

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

103

RSA No.179 of 2017

Date of decision:14.2.2020

Davinder Singh

... Appellant

versus

Director Panchayat Raj Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Ms.Amandeep Soni, Advocate,
for the appellant

...

AMOL RATTAN SINGH, J. (Oral)

1. This second appeal has been filed by the appellant who is the plaintiff in a suit by which he sought a declaration to the effect that he is the owner to the extent of 20 marlas of land comprised in *Khewat* no.65, *Khatauni* no.103, *Khasra* no.73 (1-6), vide *Jamabandi* for the year 1990-91, H.B.no.148 situated in the area of Village Daulatpur, Tehsil and District Jalandhar, with him further seeking a declaration that defendants no.1 to 4, i.e. the State of Punjab through its officers, and the Gram Panchayat of Village Daulatpur, are not owners of the suit land and that they are illegally running a Government Elementary School over the said land.

The appellant-plaintiff also sought a decree of mandatory injunction directing the said defendants to hand over possession of the said 20 marlas of land to him after removing the construction standing over it.

It is to be noticed that respondent no.5 herein was impleaded as defendant no.5 in the suit and is seen to be the brother of the plaintiff,

Davinder Singh, both being the sons of Naranjan Singh.

The case of the appellant was that he actually is the owner of the suit land which had however been converted into a part of the school premises and about 6 months prior to the filing of the suit, the school authorities had approached him that he should give in writing that the said land had been given by him 'in favour of the school'. The appellant-plaintiff thereafter approached the revenue officials and came to know that the suit land actually belongs to him, with a part of it occupied by the school premises where the school is actually running there.

Consequently, he got served a legal notice to the Department of Education requesting that the suit land be handed over to him, which was replied to by the said authorities with them stating that in the year 1976-77, the office of the school was constructed on 1 kanal and 6 marlas of land comprising *Khasra* no.73, with the said office renovated in the year 2010 by the Gram Panchayat of Village Daulatpur, and that actually the Panchayat was the owner in possession of the school, including the land comprised in *Khasra* no.73, and that a resolution had been passed (to that effect) by the Gram Panchayat on 6.10.1988. Thereafter the appellant-plaintiff got served a notice on defendants no.1 to 4 asking them to hand over the possession of the suit land, with a reply to that notice also having been received, refusing to agree to his request, as the land over which the school was constructed had been taken over by the Gram Panchayat for that purpose after the father of the plaintiff (Naranjan Singh), being the owner of the property, had exchanged it with the Gram Panchayat.

The contention of the appellant-plaintiff however was that no exchange was actually made with the Gram Panchayat, with it therefore not

being the owner of the property, and consequently the possession of the Panchayat and the school authorities was illegal, the land earlier having been owned by the father of the appellant-plaintiff who had died in the year 1991, after which it devolved upon the appellant-plaintiff and respondent-defendant no.5.

2. On the aforesaid pleadings in the plaint, upon notice issued the respondent Gram Panchayat appeared before the learned trial court and in its written statement stated that the appellant-plaintiff had concealed facts before the court, with the property in question having been constructed since 1950-51 but with the building having been taken over by the Gram Panchayat for running a private school on 12.7.1957, as was duly reflected even in the *Jamabandi* for the year 1961-62, since which time the school had been running in that property.

It was admitted that prior to that, the *Khata* (tract of land) was jointly owned by the appellants' father Naranjan Singh and his brother, which Naranjan Singh had first got partitioned and therefore had become exclusive owner of *Khasra* no.73 measuring 1 kanal and 6 marlas, which he exchanged with the Gram Panchayat, in lieu of which he got 1 kanal and 6 marlas of land in *Khasra* nos.827 and 828 on the northern side, from the holding of the Gram Panchayat.

Further, it was contended by the said respondent-defendant that Naranjan Singh had remained in possession of the exchanged area right till the time of his death and after that the appellant-plaintiff and respondent-defendant no.5 were in possession thereof, with a resolution also having been passed by the Gram Panchayat on 6.10.1988, on the written request of

Naranjan Singh, made on 11.2.1988.

Hence, it was contended that the appellant-plaintiff simply wanted to take undue advantage of wrong entries made in the *Jamabandi*, to grab the property in question.

