

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA-637-2018 (O&M)

Date of Decision:21.9.2023

Sham Lal and others

....Appellants

VERSUS

Gram Panchayat

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present : Mr. Raj Kumar Kakkar, Advocate,
for the appellants.

KARAMJIT SINGH, J.

The appellants/plaintiffs have filed this appeal against the judgment and decree dated 21.7.2017 passed by the Court of Additional District Judge, Fazilka whereby the appeal filed by the appellants/plaintiffs against the judgment and decree dated 30.4.2015 passed by the court of Additional Civil Judge (Senior Division), Fazilka whereby the suit of the appellants/plaintiffs was dismissed, has been dismissed.

2. Brief facts of the case of the appellants/plaintiffs are that they are permanent residents and share holders of village Chand Mari alias Saidoke Uttar, Tehsil and District Fazilka. In the year 1962-63, during consolidation of holdings, the appellants/plaintiffs and their elders left respective shares out of their land for the benefit and welfare of the inhabitants of the village as well as for common use and the said land was recorded as ownership of *Jumla Mushtarka Malkan* of the village; that the appellants/plaintiffs being proprietors of the village are still in possession of the suit land measuring 14K-15M and they are using the same for tethering cattle and for storing fodder and waste material and some of them have also

raised construction as per their requirement; that possession of the appellants/plaintiffs over the suit land is open, hostile and adverse for the last more than 12 years and has ripened into ownership by way of adverse possession. The defendant-Gram Panchayat has got no concern with the suit land but it threatened to take forcible possession of the suit land from the appellants/plaintiffs. Hence the suit.

3. The suit was contested by the defendant-Gram Panchayat and in its written statement, the defendants took preliminary objections that the plaintiffs are having no cause of action or *locus standi* to file the suit and the suit is an abuse of the process of the Court. It was also pleaded that the pleas taken by the plaintiffs in the present suit are self-contradictory. On the one hand, the plaintiffs are claiming themselves to be proprietors of the village and on the other hand, they are claiming ownership over the suit land by way of adverse possession. On merits, it was denied that the plaintiffs are having residential houses and agricultural land in village Chandmari. It was also denied that the plaintiffs and their elders left any share in the land for common use by the inhabitants of the village. The defendant has also denied the fact that the plaintiffs are in possession of the suit land. It was further pleaded that actually, the plaintiffs have got no right, title or interest in the suit land which is in possession of the defendants for the last more than 20 years. It was prayed that the suit be dismissed.

4. On the pleadings of the parties, the following issues were framed : -

1. Whether plaintiffs are entitled to the declaration as prayed for? OPP
2. Whether plaintiffs are entitled to the permanent injunction as prayed for ? OPP

3. Whether plaintiffs have no locus standi to file the present suit? OPD
4. Whether suit is not maintainable in the present form? OPD
5. Relief.
5. Counsel for the plaintiffs examined PW-1 Sham Lal (plaintiff No.1) and also examined PW2-Munshi Ram and PW3-Prem Chand. The plaintiff also produced Jamabandi for 1967-68 Ex.P1, Jamabandi for the 1972-73 Ex.P2, Jamabandi for 1977-78 Ex.P3, Jamabandi for 1982-83 Ex.P4, Jamabandi for 1987-88 Ex.P5 and subsequent Jamabandies Ex.P6, Ex.P7 and Ex.P8.
6. On the other hand, counsel for the defendants examined DW1-Lakhwinder Singh, DW2-Panjab Ram and DW3-Kamaljit Singh and also tendered certain documents. The defendants produced Khasra Girdawri from Sauni 1998 to 2002 Ex.D3, Khasra Girdawari from Sauni 2003 to Harri 2008 Ex.D4, Khasra Girdawari from Sauni 2012 to Harri 2013 Ex.D5 and Khasra Girdawari from Sauni 2013 to Harri 2014 Ex.D6.
7. In rebuttal, counsel for the plaintiff examined PW4-Ramesh Chander Patwari, who proved relevant entry of rapat roznamcha Ex.PW4/A, copy of mutation No.982 Ex.PW4/B. The plaintiffs also produced Jamabandi Ex.P10 and its vernacular transcription Ex.P10/A.
8. After hearing counsel for the parties, learned trial Court dismissed the suit. Even the appeal filed by the appellants against the said judgment was also dismissed by the Court of Additional District Judge, Fazilka.
9. The appellants/plaintiffs being aggrieved by the concurrent findings recorded by the Court below have filed the present appeal.

