

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

CWP-18533-2019 (O&M)
Date of Decision:06.3.2020

Kuldeep Singh

. Petitioner

Vs.

State of Haryana and others

. Respondents

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ARUN KUMAR TYAGI**

Present: - Mr.H.P.S. Ishar, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J.

The petitioner has assailed the validity of the orders dated 02.04.2013 and 11.01.2018 by which suit filed by him under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana) [for short 'the Act'] has been dismissed.

In brief, the petitioner filed a suit under Section 13-A of the Act in which he has averred that he along with performa defendants are joint owners in possession of the land in question which forms part of Ahata No.17, House No.84 belonging to him and his family and the Panchayat (contesting respondent) has no concern with it.

During the course of hearing, the petitioner was asked to file an affidavit disclosing certain facts which are relevant for the adjudication of this case and in pursuance thereof the petitioner has filed miscellaneous application No.13800 of 2019 for seeking permission to place on record the affidavit dated 11.09.2019 on record and the same is taken on record. The petitioner has disclosed that a petition under Section 7 of the Act was filed by the Gram

Panchayat against his father Charan Singh who had allegedly become the owner of the property in question in an out of Court family settlement. The said petition was filed on 20.1.1993 and was allowed on 30.9.1993. Appeal filed by his father was dismissed on 25.01.1994. His father Charan Singh challenged both the orders dated 30.9.1993 and 25.01.1994 by way of CWP-6866-1994 which was allowed on 07.11.1994 and the matter was remanded back to the Collector to decide the matter afresh after giving opportunities to lead evidence to both the parties. Thereafter, the Assistant Collector, 1st Grade dismissed the petition of the Gram Panchayat on 16.6.1997 but appeal was allowed on 26.11.1997 and the case was again remanded back. After the remand, ejectment order was passed against the father of the present petitioner on 08.08.2000. The appeal filed by the father of the petitioner was dismissed on 24.4.2002 and the revision was also dismissed on 13.11.2003. Father of the petitioner, namely, Charan Singh died on 14.2.2010. After his death a suit under Section 13-A of the Act is filed by the petitioner dated 25.7.2011 for seeking a declaration that the land in question is owned by the petitioner through his father. The said suit was dismissed by both the Courts below and hence, the present petition has been filed.

From the perusal of the aforesaid facts and circumstances, the question which arises for consideration is as to whether the suit filed under Section 13-A of the Act was maintainable at the hands of the petitioner after an ejectment order was suffered by his father without raising question of title in terms of proviso to Section 7(1) of the Act?

In order to decide this question, it would be relevant to refer to certain provisions of the Act and the Rules which are reproduced as under: -

“Section 7. Power to put Panchayat in possession of certain lands.- (1) An

Assistant Collector of the first grade having jurisdiction in the village may, either suo moto or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in the panchayat under this Act and put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887:

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall

record a finding to that effect and first decide the question of title in the manner laid down hereinafter.

2) The Assistant Collector of the first grade shall by an order, in writing, require any person to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or unauthorised possession, at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum, having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as arrears of land revenue.

3) The procedure for deciding the question of title under proviso to sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908.

4) If any person refuses or fails to comply with the order of eviction passed under sub-section (1), within ten days of the date of such order, the Assistant Collector of the first grade may use such force, including

police force, as may be necessary for putting the panchayat in possession.

(5) Any person who is found in wrongful or unauthorised possession of the land or other immovable property in shamilat deh and is ordered to be ejected under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years.”

“Section 13-A. Adjudication. (1) Any person or in the case of a Panchayat, either the Panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is shamilat deh or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a Panchayat under this Act, in the Court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated:

Provided that no suit shall lie under this section in respect of the land or other immovable property, which is or has been the subject matter of the proceedings under

section 7 of this Act under which the question of title has been raised and decided or under adjudication.

(2) The procedure for deciding the suits under sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (5 of 1908).