Jurisdiction of the civil court to entertain the suit was also questioned in the the written statement, in terms of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961, and therefore dismissal of the suit, on the aforesaid facts, was prayed for.

3. On the aforesaid pleadings, the following issues were framed by the learned trial court:-

- “1. Whether the plaintiff is entitled to declaration, as prayed for? OPP.
2. Whether the plaintiff is entitled to mandatory injunction, as prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit of the plaintiff is bad for misjoinder for necessary parties? OPD
5. Whether no notice under Section 80 CPC as required was served upon the defendants, if so, its effect? OPD
6. Whether the plaintiff has not come to the court with clean hands and suppressed the material facts from the court? OPD
7. Whether the jurisdiction of this court is barred under Section 13 of the Punjab Village Common Lands Act as

well as Public Premises Act? OPD

8. Relief.”

4. Evidence having been led by both sides in the form of witnesses as also documents, after appraising the said evidence, the learned trial court first observed that as per the *Jamabandi* for the year 2010-11, as was duly exhibited before that court, in the ownership column the plaintiff was clearly shown to be the owner of the property, though as regards the possession thereof, a school was stated to be running therein.

It was further noticed that in the same revenue record, *Khasra* nos.827 and 828 were shown to be the property of village Panchayat and therefore, as per the Gram Panchayat, in fact the plaintiff had no right over that property.

A finding was next recorded by the learned trial court that the application dated 11.2.1988 (Ex.D-16), stated to have been made by Naranjan Singh to the Gram Panchayat, upon which the resolution dated 6.10.1988 had been passed, was denied by the appellant-plaintiff, but that the signatures thereupon had been duly proved by examining a handwriting expert. DW4, Ram Piyari, Ex.Sarpanch of the village, was also found to have proved the proceedings of the village Panchayat, upon which she also identified her signatures.

As per the said proceedings, *Khasara* no.73 (belonging to the appellant-plaintiffs' father) had been exchanged with *Khasra* nos.827 and 828, with a resolution (Ex.D-17) duly passed to that effect, the said document also having been duly proved by the Panchayat.

Hence, that court came to the conclusion that though the

process of exchange was initiated, however it was not completed, as the Gram Panchayat had no power to do so at its own level and required permission/approval of the State Government.

Upon that finding, it was recorded that in fact the Panchayat had failed to prove the factum of exchange having taken place, with the revenue records continuing to reflect the appellant-plaintiff as the owner of the suit land, and with the Panchayat having failed to have also explained as to why it 'kept mum' as regards the mutation entries in the revenue record.

Hence, the finding recorded as regards the ownership of the land, was that it was the plaintiff who was the owner thereof.

5. Thereafter, coming to the issue of whether the appellant-plaintiff was entitled to a decree of mandatory injunction directing the respondent-defendants no.1 to 4 to hand over the suit land to him, that court held that since the appellant-plaintiff had not sought possession of the suit property with the suit being one seeking a declaration (though mandatory injunction had been prayed for), he could not seek such injunction in terms of the ratio of the judgment in case titled as Jeeto vs. Santa Singh, 2006 (2) RCR (Civil) 547.

On that finding recorded, issue no.3 (on the non-maintainability of the suit) was decided in favour of the defendants and against the plaintiff, with issues no.4 to 6 having been decided in favour of the plaintiff with it stated that they were not pressed by the defendants.

On the issue of whether or not the jurisdiction of the court was barred in terms of Section 13 of the Act of 1961 or under the Public Premises Act, i.e. issue no.7, it was held that since there was a question of

whether the suit land was *Shamlat Deh* or not, therefore in terms of the judgment of this court in Sardara @ Kalu vs. Gram Sabha of Village Khurdi, 1987 PLJ 1293 (P&H) = Sardara @ Kalu (deceased) through LRs vs. Gram Sabha of Village Khurdi and another, 1989(1) RRR 280, the site in dispute would belong to the Gram Panchayat, and therefore the jurisdiction of the civil court was barred, to entertain the suit.

To similar effect, another judgment of this court in the case Zail Singh vs. State of Punjab, 1997(1) RCR (Civil) 177, was also cited.