11. The counsel for the appellants while impugning the judgments passed by the Courts below, has inter alia contended that the appellants being proprietors of the village are having proprietary rights in the suit land, which was reserved for common purposes to be used by the inhabitants of the village, by imposing pro-rata cut on the land holdings of the owners at the time of consolidation. It has been further contended that the appellants/their predecessor-in-interest are/were in continuous possession of the suit land since beginning and their possession over the suit property being open continues and hostile has ripened into ownership even by way of adverse possession. The counsel for the appellants while referring to the concerned revenue record of the suit land has further submitted that the ownership of the suit land does not vest in the Gram Panchayat and even in the revenue record, the suit land is described as Jumla Mushtarka Malkan. The counsel for the appellants has further contended that the mutation No.982 whereby the ownership of the suit land has been transferred in the name of Gram Panchayat by the Revenue Authorities is totally illegal and is not binding on the appellants. The counsel for the appellants has further submitted that the concurrent findings recorded by the Courts below are totally illegal and accordingly the present appeal deserves to be allowed.

12. I have considered the submissions made by the counsel for the appellants/plaintiff.

13. The plea of the appellants is that the appellants are proprietors of the village and that the proprietary rights of suit land reserved for village common purposes, by imposing pro-rata cut on land holding of the owners at the time of consolidation, continue to vest in the proprietary body of the estate or estates concerned.

14. Recently, the Hon'ble Supreme Court in **State of Haryana Through Secretary to Government of Haryana vs. Jai Singh and Ors. 2022 AIR (SC) 1718** while dealing with subject matter of challenge to the amendments in Punjab Village Common Lands (Regulations Act) 1961, by Haryana State observed as follows:-

“52. In Suraj Bhan, the Full Bench of the High Court held that only the management and control as distinguished from the title and ownership in respect of lands carved out during consolidation operations by imposing a pro rata cut on the land of the proprietors and recorded in the revenue records as 'Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba', 'Jumlan Malkan' or 'Mushtarka Malkan' etc., vest in the Panchayat. It was held as under: “146. However, for the removal of doubts, it is clarified and held that any observations in Jai Singh's case (supra), and in Veer Singh's case (supra) (in which the application for review of the judgment in Jai Singh's case (supra) had been dismissed by making clarifications), if it is to be taken that the ownership or title in respect of lands kept for 'common purposes' of the village by imposing a pro rata cut on the land of the proprietors and recorded in the revenue records as 'Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba', 'Jumlan Malkan' or 'Mushtarka Malkan' etc. vest with the State or the Gram Panchayat, as the case may be, without payment of compensation is not the correct legal position notwithstanding the provisions of Section 4 of the VCL Act 1961 and that in fact, only the management and control of such lands vests in the State or the Gram Panchayat, as the case may be. Therefore, only the management and control as distinguished from the title and ownership in respect of lands carved out during consolidation operations by imposing a pro rata cut on the land of the proprietors and recorded in the revenue records as 'Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba', 'Jumlan Malkan' or 'Mushtarka Malkan' etc., vest in the Panchayat. Besides, as already noticed, the provision relating to appropriation of income of the land kept for 'common purposes' in a consolidation scheme has been invalidated by a Five Judge Bench of the Supreme Court in Bhagat Singh's case (supra).

53. We find that such conclusion in Parkash Singh or Suraj Bhan that ‘Jumlan Malkan’ or ‘Mushtarka Malkan’ land so described in the revenue record would not vest with the Panchayat is not based on the correct reading of judgment of this Court in Ranjit Singh. Once land had been reserved for common purposes, irrespective of description in the revenue record, such land would vest with Panchayat or the State. The only condition is that it should not be within permissible limits of the proprietors.

