xv) any claim to set aside, on any ground other than fraud, a sale for the recovery of an arrear of land-revenue or any sum recoverable as an arrear of land-revenue ;

(xvi) the amount of, or the liability of any person to pay any fees, fines, costs or other charges imposed under this Act ;

(xvii) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought ;

(xviii) any question as to the allotment of land on the partition of an estate, holding or tenancy or as to the distribution of land subject by established custom to periodical re-distribution or as to the distribution of land –revenue on the partition of an estate or holding or on a periodical re-distribution of land, or as to the distribution of land, or as to the distribution of rent on the partition of a tenancy ;

[(xviii-a) any question connected with or arising out of or relating to any proceedings for the determination of boundaries of estates subject to river action under sections 101-A, 101-B, 101-C and 101-D, respectively, of Chapter VIII] ;

(xix) any claim to set aside or disturb a division or appraisement of produce confirmed or verified by a Revenue-officer under this Act ;

(xx) any question relating to the preparation of a list of village cesses or the imposition by the

[State] Government of conditions on the collection of such cesses ;

(xxi) any proceeding under this Act for the communication of the dues of a superior land-owner ;

(xxii) any claim arising out of the enforcement of an agreement to render public service in lieu of paying land-revenue ; or

(xxiii) any claim arising out of the liability of an assignee of land-revenue to pay a share of the cost of collecting or re-assessing such revenue , or arising out of the liability of an assignee to pay out of assigned land-revenue, or of a person who would be liable for land-revenue if it had not been released, compounded for or redeemed to pay on the land-revenue for which he would but for such release, composition or redemption be liable, such a percentage for the remuneration of a village officer as may be prescribed by rules for the time being in force under this Act."

While interpreting the afore-mentioned provisions, this Court in ***Harjinder Singh vs. Kesar Singh and others,*** reported in ***2013(33) R.C.R. (Civil) 273*** in para no.5 held as under:-

"Admittedly, right to partition is governed by Section 111 of the Punjab Land Revenue Act and under Section 158(2) (xviii) of the Punjab Land Revenue Act the jurisdiction of the civil court is ousted. Section 158 (xviii) bars a civil court from hearing any question as to allotment of land made in the partition proceedings of agricultural land. Thus when in partition proceedings before revenue officer there is no dispute as to the title to the land to be partitioned, civil court has no jurisdiction to entertain any question arising out of such proceedings. The fact that

> *procedure of the revenue officer was defective would not give a civil court jurisdiction in view of clear ouster set forth in the Act. Learned counsel for the petitioner has failed to show any illegality or perversity in the orders of the revenue authorities. Only ground is that principles of natural justice have not been followed. This contention cannot be accepted. Petitioner was party to the proceedings. He had been appearing in the proceedings and had the opportunity to challenge the orders of revenue authorities which according to him were not in accordance with law. The remedy of appeal/revision and ultimately writ was available to him."*

The term "*MAUFI"* as per the revenue meaning is a Grant Of : Land by the proprietary body for charitable purposes. The object is to provide income for the upkeep and maintenance of religious and charitable institutions. The roznamcha report No. 49 dated 18.04.1951 brought on record through the testimony of DW1 – Partap Singh Patwari and proved by DW2 – Chhailu Ram Kanungo, reveals that the land granted to Dera should not be taken as a personal property of Mahant and mutation in the revenue record should be recorded in the name of Mandir with the Mahant as Mohatmim who will have no right to transfer such Maufi lands. The aforesaid report remained uncontroverted. The succession of Mahant never devolved on hereditary basis. The record of *Wazibul-arz* Ex.D-8, indisputably established that it was only a grant of land in favour of Raghbir Dass on behalf of the State Government and in such circumstances, the declaration of title, in my view, was wholly an act of aggrandizement and nothing beyond. Mere recital in the plaint would not clothe the status of chela in the absence of any proof of general assembly / begh.

As an upshot of my finding, I am of the view that finding of fact and law arrived at both the Courts below do not suffer from any illegality or perversity. The substantial questions of law are answered against the appellant/plaintiff and in favour of the respondents/defendants.

Accordingly, the appeal stands dismissed.

February 26, 2019 **(Amit Rawal)**
vkd **Judge**

Whether speaking / reasoned : Yes

Whether reportable : No