

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-15977-2015 (O&M)
Date of Decision:06.03.2020

Satyavir Singh

. Petitioner

Vs.

State of Haryana and others

. Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ASHOK KUMAR VERMA

Present: - Mr.Vijay Sharma, Advocate,
for the Petitioner.

Ms. Kirti Singh, DAG, Haryana,
for respondents No.1 to 3.

Mr.G.S. Jaswal, Advocate,
for respondent No.4.

RAKESH KUMAR JAIN, J.

The petitioner has challenged the order dated 23.01.2013 passed by respondent No.3 and order dated 22.04.2015 passed by respondent No.2 by which the plea of question of title raised by the petitioner in the proceedings initiated under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 [for short 'the Act'] was rejected.

In brief, respondent No.4 (Gram Panchayat) filed an application under Section 7 of the Act seeking eviction of the petitioner and two others from the land comprised in Khasra No.43//7/2(2-13), 8(2-8), 13/1/1(1-4), 13/1/3(0-12), 13/2(1-17), 14(7-11), 17(1-9) total measuring 17 kanal 14 marla situated in Village Phulpura, on the ground that the land in question is a part of *shamilat deh* and is being used for common purposes on which the petitioner and two others are in unauthorized possession.

In reply filed to the aforesaid application, it is averred by the petitioner herein that the land is recorded in the revenue record as *Jumla Mustarka Malkan Hasab Rasad Khewat* and is in possession of Prabhu Singh son of Bhagwana Singh as a shareholder and the land in question was not at all transferred in the name of Gram Panchayat vide mutation No.2824 dated 25.11.1964. It is further averred that the petitioners have stepped into the shoes of Prabhu Singh son of Bhagwana Singh on the basis of a registered Will dated 30.11.1990 executed by him. It is pertinent to mention that the petitioner had also filed a civil suit for declaration with consequential relief of permanent injunction against the Gram Panchayat and other residents of the same village claiming himself to be the owner of the property in dispute on the basis of the registered will dated 30.11.1990 purported to have been executed in his favour by Prabhu Singh son of Bhagwana Singh, who died on 11.9.1991. He has alleged that he is the bishwedar/proprietor of the village through the testator Prabhu Singh. In the said civil suit, on the pleadings of the parties, issue No.1 was framed "*Whether plaintiff is owner in possession of the suit property. If so to what effect? OPP*".

Voluminous documentary evidence was led but the issue No.1 was decided by the trial Court holding that the petitioner herein is neither the owner of the suit land nor he has acquired the ownership by way of adverse possession. The judgment and decree of the Civil Court dated 27.09.2004 was challenged in Appeal No.126 of 2004 by the petitioner. The said appeal was dismissed vide judgment and decree dated 21.7.2009. The petitioner then filed Regular Second Appeal No.3584 of 2009 in this Court titled as *Satvir Singh Vs. Gram Panchayat Village Phulpura and others* which has also dismissed by this Court categorically observing that his predecessor-in-interest, namely, Prabhu Singh was recorded, in the revenue record, in possession over the suit land as

tenant (*gair marusi*) on the payment of 'Chakota Sal Tamam' ₹130 Khari Pari. In this background, it was held that the petitioner herein cannot claim the ownership of the land in question, belonging to the proprietors, on the basis of a registered Will dated 30.11.1990 purported to have been executed in his favour by Prabhu Singh son of Bhagwana Singh, who himself was not the owner and was the tenant. It was also held by this Court that the plea of adverse possession was also not available to the present petitioner. The said civil litigation thus came to an end with a concurrent finding of fact that Prabhu Singh (predecessor-in-interest of the petitioner) was not the owner of the land in question as a proprietor, who was in possession of the land in question as a tenant (*gair marusi*) on payment of 'Chakota Sal Tamam'.

