

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1594-2020(O&M)

Date of decision: 21.01.2021

Manmohan Kumar

.....Appellant

Versus

Gram Panchayat Jhinjri and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Hitesh Pandit, Advocates for the appellant

ANIL KSHETARPAL, J.

The plaintiff-appellant has assailed the correctness of concurrent findings of fact arrived at by the courts below while dismissing his suit for grant of decree of permanent injunction restraining the defendants from interfering in his peaceful possession over land comprised in khasra no.450 and 303 situated in village Jhinjri, Tehsil Anandpur Sahib, District Rupnagar. The plaintiff also prayed for a decree of possession in the alternative.

The defendant-Gram Panchayat contessted the suit while claiming that the land in dispute is shamlat deh, reserved for common purpose. It has been asserted that the land in dispute is reserved as grazing ground. Both the courts as noticed above have dismissed the suit.

After having heard learned counsel for the appellant at length, this Court is of the considered opinion that the suit is an abuse of

the process of law. It is not in dispute that the plaintiff's father had filed a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 before the Collector. All the authorities decided against the plaintiff's father, who further challenged the correctness of the aforesaid orders before the High Court. A Division Bench while disposing of CWP-20626-2014 on 18.11.2015 (Ex D3), held as under:-

“(7) It may be seen that the controversy pertains to new Khasra Nos.303(0-10) & 450(7-9) i.e. old khasra No.1524(4-15) & 1524(5-2) [Total (9-17)]. As per the revenue record produced by the petitioner (P1 to P4), *shamlat deh* (self-share/ancestral) is duly recorded as its owner in the jamabandis for the year 1918-19, 1934-35, 1942-43 and 1955-56. In the column of ‘cultivator’ in the jamabandi for the year 1934-35 onwards, old Khasra No.1524 is duly recorded as ‘*charand*’ (grazing ground) and ‘*gair mumkin beer*’ (forest area). The petitioner’s father Durga Das is recorded to be in cultivating possession as ‘*gair mourusi*’ (tenant at will) only. Similar are the entries in the jamabandis for the year 1942-43 and 1946-47. The Tehsildar has verified that jamabandi for the year 1951-52 is not available. In the light of the revenue entries in the jamabandi immediate preceding 1951-52, it cannot be said that the petitioner or his father got the shamlat land partitioned and brought under individual cultivating possession before 26.01.1950 so as to get such land excluded from ‘*shamlat deh*’ under Section 2(g)(iii) of the 1961 Act.

(8) It is not in dispute and has been stated on oath by AC 1st Grade-cum-Tehsildar, Anandpur Sahib that consolidation work in village Jhinjari started in the year 1960-61 and after completion thereof, the first Jamabandi was prepared in the year 1967-68 (R5). In the consolidation, old khasra No.1219 has been converted into new Khasra no.303(0-10) whereas old khasra No.1524 has been assigned new khasra No.450(7-9). Both the new khasra Nos.303 and 450 are also reserved for common purposes of the village as ‘*charand*’ and ‘*gair mumkin khad*’ (pit for natural manure). These very entries are clearly depicted in the jamabandis (R4 & R5) as well as in the jamabandis for the year 1975-76, 1980-81, 1985-86, 1995-96, 2000-01 and 2005-06 (P7 to P12) placed on record by the petitioner. The above-stated unimpeachable and consistently maintained official record belies the petitioner’s claim that these khasra Nos. were/are in his individual cultivating possession.

(9) Least there remains any doubt in respect of the common use of the land, the petitioner himself has placed on record the relevant extracts of Consolidation Scheme (P14) of the village and its column No.2 pertains to "Right of grazing cattles in shamlat land". As per the tabulated details of Khasra Nos. reserved as *charand*, khasra No.1524 (i.e. the old number) is duly included in the land reserved for the said common purpose.

(10) Further, the petitioner has staked his claim in respect of two new khasra Nos.303 & 450. The corresponding old khasra No. of 303 was 1219. It is nowhere the petitioner's case that the old khasra No.1219 was also in their cultivating possession. It thus stands established that old khasra Nos.1219 & 1524 both were owned by shamlat deh and were reserved for common purposes. Their corresponding new Nos.303 & 450 are also Shamlat deh and continue to be reserved for common purposes. The land comprising these khasra Nos. thus stands included in 'shamlat deh' in view of Section 2(g)(3)(4)&(5) of the 1961 Act which read as follows:-

"(g) "*shamlat deh*" includes----

(1) xxxx

(2) xxxx

(3) *lands described in the revenue records as shamlat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;*

(4) *lands used or reserved for the benefit of village, community including streets, lanes, playgrounds, schools, drinking wells, or ponds situated within abadi deh or gorah deh;*

(5) *lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records."*

(11) It is well settled that a person claiming the exclusion of his land from shamlat deh under Section 2(g)(iii) of the 1961 Act is obligated to establish that (i) the land was partitioned amongst proprietors before 26.01.1950; and (ii) it was brought under cultivation by individual landholders. The petitioner has miserably failed to satisfy the twin test. Similarly, it is beyond any point of controversy that where the land is owned by shamlat patti [in the jamabandi for the year 1934-35 (P2) it is so recorded] and is used for common purposes like 'grazing', it squarely falls within the definition of 'shamlat deh' under Section 2(g)(3) of the 1961 Act.

(12) For the reasons afore-stated, no fault can be found with the impugned orders. The writ petition is accordingly dismissed."

It has also come on record that the land in dispute is the same in the previous and subsequent litigation which came to be decided by the Division Bench. Still further, the plaintiff as well as his witness admitted that the plaintiff's father also filed a similar suit in which he remained unsuccessful.

Keeping in view the principle of res judicata, the present suit is a clear abuse of the process of the Court. Still further, both the courts have found that the possession of the land has already been taken from the plaintiff in accordance with law.

Keeping in view the aforesaid facts, there is absolutely no merit in the appeal and hence, the same is dismissed in limini. The appellant is also saddled with costs of Rs.25,000/- which shall be recoverable as arrears of land revenue.

21.01.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

**(ANIL KSHETARPAL)
JUDGE**