“Rule 19. *Unauthorized occupation of shamlat deh [Sections 7 and 15(2)(k) of the Act].- For purposes of section 7 of the Act, a person shall be deemed to be in unauthorised occupation or any land in shamlat deh-*

(a) where he has, whether before or after the commencement of possession there of otherwise than under and in pursuance '[of] any allotment, lease or grant by the Act, entered into the Panchayat; or

(b) where he being an allottee, lessee or grantee, has, by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in this behalf, therein or after the commencement of the Act, to be entitled to occupy or hold before

whether contained, ceased such land in shamlat deh; or

(c) where any person authorised to Occupy any land in shamlat deh has, whether before or after the commencement of the Act –

i) sub-let in contravention of the terms of allotment, lease or grant, without the permission of the Panchayat or of any other authority competent to permit such sub-letting the whole or any part of such land in shamlat deh; or

ii) otherwise acted in contravention of any of the terms express or implied, under which he is authorised to Occupy such land in shamlat deh;

Explanation- For purposes of clause

(a), a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee.”

“Rule 20. Issue of notice to show cause against order of eviction. [Sections 7 and 15 (2)k(1) of the Act].-- If the Assistant Collector of the Ist grade is of opinion that any persons are in unauthorised occupation of or claim interest in the land. in shamlat deh situated within his jurisdiction and that they should be evicted, he shall issue in manner hereinafter provided a notice in writing calling upon all the persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall-

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are or may be, in occupation of, or claim interest in the land in shamlat deh, to show cause, if any, against the proposed order on or before such date as is specified in the notice being a date not earlier than ten days from the date of issue thereof

(3) The Assistant Collector shall cause the notice to be affixed on some conspicuous place outside the Panchayat ghar or any other building used as office by the Panchayat and at some conspicuous places of the estate in which the land in shamlat deh is situated, whereupon the notice shall be deemed to have been duly given to all persons Concerned.

(4) Where the Assistant Collector knows or has reasons to believe that any persons are in occupation of the land in shamilat deh, then without prejudice to the provisions of sub-rule (3), he may cause a copy of the notice to be served on every such person by delivering or tendering it to that person or by registered post with acknowledgement due.”

“Rule 21. *Eviction of unauthorised persons. [Sections 7 and 15 (2)(6) of the Act-- (1) If, after considering the cause, if any, shown by any person in pursuance of notice under rule 20, and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Assistant Collector is satisfied that the land in shamlat deh is in an unauthorised occupation, the Assistant Collector may on a date to be fixed for the purpose make an order of eviction for reasons to be recorded therein, directing that the land in shamlat deh, shall be vacated by all persons who may be in unauthorised occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door of the Panchayat ghar and at some other conspicuous places of the shamlat deh or of the estate in which the land in shamlat deh is situated.*

(2) If any person refuses or fails to comply with the order of eviction 'within thirty days after the expiry of time period of appeal the Collector or any other officer duly authorised by him in this behalf may

evict that person from and take possession of, the land in shamlat deh and may, for that purpose, use such force as may be necessary.”

Section 11 and Order 2 Rule 2 of the Code of Civil Procedure, 1908 [for short ‘the CPC’] are also relevant for the decision of the aforesaid question and are reproduced as under: -

11. *Res judicata* - *No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

Explanation I.—The expression " former suit " shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VII.— An issue heard and finally decided by a court of limited jurisdiction competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

Order 2 *Suit to include the whole claim –*(1) *Xxx*

(2) *Relinquishment of part of claim –*
Where a plaintiff omits to suit in
respect of, or intentionally
relinquishes, any part of his claim, he
shall not afterwards sue in respect of
the portion so omitted or
relinquished.

(3) *Xxxx**Explanation - xxx*

As per the scheme of the Act, Section 7 of the Act is provided for a summary enquiry to remove wrongful and unauthorized possession from the land which is vested or deemed to have been vested in the Panchayat but the proviso to Section 7(1) of the Act says that if in such proceedings question of title is raised with *prima facie* proof on the basis of documents and it is so recorded by the Collector that the question of title is really involved then the Assistant Collector, 1st Grade shall first decide the question of title in the manner provided. Section 7(3) of the Act provides the procedure for deciding the question of title which shall be as laid down in the CPC. It apparently means that if a question of title is not raised and proved *prima facie* with the aide of supporting documents, the Assistant Collector shall not be under any obligation to first decide the question of title by converting the petition filed under Section 7 of the Act, which is to be tried in a summary manner, into a suit which has to be decided as per the procedure prescribed under the CPC. Section 13-A of the Act provides that any person or the Panchayat who have a right, title or interest in any land or immoveable property vested or deemed to have been vested in the Panchayat shall have a right to file a suit for adjudication of

the question as to whether the land or other immoveable property is *shamilat deh* or not and whether it vests or does not vests in the Gram Panchayat. The suit is to be filed before the Collector but proviso to Section 13-A of the Act says that the suit shall not be maintainable under Section 13-A of the Act if the land or other immoveable property has been subject matter of the proceedings under Section 7 of the Act in which the question of title has been raised and decided or is under adjudication. Section 13-A(2) of the Act further provides that the procedure for deciding the suit shall be the same as laid down in the CPC.