54. Still further, in Parkash Singh, it has been held that the forum available to a person, who raises a dispute regarding title in “Jumla Mushtarka Malkan” is the principal Court of civil jurisdiction having jurisdiction in the matter, as provided by Section 9 of the Code of Civil Procedure, i.e., a Civil Court. Though the said judgment is in the context of the State of Punjab, but the said finding is not sustainable for the reason that “Jumla Mushtarka Malkan” is a land reserved for common purposes during consolidation. Though Rule 16(ii) of the 1949 Rules prescribes that the common purposes land after applying pro-rata cut would be described in the revenue record but the expression “Jumla Mushtarka Malkan” or “Mushtarka Malkan” is a land of the proprietors for the benefit of the village community for common purposes. Therefore, if the revenue records as “Jumla Mushtarka Malkan” or “Mushtarka Malkan” in the ownership column, it is the authority under the 1961 Act and the machinery provided thereunder which would exercise jurisdiction to determine the dispute as to whether it is reserved for common purposes or not.

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106. The argument of the proprietors that the land which is not capable of being used for common purposes of the inhabitants of a particular village shall be reverted to the proprietors is untenable and unsustainable. The land has been put to common pool by applying pro-rata cut. Once pro-rata cut has been applied, the management and control of such land vest with the Panchayat. There is no question of reverting the land to the proprietors. As discussed above, the land which is not part of the permissible limits under the land ceiling laws stand acquired and vested with the Panchayat in terms of judgment of this Court in

Ranjit Singh. However, in respect of the land forming part of permissible limits of the proprietor under the land ceiling laws, the management and control vest with the Panchayat. Neither the 1961 Act nor the 1948 Act contemplates redistribution of land to the proprietors. It is an irrevocable act which cannot be undone. Therefore, once land vest with the Panchayat, it can be used for common purposes of the community and will never revert back to the proprietors.”

15. In the light of settled position of law as has been enumerated in **Jai Singh’s** case (supra), now adverting to the facts of the present case, it is evident that no record with regard to consolidation of holdings in the village was produced or proved by the appellants except for document Ex.P10, whose vernacular transcription is Ex.P10/A. In the absence of other documents prepared by revenue officials at the time of consolidation, both the Courts below did not give much importance to Ex.P10. No Jamabandi or revenue record, which was prepared by the authorities immediately after consolidation of holdings, was produced by the appellants, in support of their case.

16. The 1st Appellate Court in its judgment dated 21.7.2017 observed that as per the revenue record produced by the appellants, the appellants are not recorded to be in possession over the suit land. The said findings were also affirmed by the 1st Appellate Court after going through the revenue record available on the judicial file. The 1st Appellate Court observed that there is absolutely no document available on the record, to establish the possession of the appellants/plaintiffs over the land in dispute.

17. The appellants also took plea that they have become owners of the suit land by way of adverse possession. The Hon’ble Apex Court in **Surup Singh vs. Banto and Ors. 2006(1) PLR 783**, held that a person who claims adverse possession should show- **(a)** on what date he came into

possession **(b)** what was the nature of his possession **(c)** whether the factum of possession was known to other party **(d)** how long his possession has continued and **(e)** his possession was open and undisturbed.

18. In the instant case, there are no specific pleadings in the plaint with regard to the aforesaid elements of adverse possession as were enumerated by the Hon'ble Apex Court in **Sarup Singh's** case (supra). Even otherwise the appellants have failed to prove their continuous possession over the suit property. Further, the appellants/plaintiffs cannot claim their ownership over the suit property on the basis of title and by way of adverse possession as both such pleas are mutually inconsistent and the latter does not begin to operate until the former is renounced as has been held by Hon'ble Supreme Court in **Civil Appeal No.2710 of 2010, Narasamma and Ors. vs. A. Krishnappa through LRs decided on 26.8.2020.**

19. In the light of the above discussion, this Court is of the view that there is no illegality or infirmity in the impugned judgment passed by both the Courts below. No question of law much less the substantial question of law is involved in the present appeal and thus no ground is made out to interfere with the concurrent findings recorded by the Courts below in the present appeal. Consequently the appeal is dismissed being devoid of merits.

(KARAMJIT SINGH)
JUDGE

September 21, 2023

Pariitosh Kumar/Gaurav Sorot

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No