On the aforesaid findings, the suit of the appellant-plaintiff was dismissed.

6. In the first appeal filed by the appellant, the learned District Judge, after recording the aforesaid findings as regards the exchange of land initiated, eventually recorded a finding of fact that as per the demarcation report (Ex.DA), the appellant and his brother, Dilbagh Singh, were in possession of *Khasra* nos.827 and 828 to the extent of 12 marlas of land, on which they even constructed their houses, and on some part which they had made a passage, with *Khasra* no.828/2, consisting of 13 marlas, being in their exclusive possession where they had sown wheat crops.

Hence, from the above, it was very obvious that their father, Naranjan Singh, was given land out of *Khasra* nos.827 and 828 (measuring 12 and 13 marlas respectively), on which the appellant and his brother had constructed their houses and were using the remaining land for a passage/sowing crops and consequently, as a matter of fact the Gram Panchayat had become the owner of the land comprising *Khasra* no.73, measuring 1 kanal and 6 marlas, with the appellant-plaintiff (though his

brothers' name is not mentioned in paragraph 17 of the judgment), had become the owner of the land comprised in *Khasra* nos.827 and 828, also measuring 1 kanal and 6 marlas, in lieu of the land given by their father to the Gram Panchayat.

It was also noticed by that court that, strangely, the Government of Punjab in the Department of Education had not been impleaded as a party, though the school was running on the suit property.

Hence, it was held that though a mutation as regards an exchange having taken place had not been entered in the revenue record, however, non-entry thereof would not change the position of title, because though a presumption of correctness is attached to a *Jamabandi*, however, such presumption is rebuttable.

Similarly, a simple entry of a mutation on the basis of an oral exchange would also not change the factual position as regards the ownership of the property.

On the aforesaid findings, the first appeal filed by the appellant was dismissed.

7. Before this court, learned counsel for the appellant submits that, as has been correctly recorded as a finding of fact by the learned trial court, that actually no exchange eventually fructified, though it was initiated, the appellant-plaintiff and respondent-defendant no.5, i.e. his brother, are actually the owners of the suit property and therefore respondent-defendants no.1 to 4 have no right or title to the same and consequently the courts below have wholly erred in dismissing the suit.

She has also submitted that the trial court has come to an

erroneous conclusion that since possession of the suit land was not sought by way of a 'suit for possession, therefore the suit was not maintainable, because a decree of mandatory injunction having been sought against respondent-defendants no.1 to 4, to hand over the suit property to the appellant-plaintiff, that was the same as seeking a decree of possession, with only the nomenclature of the prayer being different.

8. Having considered that argument, with no other argument raised, in my opinion to the extent that the ownership of the land did not actually legally stand changed by way of any exchange deed registered, learned counsel for the appellant is correct.

However, that does not change the factual position as has been discussed in detail by the learned first appellate court, that the exchange as was proposed to take place, actually fructified in such exchange actually taking place on the ground, with *Khasra* nos.827 and 828 having been taken possession of by the father of the appellant-plaintiff, i.e. Naranjan Singh, to the extent of 1 kanal and 6 marlas, with *Khasra* no.73 owned by him having been taken possession of by the Gram Panchayat, to the extent of the same acreage of land.

It is also obviously not denied even as per the plaint itself, that a school was already running on the suit property and as per the Gram Panchayat, at least that was so right since 1961-62. In any case, obviously since 1988 at least, when the application was made by the father of the appellant-plaintiff, i.e. by Naranjan Singh, as was proved before the courts below, a school was running on the suit land, which is why the application was accepted by the Gram Panchayat and a resolution thereafter was passed

by it on 6.10.1988.

Consequently, though on an absolute technicality, learned counsel for the appellant is right that no formal exchange ever fructified into a registered exchange deed; but upon query to her, she naturally has not been able to answer as to why the appellant remained silent for all the years during which the school was obviously first constructed on the suit land and thereafter it was continuing to run thereupon till date.

