

**In the High Court of Punjab and Haryana, at Chandigarh****Regular Second Appeal No. 887 of 1999 (O&M)****Date of Decision: 14.12.2023**

Tara Chand (Deceased) through his Legal Representatives and Others

... Appellant(s)

Versus

Roshan Lal (Deceased) through his Legal Representatives and Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Anil Kshetarpal.**

Present: Mr. Rajesh Sethi, Mr. C.R.Dahiya, Mr. Arun Biriwal,  
Ms. Preeti Bansal and Mr. Ajay Pal Singh Malhi, Advocates  
for the appellant(s).

Mr. Ajay Jain, Advocate  
for the respondents.

**Anil Kshetarpal, J.**

1. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in ***Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157.***

2. In this regular second appeal, the correctness of the concurrent findings of facts, arrived at by both the Courts below, is challenged by the defendants.

3. In order to comprehend the controversy involved in the present case, the relevant facts, in brief, are required to be noticed. The plaintiffs

filed a suit for the grant of decree of possession with a consequential relief of permanent injunction restraining the defendants from raising the construction over the suit property. They claim to be the Dholidars of the land in dispute. They permitted late Sh.Badlu to provide drinking water to the villagers and in lieu thereof, he was allowed to cultivate the land. Subsequently, late Sh.Badlu stopped rendering the services to the villagers and has died of late. Thus, the plaintiffs claim that they are entitled to the possession of the property.

4. On the other hand, the defendants, while contesting the suit, claimed that they are in possession of the property for the last 50 years as *gair marusi* tenants. The trial Court, in para 7 of the judgment, held that the plaintiffs are the Dholidars, whereas, late Sh.Badlu was a Sub Dholidar. Thus, the suit filed by the plaintiffs was partly decreed and the defendants were restrained from raising construction over the suit property. The First Appellate Court, on re-appreciation of the evidence, found that in column No.9 of jamabandi, it is proved that for the various years there has been no entry regarding payment of rent and the trial Court has wrongly held that the defendants are the Sub Dholidars because any such terminology does not exist. Keeping in view the aforementioned facts, the First Appellate Court has completely decreed the suit filed by the plaintiffs.

5. Heard the learned counsel representing the parties at length and with their able assistance, perused the record along with the requisitioned record which is available in the digital form.

6. The appellants have filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908, for permission to lead additional

evidence in order to produce a copy of the order passed on 28.08.2015 by the Sub Divisional Officer (Civil) while exercising the powers of the Collector, Rewari. This order has been passed while dismissing the application filed by the plaintiffs to grant the proprietary rights of the suit land.

7. The learned counsel representing the appellants contends that as per column No.4 of the revenue record, the suit property is *shamlat deh* land which vests with the Gram Panchayat in accordance with Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the 1961 Act”). The learned counsel submits that the plaintiffs are seeking possession while claiming themselves to be the Dholidars and such relief could not be granted without the permission of the Gram Panchayat as *shamlat deh* land vests with the Gram Panchayat. The learned counsel further contends that the plaintiffs have failed to prove the term of Dholi and once it is proved that late Sh.Badlu was rendering the service of providing drinking water to the villagers for the last 50 years and in lieu thereof he was cultivating the land, the grant, if any, in favour of the plaintiffs, would cease to exist. The learned counsel further submits that the plaintiffs have failed to prove the term of Dholi, therefore, they are not entitled to possession of the property.

8. On the other hand, the learned counsel representing the respondents (plaintiffs before the trial Court), while referring to the jamabandi for the year 1961-62 onwards, submits that in column No.4, the names of the plaintiffs are entered as the Dholidars and late Sh.Badlu has been reflected in possession under the plaintiffs. The learned counsel

further submits that the defendants are claiming that the terms of Dholi came to an end, however, they have not proved the terms and conditions of the grant.

9. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties.

