

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

CWP-18411-1995

Reserved on: 24.02.2023

Date of decision: 3.03.2023

SANT RAM AND OTHERS

...Petitioners

Versus

THE COMMISSIONER, GURGAON DIVISION, GURGAON & OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Ajay Jain, Advocate
for the petitioners.

Mr. Raman Sharma, Addl. A.G. Haryana

Mr. Sanjay Mittal, Advocate
for respondent No.4.

SURESHWAR THAKUR, J.

1. The plaintiffs instituted a declaratory suit before the learned Assistant Collector Ist Grade, Narnaul. To the said suit became assigned file No.130/VCL. In suit (supra) the plaintiffs' claimed the rendition of a declaratory decree of ownership with respect to the petition lands comprised in Khasra No.22/21/1 measuring 1 Kanal 16 Marlas. The above declaratory decree of ownership was claimed against the Gram Panchayat of village Thanwas.

2. However, the espousal for the making of an declaratory decree of ownership *qua* the plaintiffs, became rested on the ground, that they inherited the suit lands from their predecessor in interest one Bahadur alias Mala Ram, and, who became averred therein to be in cultivating possession of the suit khasra number prior to 1950. Thus, it appears that the claim for the making of a

declaratory decree of ownership became rested on the apposite savings clause as carried in Section 2(g) of The Haryana Village Common Lands (Regulation) Act, 1961 (as notified on 05.04.2021), provisions whereof becomes extracted hereinafter.

“Section 2(g) xxx

but does not include land which--

(i) 3(----)]

(ii) has been allotted on quasi-permanent basis to a displaced person;

[(ii-a) was shamilat deh, but, has been allotted on quasi-permanent basis to a displaced person, or, has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th day of July, 1985.]

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh and is so recorded in the Jamabandi or is supported by a valid deed; [and is not in excess of the share of the co-sharer in the shamilat deh].

(v) is described in the revenue records as Shamilat, Taraf, Pattis, Pannas, and Thola and not used; according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

[(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, house or for cottage industry, immediately before the commencement of this Act];

(vii) (----)]

(viii) was shamilat deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950; or

[(ix) was being used as a place of worship or for purposes, subservient thereto, immediately before the commencement of this Act;]”

3. However, the learned Collector concerned, after making an analysis of the revenue record, though came to a conclusion, that the plaintiffs did ably prove *qua* their purported predecessor, in interest one Bahadur alias Mala Ram, being assignable the benign grace of the savings clause (*supra*), but it was also declared therein, that in respect of the inheritance as claimed *qua* the land shown in the revenue records to be held in the cultivating possession of Tonia son of

Jina rather theirs not ably proving *qua* theirs being his lawful descendants or legal heirs.

4. Be that as it may, though as stated (*supra*), the claim *qua* Bahadur alias Mala Ram holding evident cultivating possession of the suit land prior to 1950, though became accepted. Nonetheless, the Collector concerned concluded, that the plaintiffs were not able to prove *qua* theirs being the lawful descendants or the legal heirs of the above Bahadur alias Mala Ram, and/or, theirs not proving that Bahadur alias Mala Ram are the one and the same person. On the above ground, the plaintiffs' declaratory suit for the making of a decree of ownership *qua* the suit land became dismissed through an order recorded on 15.10.1990. The said order is enclosed in Annexure P-1.

5. Aggrieved therefrom the petitioners preferred an appeal thereagainst before the learned Appellate Authority. To the said statutory appeal became assigned appeal No.10/VCL. The learned Appellate Authority through an order drawn thereons, on 11.01.1995, and, as enclosed in Annexure P-2 after concurring with the verdict drawn earlier by the learned Collector concerned, hence proceeded to make an order of dismissal on the statutory appeal (*supra*).

6. The above concurrently made orders, led the aggrieved to prefer thereagainst the instant writ petition before this Court.

7. At the outset, it is pertinent to refer to an affidavit placed on record by the learned counsel for the petitioners, wherein, there is an echoing *qua* abandonment of the suit claim in so far as it pertains to the cultivating share in the suit land of Tonia son of Jina. Therefore, but obviously the decision on the instant writ petition would stand confined to the validity of the reasoning adopted by both the learned Authorities below, in non suiting the plaintiffs, inasmuch as, the plaintiffs being non suited on the ground, that the plaintiffs are not the lawful successors in interest of Bahadur alias Mala Ram, and/or, theirs

being non suited on the ground, that there is no cogent proof *qua* Bahadur alias Mala Ram being one and the same person.