9. It needs to be noticed of course that no plea of adverse possession having been taken by respondents no.1 to 4, this court could actually reverse the finding of the learned courts below on that ground alone, with admittedly no formal exchange of land, presumably valued for more than Rs.100/-, having been registered by way of a formal document. However, what this court cannot ignore is that eventually it is public money spent on constructing and running a school for public welfare, with the appellant, his father and his brother having taken possession of the Gram Panchayats' land comprised in *Khasra* nos.827 and 828 and even having constructed their houses over it, with the remaining land being used by them by way of a passage/for agriculture.

Therefore they cannot be allowed to take undue advantage of non-registration of an exchange that actually took place. Allowing them to do so would mean that they should be allowed to retain land of the Panchayat and should also be given the possession of land that was handed over by their father voluntarily even as per his application dated 11.2.1988.

10. Thus, on the absolute merits of the plaint, the appellant has no right to the suit land, though on a technicality he could have succeeded in

view of the fact that admittedly no exchange deed ever took place pursuant to the actual exchange of land having taken place between his father and the Gram Panchayat, with the Gram Panchayat not having taken any plea of adverse possession in the suit filed by the appellant.

However, even that legal issue cannot operate in favour of the appellant in view of the fact that after the exchange had taken place, a resolution to that effect had also been passed by the Gram Panchayat on 06.10.1988 (pursuant to the appellants' fathers' application dated 11.02.1988, with his signatures on that application having been duly proved by examination of his standard signatures with the Will executed by him thereafter).

It has also been found as a fact by the learned lower appellate court that even as per the *jamabandis* right since the year 1965-66, a school was existent on *khasra* no.73.

Hence, it has to be held that the suit land, even if not owned by the Gram Panchayat as per the revenue record, duly vested in the Panchayat and consequently, the finding of the trial court, upheld by the lower appellate court, that in terms of the bar contained in Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961, in respect of land vesting in the Panchayat (by way of it being *shamlat deh*), a civil suit in any case seeking a declaration of title and consequent possession, was not maintainable.

The said provision is reproduced as follows:-

[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.]

11. It further needs to be mentioned here that the application of the father of the appellant (Ex.D6), has been reproduced *in extenso* by the learned first appellate court in paragraph 14 of its judgment, in which it is stated that 1 kanal and 6 marlas of land comprised in *khasra* no.73, alongwith a small building thereon was taken over by the Gram Panchayat of the village on 12.07.1957 for running of a primary school, with the cost of the building material duly received by the appellants' father and grandfather, and with *khasra* nos.827 and 828, comprising 1 kanal and 6 marlas approximately, given to the family from the village *shamlat* land; but due to the fact that the appellants' father was serving in the Border Security Force, a formal exchange could not take place and consequently with the appellants' father also having constructed houses on the land as had been given by the Gram Panchayat to him, he requested that the exchange of land now be formalised.

Thus, it was on that application that the Gram Panchayat passed the resolution allowing the exchange, though again that also never fructified into a registered exchange deed.

Yet, very obviously, with the Gram Panchayat having, vide a resolution formalised in 1988, qua an exchange that took place 31 years earlier in 1957, with *shamlat* land given to the appellants' father and grandfather, the land given in lieu thereof to the Panchayat would then be *shamlat* land in the hands of the Panchayat, on which the Government is running a school.

Hence, that being so, I see absolutely no error in the finding of the learned trial court, not reversed by the first appellate court, that in fact the suit itself was not maintainable, in the face of the bar contained in Section 13 of the Act of 1961.

12. Keeping in view the above, I find no ground on which this appeal can be entertained, which is consequently dismissed *in limine*.

As a matter of fact, even costs should be imposed upon the appellant for dishonestly trying to take advantage of the fact that a strictly formal exchange did not take place, even though he and his family had taken over the Gram Panchayats' land (and with him now wanting to take over the land which was handed over by his father to the Gram Panchayat). However, in the circumstances, costs are not being imposed, other than those imposed by the learned courts below.

Still, in order to formalise the exchange by way of a decree issued by a competent court, as regards *khasra* no.73 now being in the ownership of the Gram Panchayat and *khasra* nos.827 and 828 being in the ownership of the appellant and his brother/family (as the case may be), he or the Gram Panchayat would naturally be at liberty to institute appropriate proceedings under the provisions of the Punjab Village Common Lands

(Regulation) Act, 1961, strictly for that purpose only.

14.2.2020
pk/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No