

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3052 of 1994

Date of Decision: 05.02.2019

Shamsher Singh through LR's and othersAppellants

Vs.

Gram Panchayat, NanausuRespondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.S.S.Swaich, Advocate, for the appellants.

Mr.Jaiteshwar Singh, Advocate, for
Mr.H.S.Brar, Advocate, for the respondents.

DR. RAVI RANJAN, J.

The challenge in this appeal is made to the Judgment and Decree dated 05.08.1994 passed in Civil Appeal No.58/13.03.1992 by which the lower appellate Court has dismissed the appeal and affirmed the trial Court's Judgment dated 24.01.1992 by which the suit filed by the appellant was dismissed by Subordinate Judge Ist Class, Patiala, in Civil Suit No.48 of 15.02.1989.

Before proceedings to consider and decide this matter, it is to be noted here that trial Court records could not be received because they were lost and a report of the District and Sessions Judge, Patiala, is on record that as per direction of this Court inquiry was held in which it has found that it was not possible to reconstruct the file in question because the parties were not in possession of the necessary documents. No action could be taken against the erring official also as he had already left for heavenly abode.

However, it is regretted that though an inquiry was directed to be held on

15 years.

Be that as it may, since the issue involved in this appeal is merely a question of law on the basis of fact admitted by both the sides, the non-availability of lower Courts records would not pose any problem in taking a decision in this matter.

Appellants/plaintiff filed Civil Suit No.48 of 1989 before the Subordinate Judge Ist Class, Patiala, for declaration that they are in possession of the land described in the plaint and the order of the Collector under the The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”) and that of the Joint Director, Punjab, exercising powers of Commissioner under the Punjab Village Common Lands Act, 19.09.1988 are illegal, null and void, unconstitutional and without jurisdiction.

The plaintiffs, on earlier occasion, had filed a Civil Suit claiming their ownership on the land in dispute which was decreed by the Civil Court on 13.08.1976. The defendant Gram Panchayat did not file any appeal assailing the aforesaid judgment rather it filed a Civil Suit for setting aside the aforesaid judgment and decree of the trial Court taking one of the grounds that Civil Court did not have any jurisdiction in the matter, however, it subsequently withdrew the suit with a liability to file one before the Collector under Section 11 of the Act. That was allowed by the Collector on 03.06.1986 and he ordered ejectment of the plaintiffs under Section 7 of the Act. The appeal filed by the plaintiff-appellants was also dismissed on 19.08.1988. Therefore, the present suit was filed.

The Gram Panchayat contested the present suit by filing a

impugned orders were appealable in the Court of Commissioner and the plaintiffs have not exhausted all the remedies available to them and further that the suit is also barred by the principle of *res-judicata*. A further stand was taken that the decree passed by the Civil Court on 13.08.1976 is a nullity as the same was passed after the amendment of the Punjab Village Common Land (Regulation) Act, 1961 which has already come in force on 27.04.1976 under which the Civil Court jurisdiction was barred. In the proceeding under the aforesaid Act, Gram Panchayat has been held to be owner by the Collector under Section 11 and under Section 7 an eviction order was passed on 03.05.1996. The appeal was also dismissed by the Commissioner on 19.09.1988.

The trial Court, upon considering rival pleadings, framed following issues:

1. Whether the plaintiffs are owners in possession of the suit land ? OPP.
2. Whether the order of Collector under the Punjab Village Common Land Act dated 03.06.1986 and of the Director Panchayat Punjab dated 19.09.1988 are illegal, null and void, without jurisdiction?
3. Whether the plaintiffs are entitled to declaration and injunction prayed for ? OPP.
4. Whether the suit is not maintainable under Section 13 of the Punjab Village Common Lands Act? OPD.
5. Whether the suit is time barred? OPD.
6. Whether the suit is hit by principles of *resjudicata* ?
7. Relief.

