

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

RSA-1931-1990 (O&M)

Reserved on : October 17, 2022

Date of decision : October 19, 2022

State of Haryana and others

...Appellants

Vs.

Phula and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Deepak Kumar Grewal, DAG, Haryana
for the appellants.

Mr. Anas Ahmed, Advocate for
Mr. R.N. Lohan, Advocate
for respondents No.4, 5, 10 to 14, 17 and 22.

ARVIND SINGH SANGWAN, J.

This appeal is preferred by the State of Haryana challenging the judgment and decree dated 21.4.1988 passed by the Additional Senior Sub Judge, Jind decreeing the suit of the respondent/plaintiff as well as the judgment and decree dated 19.9.1989 passed by the District Judge, Jind, vide which the appeal filed by the State of Haryana was dismissed.

Brief facts of the case are that the respondent-plaintiffs, who are 25 in number have filed a suit praying for a decree of declaration that they are owner in possession of the suit land. The land was acquired by the State of Haryana for public purpose, i.e. for construction of Shamdo minor (canal minor). However, no compensation was paid to the plaintiffs. The minor was dug but later on the same was discontinued

and the land was reverted back to the plaintiffs and since then, the plaintiffs are owner in possession of the suit land.

It is submitted that since no compensation was paid, the entry in the revenue records, which was changed as *gair mumkin rajbha* (*canal minor*) is against the record and existing position at the spot, therefore, is creating a cloud on the rights of the plaintiffs. Therefore, a declaration be issued that the revenue record is liable to be corrected.

The suit was contested by the District Forest Officer, Forest Range, Jind—defendant No.2 as a statement was made on behalf of the State of Haryana through Collector, Jind that it is only defendant No.2, who is the contesting respondent.

The defendant No.2 has filed the written statement in which an objection was raised with regard to the jurisdiction of the Civil Court as well as that the suit is time bared. It is stated that the land was transferred to the Forest Department vide a letter dated 3.3.1972 as a protected forest and it remained in possession of the Forest Department.

On merits, the specific averments made by the plaintiff in para 2 of the plaint that no compensation was paid while digging the shamdo minor was neither denied nor it was stated that the compensation has been paid. The only reply is that some plantation is done at the spot.

The trial Court framed the following issues :-

1. Whether the Shamdo Minor previously ran through the suit land and whether the said land had been delivered by the plaintiffs without compensation ? OPP

2. Whether there existed any agreement between the plaintiffs and the defendants State that the land would revert to the owners-plaintiffs as and when Shamdo minor was abolished ? OPD
3. Whether the plaintiffs are owners in possession of the suit land on account of the Shamdo minor having ceased to run through the same ? OPP.
4. Whether possession of the suit land was delivered to the plaintiffs after the abolition of the Shamdo minor ? OPP.
5. Whether the defendants are the owners in possession of the suit land ? OPD.
6. Relief.”

The respondent-plaintiff led their evidence and one of the plaintiffs-Sirya appeared as PW1 and tendered the Jamabandi Exp1. The defendant examined DW2 one Jagdish Chander, Forest Range Officer and closed the evidence.

On appreciation of evidence, the trial Court recorded a finding that it has come in the statement of PW1 that the land of the land owner was taken by the Government without paying any compensation. A categorical plea is taken in para 2 of the plaint that no compensation was given and in the written statement, nothing is stated by the respondent.

It is also held that DW1 has produced the notification declaring the land as protected forest and apart from that, no evidence

has been led as to how the land has been transferred to the Forest Department.

The Court also recorded a finding that during the cross-examination this witness has admitted that he has no knowledge about the acquisition of the land. This witness further stated that Shamdo minor was running upto Burji No.60, whereas the land of the plaintiff is situated within Burji No.64 and 65 and this canal minor stand abandoned from Burji Nos.60 to 70. Accordingly, the trial Court decreed the suit and directed the defendant from interfering in the possession of the plaintiff and further stated that the entry in the revenue record showing the land as *gair mumkin rajwaha* is corrected in favour of the plaintiffs.

Similar fining is recorded by the lower Appellate Court, while dismissing the appeal.

This appeal is pending since 1990 and it was admitted on 23.1.1991 and was relisted for final argument, being an old case.

The lower Court record has been requisitioned.

A perusal of the record show that in the intervening period of about 22 years, there was no stay of operation of the impugned judgment and decree.

The learned State counsel has argued that both the Courts below have erred in appreciating that it has come in the statement of RW1 that as per the circular dated 3.3.1972, the land vested with the Forest Department and it was declared as protected forest.

Learned State counsel has further argued that from the documents Exs.DA, DB and DC, it is proved that the Forest Department has planted certain Kikkar trees at the spot which are standing and the

plaintiffs are claiming illegal possession over the same, which is factually incorrect.

On a Court query, the learned State counsel from the official of the Forest Department could not dispute that there is no record with the Forest Department that the land was ever acquired or any compensation was paid to the land owners.

After hearing learned counsel for the appellant, the following substantial questions of law are involved :-

- (1) Whether the plaintiffs are entitled for a decree of declaration that they are owner in possession of the land as no compensation was paid ?
- (2) Whether by issuance a letter declaring the land as protected forest, the ownership stands transferred in the name of the Forest Department ?
- (3) Whether the suit is maintainable under Order 1 Rule 1 CPC ?
- (4) Whether the suit is bad on account of non-compliance of Section 80 CPC ?

Counsel for the respondent has argued that in corresponding para 2 of the written statement, where a specific plea is taken in plaint that no compensation has been paid, nothing is denied which amounts to admission by the State. Counsel has submitted that it has come in the statement of RW1 from Burji (pillar) Nos.60 to 70, there is no minor in existence at the spot and the plaintiffs are in possession of the same.

I have heard learned counsel for the parties.

Firstly, it has come on record that the suit was filed, however, no interim injunction was granted by the trial Court and, therefore, the trial Court issued notice and did not return the plaint and the suit was decided on merits. Therefore, the arguments raised by the appellant that the suit is bad on account of non-issuance of notice under Section 80 CPC is not sustainable as held by both the Courts below and question of law No.4 is decided, accordingly.

So far as the question of law that the suit is not maintainable under Order 1 CPC Rule 1, again both the Courts below have recorded a finding of fact that all the plaintiffs are praying for same relief against the appellant-defendant qua the same cause of action. Therefore, the suit was competent under Order 1 Rule 1 CPC. Accordingly, question No.3 is decided in favour of the respondent.

The argument raised by the counsel for the appellant that vide circular dated 3.3.1972, the land has been transferred to the Forest Department, where some plantation is done by the Department cannot over right the right of the respondent-plaintiff, who are the owner of the land and once it has come on record that without paying any compensation a canal minor was dug, which was later on abandoned by the State of Haryana itself, therefore, the administrative circular will have no bearing on the rights of the plaintiffs as concurrently held by both the Courts below.

Since it has come on record that without making any payment, the government has dug Shamdo Canal Minor, which was abandoned, later on, by the government itself, it cannot be said that the government has acquired any title over the disputed land and, therefore, the change of entry as *gair mumkin rajbah* (canal) is rightly ordered to be corrected by both the Courts below.

Both the Courts below have also recorded a finding that there is no evidence on record to prove that the trees are existed at the land as it is the plaintiff who are owner in possession of the suit land. Accordingly, questions No.1 and 2 are decided in favour of the respondent-plaintiff.

The appeal is without any merit and the same is, therefore, dismissed.

October 19,2022
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No