10. At the outset, it is important to note the meaning of expression “Dholi”. A Division Bench of this Court in ***Mohan Lal and Others v. Gram Panchayat Jarthal and Others*** 2016(2) PLR 283 explained the expression “Dholi” while relying upon the various other judgments in para 13 and 14, which read as under:-

*“13. This Court in Om Parkash and another v. Commissioner, Ambala Division, Ambala and others (2015) 4 PLR, 333 held that ..... "The right to create a "Dholi" flows from custom but the terms and conditions of a Dholi are settled by private covenant, leaving it to each settler to prescribe his particular set of conditions. The recipient of a Dholidari grant is required to discharge, in return, certain religious, social or charitable obligations. A Dholi may be temporary but subsists only so long as the "Dholidar" continues to perform his obligation. A Dholi tenure is inalienable but whether it is heritable and in what manner, depends upon the terms & conditions of a Dholi."*

*14. A Division Bench of Lahore High Court in Sewa Ram v. Udegir (AIR 1922 Lah. 126), considered the concept of 'Dholi' and it was held that 'dholi' tenure may be a rent free grant for the benefit of a temple or mosque or shrine or to a person for religious purpose and the grant continues till the holder carries out the duties of his office and can be terminated on failure to carry out the said duties. The petitioners' contention before this Court that the Gram Panchayat was not the owner of the land*

*or that the eviction petition was maintainable, thus, has no legal or factual basis and merits outright rejection.”*

11. Thus, it is evident from the above mentioned discussion that the expression “Dholi” signifies a rent free grant in lieu of the services required to be rendered for the religious, charitable or public benefits.

12. In this case, the terms of the grant have not been produced on record. No evidence has been led to prove that the Gram Panchayat has recalled or revoked the grant in favour of the plaintiffs. This suit is between the Dholidars on the one side and their licensees on other side. It is not the case of the defendants that they were inducted in the land by someone else and not by the plaintiffs or their predecessors. The defendants, while contesting the suit, have themselves asserted that they are in possession of the land in dispute for the last 40 years as tenants “*gair marusi*”. Thus, the defendants claim to be in possession of the land in dispute as tenants. From the perusal of the revenue record, it has been proved that late Sh.Badlu was never inducted as tenant by the plaintiffs or their predecessor but he was handed over permissive possession. In the given facts of the case, the First Appellate Court has held that the possession of the defendants or their predecessor, namely late Sh. Badlu was in the nature of permissive possession.

13. With respect to the first argument, it would be noted that the rights qua the plaintiffs vis-a-vis the Gram Panchayat are not required to be adjudicated. Hence, it is concluded that the Gram Panchayat was not a necessary party to the suit.

14. As regards the second argument of the learned counsel representing the appellants, it would be noted that the First Appellate Court

has found that late Sh.Badlu was inducted by the plaintiffs or their predecessors and the defendants owe their permissible possession to the plaintiffs or their predecessor. In such circumstances, it was for the defendants to prove that the Dholi has ceased to exist. However, the defendants have led no evidence to prove the fact. The learned counsel representing the appellants has relied upon the judgment in *Mohan Lal's case (supra)* which is in the context of the fact that the Dholidar had executed 99 years lease in favour of the plaintiffs. The Gram Panchayat had sought eviction of the tenant which was allowed by the authorities. In a writ petition filed by the tenants, the Court observed that the rights of the Dholi stand terminated. However, as already noticed, the Division Bench has decided the case in the peculiar facts of the aforesaid case. Similarly, reliance placed upon by the learned counsel representing the appellants on a Division Bench Judgment in *Om Parkash and Another v. Commissioner, Ambala Division, Ambala 2015(4) PLR 333* is also misplaced because the Court was examining the issue with regard to change of the terms and conditions of the Dholi in the peculiar facts and circumstances of the case. The Court held that it is permissible to change the terms of the Dholi at any point of time and the settler of the Dholi has a right to alter the terms and conditions of the Dholi.

15. Moreover, Section 116 of the Indian Evidence Act, 1872, provides that during continuance of tenancy, the tenant or the licensee is not permitted to deny the title of the landlord or the licensor as the case may be, until he surrenders the possession back to the grantor of the license or lease.

Although the learned counsel representing the appellants contends that the

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defendants do not admit this fact, however, there is an overwhelming evidence available on the record in the shape of the revenue records i.e. jamabandis from the years 1961-62, 1965-66, 1970-71, 1975-76, 1980-81 and 1984-85, which clearly proves that late Sh.Badlu was in possession of the property in view of the license granted in his favour by the plaintiffs.

16. It would be noted here that the order passed by the Sub Divisional Officer (Civil) exercising the powers of the Collector is not relevant because firstly, it has been passed during the pendency of the litigation. Secondly, in the aforesaid order, the Collector has refused to declare the plaintiffs to be the owner of the property in view of the Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010. In the aforesaid order, it has nowhere been declared that late Sh.Badlu or his successor-in-interest has become Dholidars of the property.

17. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

18. The miscellaneous application(s) pending, if any, shall stand disposed of.

**(Anil Kshetarpal)**  
**Judge**

**December 14, 2023**

**“DK”**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No