

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

RSA-2635 of 1998 (O&M)

Date of Order:07.11.2023

Chhaju Ram and others**.Appellants****Versus****Gur Dyal (Deceased) through LR's and others****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL****Present: Mr. Chanderhas Yadav, Advocate
for the appellants.****Mr. Brijender Kaushik, Advocate
Mr. Vaibhav Vats, Advocate
for the respondents.****ANIL KSHETARPAL, J**

1. In this regular second appeal, the correctness of the judgments and decrees passed by both the courts below is assailed by the defendants.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. In the column of ownership of the revenue record 'Shamlat Panna Bhima Sudhar' is recorded as the owner of the property. The plaintiff is a "Brahmin Priest. His father used to perform obsequies (funeral rites). He was granted "Dholi" rights by the proprietors of Panna Bhima Sudhar to cultivate 26 kanals land without the payment of any amount. The plaintiff (the son of original Dholidar) executed a registered lease deed for a period of 99 years on 03.04.1970, in favour of late Sh. Munna Lal, the predecessor-in-interest of defendants no.1 to 7 and defendant no.8.
4. On 29.04.1988, the plaintiff filed the suit for grant of decree of declaration that the aforesaid lease amounts to the permanent alienation of

the property which is not permissible. It was also alleged that the lease deed was executed for a period of 17 years but due to misrepresentation the period of lease was described as 99 years.

5. Both the courts have held that the plaintiff failed to prove that the period of lease was 17 years, however, decreed the suit on the ground that such lease results in the permanent alienation of property which is not permissible.

6. As per the findings of fact arrived at by the courts below the execution of the lease deed on receipt of the amount has been proved. It has also come on record that the proprietors of Panna Bhima Sudhar filed a suit for the cancellation of the lease deed, however, the same was dismissed as withdrawn vide order Ex.D1, dated 21.05.1982, Ex.D5. The proprietors of Panna Bhima Sudhar also filed a suit for cancellation of "Dholi" rights against the plaintiff which was also withdrawn by them. In the meantime, the State of Haryana has notified the Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Property Rights) Act, 2010 (hereinafter referred to as 'the 2010 Act') conferring the absolute right of ownership in favour of such Dholidars.

7. Both the courts have held that "Dholi" tenure is a peculiar type of grant created in favour of an individual, who is rendering services to the village community. It is a grant in lieu of the services rendered to the residents of the village. The courts have relied upon the judgment passed by two Division Benches in **Dharma vs. Smt. Harbai, 1976 PLJ 617** and **Sittal Dass and another vs. Financial Commissioner Haryana and others, 1989 PLJ, 148,** to hold that such permanent alienation of the property goes against the very concept of grant of Dholi.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

9. On the one hand the learned counsel representing the appellants submits that the judgment passed by the Division Bench in **Dharma's case (supra)** is based on a clear restriction on the rights of “Dholi” to keep the land as “Dholi” in *Sharat Wajib-ul-arz* . The Dholidar is forbidden from selling or mortgaging the land. In that context, the aforementioned judgment was delivered. He further relies upon the judgment passed in **Rajwati and another vs. Sukhi and others, 2018(3) PLR 137.**

10. On the other hand, the learned counsel representing the respondents while heavily relying upon the Division Bench judgment passed in **Dharma's case (supra)** submits that the creation of the lease for a period of 99 years results in the permanent alienation of the land and as such it defeats the very purpose of 'Dholi'. He submits that the aforesaid alienation is prohibited, hence the courts have correctly decided the case.

11. In fact, this court in **Rajwati and another's case(supra)** considered the following two questions in detail:-

“(i) *Whether a person who subsequently acquires absolute title can be permitted to challenge the lease deed for a period of 99 years executed by him on the ground that on the day, he executed the lease deed, he was not competent to execute?*

(ii) *Whether an executant of the document/deed/instrument can be permitted to challenge the same on the ground that he was not competent to execute?”*

12. While answering the questions in para 11 of the judgment, this court held as under:-

“It is not in dispute that dholidars had executed

registered lease deed for a period of 99 years. Plaintiffs are representatives of the aforesaid dholidars who subsequently acquired title pursuant to an act enacted by Haryana Government in the year 2010. In the considered opinion of this court, plaintiffs who have stepped into the shoes of lessor, could not challenge the registered lease deed executed by their predecessors on the ground that the then aforesaid dholidars were not competent to execute the registered lease deed. Section 115 of the Evidence Act would estop the plaintiffs to challenge the lease deed.

A suit for declaration on their behalf would be barred by principles of estoppels. Section 115 of the Evidence Act is extracted as under:-

115. Estoppel - When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. Illustration A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards, become the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want to title.

In view of the aforesaid the suit filed by the plaintiffs was not maintainable.