8. In the above regard, it is but utmost necessary to refer to the pleadings, as became cast in the civil suit. The relevant pleadings enunciated, the factum, that Bahadur alias Mala Ram was the predecessor in interest of the plaintiffs, and/or, obviously that Bahadur alias Mala Ram were one and the same person. The said pleadings are carried in paragraphs 1 to 3 of the civil suit, paragraphs whereof are extracted hereinafter.

“1. That Bahadar alias Malaha, the father of plaintiffs was cultivating the agriculture land bearing Khewat No.341 Khatoni No.515 rectangle & killa No.32//21/1 measuring 1 kanal 16 marlas according to Jamabandi 1979-80 situated in the revenue estate of village Thanwas Teh. Narnaul from his forefathers.

2. That Malaha alias Bahadar the father of plaintiffs was dies in the year of 1981 and after his death the plaintiffs being his male lineal successor are in cultivating possession of the land mentioned in para No.1 of the plaint as a co-sharer in Shamlat Deh and the possession of the plaintiff or the suit land as above more than 50 years and this suit land does not exceed more than the share of the plaintiffs in Shamlat Deh and as such the plaintiffs are owner in possession of the suit land and defendant Gram Panchayat is not concerned with the ownership of the suit land.

3. That the entries of ownership in the name of the defendant Gram Panchayat are wrong, illegal and against real facts. The suit land was never utilised for the benefit of the village community at the time of the enforcement of Shamlat Law and as such it could not be vested in Panchayat but the Consolidation Authorities without taking the correct provision of law into mind sanctioned the mutation in the name of the Panchayat without notice to the plaintiffs and as such the entries in the name of the Gram Panchayat as owner are illegal and are liable to be brushed aside and not binding on the plaintiffs.”

9. A perusal of the written statement filed to the said paragraphs, reveals that to the (supra) relevant paragraphs 1 to 3 thereof, there is an answer in the affirmative. Therefore, the contents of paragraph 1 (supra), became admitted by the answering respondents-defendants. Moreover, a perusal of the written statement filed to paragraph 2 of the plaint reveals, that there is no

specific denial to the corresponding paragraph 2 of the plaint, wherein, there is a specific averment that Bahadur alias Mala Ram was the father of the plaintiffs. Moreover, a perusal of paragraph 3 of the written statement as became furnished to paragraph 3 of the plaint discloses, that therein there is a clear admission, that the above Bahadur alias Mala Ram was the father of the plaintiffs. The inference to be drawn therefrom, is that, Bahadur alias Mala Ram was one and the same person, besides also *qua* obviously then, the said Bahadur alias Mala Ram was the lawful predecessor in interest of the plaintiffs.

10. However, the above admission has remained completely overlooked, and, ignored. Thus, an erroneous conclusion has been premised by both the learned Authorities below, that there was scanty evidence in respect of the plaintiffs being the lawful successors in interest of Bahadur alias Mala Ram, besides there is completest non application of mind, to the fact, that Bahadur alias Mala Ram was very same person, and, that there was no concomitant necessity for further evidence being adduced, by the plaintiffs, for proving that Bahadur alias Mala Ram are the names of the very same person. As but a natural corollary the above taken ground for non suiting the plaintiffs, is a flimsily drawn ground, and, is required to be completely rejected.

11. That as above stated, both the Authorities below had after assessing the probative vigor of the revenue records, and, which were completely suggestive that Bahadur alias Mala Ram was to the extent of his lawful cultivating share in the suit land, hence holding cultivating possession thereof, hence evidently prior to 1950. Therefore, since the above finding, did also cause, the application thereon of the relevant savings clause (*supra*), as but a consequential sequel thereto, the suit lands to the extent of the lawfully recorded cultivating possession of one Bahadur alias Mala Ram is concerned, rather became saved from vestment in the *Panchayat Deh*, and, thereafter, upon

occurrence of the demise of the said Bahadur alias Mala Ram, the petitioners became vested with a valid right, title or interest, in the petition lands.

CONCLUSION

12. In sequel, the plaintiffs are declared to be the owners in possession of the suit land, but only to the extent of the cultivating share therein, of their predecessor in interest one Bahadur alias Mala Ram.

FINAL ORDER

13. The impugned orders as respectively carried in Annexures P-1, P-2, and, P-4 hence suffer, from a gross perversity of non application of mind as well as non appreciation of admissions as set forth by the defendants in the written statement. Therefore, the instant petition is allowed, and, the impugned orders (supra) are quashed, and, set aside, but only with the above observations.

14. No orders as to costs.

(SURESHWAR THAKUR)
JUDGE

03.03.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No