Issues No.1,2,3 and 4, being interconnect, were taken together for consideration by the trial Court. The trial Court has noticed that the

Section 13 and 13(B) of the Act were inducted by amendment vide Punjab

Amendment Act, 1976 which was made effective from 27.04.1976. Which would mean that on the day on which the judgment and decree was passed i.e. 13.08.1976, the said Act became operational, thus, the Civil Court didn't have any jurisdiction to decide the *lis* at that point of time. So far the possession is concerned, it was submitted by the defendants Gram Panchayat that the plaintiffs were *chakotedars* in the year 1969-70 at Rs.13/- per killa. The trial Court has come to the conclusion that the lease deed Ex.D2, Ex.D3, Ex.D4, Ex.D5, Ex.D6 and Ex.D7 confirmed the assertion made by the counsel for the defendant-Gram Panchayat that the plaintiffs were *Chakotedars* of the Gram Panchayat as no other evidence was available on record to hold otherwise. Thus, the defendant Gram Panchayat sought its title and ejectment of the plaintiffs by filing petition under the provisions of Section 11 and Section 7 of the Act. The ejectment of plaintiffs has been ordered by the competent authority under the Act. The appeal filed by the plaintiff also stood dismissed.

Eventually, in view of the statutory provisions, the trial Court has held the present suit was also not maintainable and the plaintiffs are not entitled for declaration and injunction prayed for. In the result the suit was dismissed.

The aforesaid judgment and decree was put to challenge by the plaintiffs-appellants before the lower appellate Court which has also affirmed the views of the trial Court.

Now in the present appeal, the first question of law raised by the counsel for the appellant is as to whether on the date of decree in the earlier suit, the Civil Court stood divested with the power to decide the *lis* or the

prospective in nature? Secondly, as to whether the present suit itself was maintainable or not?

In the aforesaid background of the matter, I have heard the parties. For better appreciation, the provision contained in Section 13 as well as Sections 12, 13 and 13B of the Act are extracted and reproduced as under:

12. Finality of orders-- *Save, as otherwise, expressly provided in this Act, every order made by the Collector or the Commissioner shall be final and shall not be called in question in any court by way of appeal or revision or in any original suit, application or execution proceedings.*

13. Bar of jurisdiction in civil Courts:- *No civil Courts shall have jurisdiction---*

(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not shamilat deh vested or deemed to have been vested in a Panchayat under this Act; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act; or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.

13A. XXX XXX XXX XXX XXX XXX XXX

13B. Provisions of this Act to be overriding-- *The provisions of this Act shall have effect, notwithstanding anything to the contrary in any law or any agreement, instrument, custom or usage or any decree or order of any court or other authority.*

From perusal of the aforesaid provision, in my considered opinion, since provisions have not been made effective with any retrospective date, it would have to be held as prospective in nature. However, the question remains whether the suit stood disposed of on the date when the Section 13 was made operational and effective? The date of enforcement of the aforesaid provision admittedly being 27.04.1976, and the date of decree being 13.08.1976, it has to be held that at the time when Section 13 became effective, the suit was pending and as per Section 13, the Civil Court concerned did not have any jurisdiction to entertain and adjudicate upon any question with regard to any right or interest in the property which has vested or deemed to have vested in the Panchayat under the Act or in respect of any matter which the Commissioner or Collector was empowered under this Act to determine. In such a situation, the Course open to the plaintiff was to approach the Collector under the Act for such declaration as the *lis* in the earlier suit was also as to whether the plaintiffs had title and possession over the property or the Gram Panchayat was the holder of the property having been vested in it.

Once it is held as above, then the judgment and decree passed in the earlier suit can easily be termed to be nullity and would have to be treated as if there is no decree in favour of the plaintiff.

Secondly, in view of the bar created under Section 13 Read with Section 12 and 13 (B), it has also to be held that the present suit is also not maintainable for the reason that the plaintiffs have lost up to the appellate stage in the concerned proceedings under the Act and the Civil Court didn't have any jurisdiction to take a decision in such matter finally been decided

Court would not have any hesitation in holding that no good ground or question of law could be raised on behalf of the appellants warranting this Court to intervene into this matter.

In the result this appeal has to fail being devoid of merit, and, accordingly, the same is dismissed. However, parties would bear their own costs.

(DR. RAVI RANJAN)
JUDGE

05.02.2019

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No