A careful perusal of both the provisions i.e. Section 7 and 13-A of the Act shows that Section 7 deals with the summary proceedings wherein eviction order is passed against an unauthorized occupant of land which is vested or is deemed to have been vested in the Panchayat. The said petition is to be decided by the Assistant Collector, 1st Grade. But in such proceedings, if the person defending the application, raise a question of title with proof or documents and the Assistant Collector, 1st Grade also reaches to a conclusion that *prima facie* question of title is involved then he would convert the summary proceedings of Section 7 into a regular suit in terms of procedure prescribed under Section 7(3) of the Act.

Insofar as Section 13-A is concerned, it deals with the declaration of title over the land in question which is required to be decided as a regular suit. But it provides that no suit shall be allowed in respect of land or other immovable property about which the question of title has been raised and has been decided in proceedings under Section 7 of the Act or the question of title is raised the proceedings under Section 7 of the Act is pending adjudication.

Now the question would be as to what would happen when the person defending the petition under Section 7 of the Act has the opportunity to

raise question of title on the basis of documents and has not raised it or when it is raised and suffered an order of ejectment which attain finality then a suit under Section 13-A of the Act thereafter on behalf of the same person or his legal heirs would be maintainable to establish the question of title?

According to the proviso to Section 13-A of the Act, no such suit shall be maintainable if a question of title in regard to the property in question has been raised and decided or is still under adjudication but since the suit filed under Section 13-A of the Act has to be decided in terms of procedure of the CPC, Explanation IV to Section 11 and Order 2, Rule 2 of the CPC cannot be ignored. The cause of action to file a suit under Section 13-A would not be available to such persons whose predecessor-in-interest had an opportunity of raising the same question of title before the Assistant Collector, 1st grade in the proceedings initiated under Section 7 of the Act, after the eviction order attains finality. Similarly, as per Explanation IV to Section 11 of the CPC it would be a case of constructive *res judicata* because it was a plea of defence available to the party at the time when they were tried to be evicted from the land in question and if it is not raised at that time, it cannot be allowed to be raised in the subsequent suits. It would have been an altogether different situation if the question of title is acquired later on.

Thus in view of the aforesaid facts and circumstances, the question posed herein before is hereby decided to the effect that if in a proceeding filed under Section 7 of the Act, the party defending the application has a *prima facie* proof with documents, on the basis of which question of title is not raised and the Assistant Collector, 1st Grade proceeds to decide the issue of unauthorized occupation on the *shamilat deh* and passes the order of eviction which also attains finality, the successor-in-interest of the same person or the same person cannot file a suit under Section 13-A of the Act for the purpose of seeking

declaration of his title over the same property from which he has been ordered to be evicted without raising question of title therein.

In the present case, the eviction order was passed against Charan Singh (father of the petitioner), who had allegedly become the owner of the property in dispute on the basis of an exchange much before the filing of the petition under Section 7 of the Act by virtue of a family settlement but despite having an opportunity to raise the question of title, he did not choose to do so and after the orders were passed repeatedly after remand, suffered the order of ejectment and after his death in 2010, the petitioner, who happens to be his son, filed the suit under Section 13-A of the Act in 2011 to start another round of litigation to claim title on the land in dispute through his father.

To our mind, the entire proceedings much less the suit filed under Section 13-A of the Act is barred by Order 2, Rule 2 of the CPC as well as Explanation IV of Section 11 of the CPC and as such, the suit filed under Section 13-A of the Act was not maintainable. Besides this, even on merits, both the Courts below have recorded a concurrent finding of fact on the basis of demarcation report that the land in question is a part of *shamilat deh* and is not a part of property owned by the petitioner. The writ petition is thus found to be without any substance and the same is hereby dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

06.03.2020

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*