

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 17803 of 2023
Reserved on: 11.09.2023
Date of decision: 15.09.2023

KAPUR SINGH @ KAPURA SINGH AND ANR. -PETITIONERS

VERSUS

STATE OF PUNJAB AND ORS. -RESPONDENTS

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

Present : Ms. Puja Chopra, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR, J.

1. The present petitioners are the vendees from one Dina Nath, Sri Ram and Kosh Raj. The afore along with their predecessor(s)-in-interest became impleaded as respondents in a suit bearing No.DDDP(11), Bhunderheri-60, which became instituted on 19.05.2016, by one Raghbir Singh, and wherein, he claimed the making of a declaratory decree, thus assigning the right, title and interest as owner, over the disputed lands vis-a-vis the Gram Panchayat concerned.

2. Through a decision made, upon, the suit (supra) on 12.03.2018 (Annexure P-1), the espoused declaratory decree became granted to the petitioner therein, and/or, qua the Gram Panchayat concerned.

3. Both the present petitioners, the vendees from their predecessor(s)-in-interest, as well as the latter strived to contest the making of the said decree. The said contest was rested upon a decree of the civil court concerned, as became pronounced on 28.07.1964. In the said civil suit, the predecessor(s)-in-interest of

the present petitioners were arrayed as plaintiffs and therein became arrayed the Gram Panchayat Jalbehra, thus as defendant. The espoused declaratory decree thus conferring right, title and interest over the disputed lands became assigned to the plaintiffs. The above is evident on a reading of the decree-sheet, which becomes enclosed in Annexure P-6. However, the learned Collector concerned declined to assign jurisdictional vigour to the decree (supra), as became made on 28.07.1964, rather on the premise, that the said decree became not tendered into evidence. Consequently, in the wake of the non-tendering of the said decree, the learned Collector concerned bestowed the asked for declaratory relief, upon, one Raghbir Singh. The said declaratory decree is embodied in Annexure P-1.

4. The making of Annexure P-1 led the aggrieved therefrom respondents/defendants in the suit (supra) to make an appeal thereagainst before the learned appellate authority concerned. The said appeal became assigned Appeal No.PUN/JDC/TT/2018/001838. The learned appellate authority concerned, rather affirmed the verdict, as comprised in Annexure P-1, and resultantly, dismissed the statutory appeal (supra).

5. The reason, as becomes assigned by the learned appellate authority concerned, to decline relief on the statutory appeal (supra), stemmed from, the factum, that the attestation of the mutation made on 28.07.1964, thus on the basis of the decree of the civil court, rather lacking in jurisdictional vigor. The reason which became assigned for the making of the above inference, became sparked from the factum, that the declaratory decree as became passed in the year 1964, by the learned Civil Judge concerned, in a lis, in which the predecessor(s)-in-interest of the present petitioners were engaged therein, but as plaintiffs, and, with the Gram Panchayat concerned becoming arrayed therein as a defendant, rather being without an able jurisdictional empowerment becoming conferred on

the civil court of competent jurisdiction. The above reason became planked on the ground, that the civil court concerned was barred by a statutory provision engrafted in the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), to either entertain a suit for declaration, and/or, to make a declaratory decree thereons.

6. The above concurrently made decisions against the present petitioners leads them to make a challenge thereto, through theirs casting the instant writ petition before this Court. The gamut of the lis is confined only to the validity of the above discardings being made by the learned appellate authority concerned, to the decree of the civil court concerned, as became passed in the year 1964, and, also is confined to whether the consequent thereto mutation, as became recorded in the year 1965, also being likewise being flawed.

7. This Court would proceed to assign an able tenacity to the above made conclusions, but only when a specific statutory contemplation existed, but at the time of the making of the decree of the civil court concerned, thus in the year 1964, whereby, there was a complete ouster qua exercising of jurisdiction by the civil court of competent jurisdiction rather against entertaining or trying a civil suit, thus involving shamlat deh lands.

8. In the above regard, it appears that the said specific statutory ousting provisions, whereby the jurisdiction of civil courts, thus become barred, rather to either entertain a suit for declaration, or, to make a declaratory decree thereons, in respect of a subject matter relating to shamlat deh lands, did not apparently exist, at the time of the passing of the said decree, nor it existed at the time of the making of the consequent thereto mutation, which finds a reference in the relevant revenue records.

9. Contrarily, the said ably ousting apposite statutory provision, rather

became engrafted through insertion of Section 13 in the Act of 1961, through an amendment being made in the year 1976, which but is 12 years subsequent to the passing of the decree of civil court concerned, and also is much subsequent to the attestation of the mutation (supra), as became made in consequence thereof. The engraftment of the statutory provision (supra), thus post the passing of the decree (supra) and also post the consequent thereto attestation of mutation (supra), thus thereby constrains this Court, to conclude, that at the time of passing of the decree (supra), there was no specific statutory contemplation, whereby, the jurisdiction of the civil court concerned, became barred to either entertain a declaratory suit or to make an adjudication thereon, especially when therein became included a subject matter relating to shamlat deh lands. Resultantly, the conclusion as became made by the learned appellate authority concerned, that yet there was a statutory dis-empowerment vis-a-vis the civil court concerned, to make a decree in the year 1964, thus was an inaptly drawn conclusion.

10. The upshot of the above discussion, is that, the above conclusion is required to be quashed and set aside. The further sequel thereof, is that, the writ petition is allowed and the impugned Annexures are quashed and set aside.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

15.09.2023
devinder

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No