The petitioner raised a question of title in the proceedings pending under Section 7 of the Act. The said application was rejected by the impugned order dated 23.01.2013 on the ground that no relevant evidence has been produced on record to *prima facie* prove the question of title. Against the said order, the revision petition filed by the petitioner was also dismissed by the Financial Commissioner again on the ground that no evidence has been placed on record to show *prima facie* that the question of title is involved. Rather the observations of the Financial Commissioner are that the petitioner has used all the tricks and tactics to delay the proceedings in order to remain in possession of the land in question. In this regard, reference could be had to paragraph Nos.5, 6 & 7 of the order of the Financial Commissioner, which are reproduced as under: -

“5. After hearing both sides and perusing the litigation history, it appears clear that all tricks and tactics were used, if that is the

right word, to prolong the eviction from the gram panchayat land. Assistant Collector 1st grade has given 36 dates. It gave 9 opportunities to revisionist. First revisionist made a request for stopping eviction proceeding on the ground of stay by civil court. After rejection of application, he also moved to appellate court of Collector. Then he disappeared from court and when ex-parte proceeding was initiated, he again appeared. When evidence part came from both sides, then he again sought adjournment due to pending civil court litigation, which was rejected and then he again preferred appeal in Collector's court, which was also dismissed. When he was evicted ex-parte from the suit land, then he requested for setting aside ex-parte proceeding. Finally, the case was reaching the decision stage, he gave another application for deciding the question-of-title as per Code of Civil Procedure. When this application was rejected, then he moved before Collector also and then, he moved before this court also.

6. *The conduct of revisionist in availing*

the parallel remedy in civil court is also interesting. He filed application for declaration and permanent injunction in civil court over suit land. In the garb of said civil court, he tried multiple times to get eviction proceeding in revenue court stopped. Finally, he lost in civil court. Its appeal in the court of Additional District Judge was dismissed. Finally, High Court has also dismissed the Regular Second Appeal. High Court has recorded that Shri Parbhu Singh was in possession of the suit land as tenant gair maurusi on payment of chakota saal tamam Rs. 130/-. Revisionist has claimed to be inherited through Shri Parbhu Singh possession, who was his uncle. High Court has also held that plea of adverse possession is also not available to the revisionist. As even Parbhu Singh was not owner of the suit land.

7. The whole litigation history of this case clearly shows that there is no ground left for accepting the question of title. The title of the suit land has been refused by all the three civil courts namely Civil Judge (Senior Division), Additional District Judge and High Court. The same

*has not been challenged in Supreme Court.
So, the title issue has attended finality.
Nobody can claim title on the basis of
jamabandi entry as gair maurusi on
payment of chakota. The whole request is
only meant to further prolong the
eviction process by another of litigation in
various courts.”*

Confronted with the aforesaid facts, counsel for the petitioner has vehemently argued and referred to mutation (Annexure P-5) and jamabandi for the year 1966-67 (Annexure P-6). According to the petitioner, the land in dispute has been recorded in the name of the Gram Panchayat by virtue of mutation No.2824 sanctioned on 25.11.1964 whereby the land of *Jumla Mustarka Malkan Hasab Rasad Khewat* has been shown in the ownership of the Gram Panchayat. He has also submitted that the land in question cannot be termed as *shamilat deh*.

We have heard counsel for the parties and perused the record with their able assistance.

The question in this case for consideration is about the dismissal of the application of the petitioner for raising the question of title. The petitioner has set up the defence in the application filed under Section 7 of the Act that the land in question was owned by the proprietor of the Village, namely, Prabhu Singh who had executed a Will in his favour before his death and therefore, he has stepped into his shoes and had also become the proprietor of the village, therefore, the land belongs to him as owner and he is not an unauthorized occupant.

On the other hand, counsel for the respondents has submitted that the petitioner cannot wriggle out of the finding recorded by the Civil Court in the civil suit for declaration and permanent injunction, claiming his right over the property in dispute on the basis of the same Will purported to have been executed in his favour by Prabhu Singh, who has been concurrently held not to be not the owner of the property in dispute as he has been recorded in the revenue record as tenant (*gair marusi*) on 'Chakota Sal Tamam'.

Thus in view thereof, there is hardly any merit in the present petition for the purpose of interference by this Court and the same is hereby dismissed though without any order as to costs

(RAKESH KUMAR JAIN)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

06.03.2020

Vivek

Whether speaking /reasoned : *Yes/No*
Whether Reportable : *Yes/No*