Still further this issue can be examined from another angle. Transfer by an unauthorised person who subsequently acquires interest in the property, is liable to honour the transfer and cannot be permitted to

subsequently say that on the date he transferred the interest, he was not entitled to transfer. Reference in this regard can be made to Section 43 of the Transfer of Property Act. The principle which emerge from careful reading of Section 43 of the Transfer of Property Act(extracted as under) is that if any transfer is made by an unauthorised person, who subsequently acquire interest, the transfer of interest shall continue to operate at the option of the transferee. This principle has a direct connection with rule of estoppel as envisaged under Section 115 of the Evidence Act. Section 43 of the Transfer of Property Act is extracted as under:-

43. Transfer by unauthorized person who subsequently acquires interest in property transferred.- Where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Still further this issue can also be examined in the context of Section 13 of the Specific Relief Act, 1963 which deals with rights of purchasers or lessee against persons with no title or imperfect title. It is provided that if a person contracts to sell or give on lease certain immovable properties having no title or an imperfect title then when the vendors or the lessor subsequently acquires interest in the property, the purchaser or the lessee may compel him to make good the contract out of such interest.

Section 13 of the Specific Relief Act, 1963 is extracted as under:-

13.Rights of purchaser or lessee against person with no title or imperfect title.—

(1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely:—

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other person is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return

of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lesser in the property which is the subject-matter of

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

A commutative reading of the aforesaid 3 statutory provisions, it is clear that a person who was having imperfect title or no title, subsequently acquires any title, right or interest, shall remain bound by the contract he entered into. A person who has represented to the other and have executed the instrument cannot subsequently turn around and claim setting aside of the same on the ground that he had no title or a imperfect title.”

13. On a careful reading of the judgment passed in ***Dharma's case (surpa)***, it is evident that in that case as per '*Sharat Wajib-ul-arz*', it was clearly stipulated that the Dholidar is forbidden from selling or mortgaging the land. In that particular context, the Division Bench held that lease for the period of 99 years amounts to the permanent alienation of land which goes against the concept of “Dholi”. It was held that Dholidar is expected to render service and in lieu thereof he is entitled to continue in the possession of said land. Hence, the moment Dholidar stops rendering the service, the tenure of the Dholi comes to an end. With highest respect, the aforesaid judgment shall not be applicable to the facts of the present case.

14. The courts have also relied upon the another Division Bench judgment in ***Sittal Dass and another vs. Financial Commissioner Haryana and others, PLJ 1989, 148***. In that case, the Gram Panchayat had granted

the “Dholi” rights. The property was claimed to be “Shamilat Deh”. The Dholidar himself came before the High Court. He challenged the orders passed by the revenue authorities while deciding the mutation proceedings. In that context, the Division Bench held that the land vests with the Gram Panchayat and that is why the permanent lease is not permissible.

15. However, now there is a significant development in the law and regulations governing lease. The State of Haryana has notified the '2010 Act'. As per Section 3 which starts from non obstante provision, it is embodied that the Dholidars who are in possession of land for a period of more than 20 years on the appointed day become owner and the rights of the proprietary body or proprietor stand extinguished. The learned counsel representing the respondents submitted that in this case the plaintiff has not filed any application under the aforesaid Act. However, the aforesaid argument has no substance because as per Section 4 of the 2010 Act, it is for the landowner to apply for the compensation within the period prescribed. In this regard, it will be appropriate to take note of Section 3 of the '2010 Act', which is extracted as under:-

3. Notwithstanding anything to the contrary contained in any other law, custom, usage or deed for the time being in force, on and from the appointed day-

(a) all rights, title and interest including the contingent interest, if any, recognized by any law, custom, usage or deed for the time being in force with respect to the land and vested in the landowner shall be extinguished, and such rights, title and interest shall vest in the Dohlidar, Butimar, Bhondedar or Muqararidar or any other similar class or category of persons, which the State Government has

notified in the official Gazette, under whose occupation the land is, free from all encumbrances, if any, created by the landowner;

(b) the landowner shall cease to have any right to collect or receive any rent or service in respect of such land."

16. It is evident that Section 3 of the '2010 Act' has been placed at a higher pedestal and has been given an overriding effect. It clearly provides that the rights of the owners shall stand extinguished from the appointed day or from the date a Dholi completes the tenure of 20 years and it is not dependent upon any application filed by the Dholidars.

17. Furthermore, Section 43 of the Transfer of Property Act, 1882, Section 115 of the Indian Evidence Act, 1872 and Section 13 of the Specific Relief Act, 1963 come to the rescue of the appellant, which have been discussed in **Rajwati and another's case (supra)**.

18. In this case, the plaintiff has not alleged that there is any restriction with respect to the alienation of Dholidar rights. The learned counsel representing the respondents have also failed to draw the attention of the court to any such provision either in the '*Sharat Wajib-ul-arz*' or in the terms and conditions of the grant of Dholi.

19. Keeping in view the aforesaid facts and discussion, the judgments relied upon by the Courts below are distinguishable. However, the courts below have overlooked that fact.

20. Considering the peculiar facts of the present case, the conclusion is inevitable. The judgments passed by both the courts are set aside and the suit filed by the plaintiff shall stand dismissed.

21. The appeal stands allowed.

22. All the pending miscellaneous applications, if any, are also disposed of.

November 07, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO