IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP-15935-1995
Reserved on: 01.02.2024
Pronounced on: 19.02.2024

LEELA RAM AND ANR. .....Petitioners

Versus

COMMISSIONER GURGAON DIVISION AND ORS. ....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr. Ankur Goyat, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. P.P.Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

Mr. J.P.Sharma, Advocate
for respondent No. 3.

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SURESHWAR THAKUR, J.

1. The instant writ petition is directed against Annexure P-5, as made by the Collector, Mahendergarh, upon, misal No. 44/VCL and against Annexure P-6, as made on Executive Revision No. 56 by the Commissioner, Gurgaon, wherebys, the present petitioners claim for a declaratory decree, thus, making them lawful owners in possession of the disputed lands, rather became declined, despite, the Assistant Collector concerned through Annexure P-4, assigning a declaratory decree to the present petitioners.

Brief facts of the case.

2. The present petitioners instituted a declaratory suit for making them the lawful owners in possession of the suit lands. However, thereins they also claimed that the revenue entries carried in the revenue records are erroneous, and, are required to be quashed and set aside.

3. On the contested pleadings of the litigants, the hereinafter extracted issues became formulated, and, thereons evidence became adduced, thus resulting in the learned Assistant Collector concerned, through Annexure P-4, proceeding to declare the petitioners as lawful owners in possession of suit lands, carried in Khasra No. 62/14/2 and 62/1/17 total standard area 3 K – 11 M which simple area comes to 14 K- 14M. However, the petitioners were declared to be evicted from the other suit khasra numbers.

> *" 1) Whether the applicants had been cultivating the disputed land for the last 50 years as owners ? OPP.*
>
> *2) Whether the disputed land vest in the Panchayat ? OPP.*
>
> *3) Relief...."*

4. In the making of the above annexure, the Assistant Collector concerned, made reliance upon an order passed by the Assistant Director Consolidation (Ex. P-10), order whereof, became corroborated by the statement of Beant Singh, Office Kanugo concerned, with revelations thereins, that in lieu of Khasra No. 10/20, 11/1671 of the Gram Panchayat, Khasra No. 62/14/2(1-6), 62/1/17 (2-5) total 3K-11M standard area was allotted, from which simple area comes of 14K-14M, as thereovers the petitioners and their fore-fathers were in possession since 1948.

5. The aggrieved Gram Panchayat preferred thereagainst, an appeal bearing No. 44/VCL, before the Collector Mahendergarh, who through Annexure P-5, after accepting the appeal proceeded to annul the order Annexure P-4, made on 02.02.1994.

6. The reason which became assigned by the learned Collector, Mahendergarh to quash Annexure P-4, became rested on the premise that the respondents in the said appeal were unable to produce any documentary evidence or any clinching oral evidence to substantiate, their claim that they were in independent, continuous cultivating possession, over the suit lands from 26.01.1950.

7. Therefore, it appears that the plaintiffs in the suit (supra) had ventilated a statutory ground, for the espoused decree becoming assigned to them, statutory ground whereof, became hinged upon the apposite savings clause to the definition of *shamlat deh,* as, embodied in Section 2(g)(viii), provisions whereof are extracted hereinafter.

> *2. (g) "shamilat deh" includes -*
> *(1)*
> *(2)*
> *(3)*
> *(4)*
> *(5)*
> *but does not include land which -*
> *(i)*
> *(ii)*
> *(iii)*
> *(iv)*
> *(v)*
> *(vi)*
> *(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) ....

8. It appears that the said ground became founded, despite in jamabandis (Annexures P-7 and P-8), the predecessor-in-interest of the petitioners becoming revealed to be rather holding a limited status of a *Gair Marusi* over the disputed lands.

9. Therefore, it appears that given the above limited status of the predecessor-in-interest of the plaintiffs over the suit lands, which but is not co-equal to theirs holdings' thus independent cultivating possession of the suit lands, but as required by the savings clause (supra), that thereby, through Annexure P-5, the Collector concerned accepted the statutory appeal (supra), and resultantly quashed and set aside Annexure P-4, whereby the Assistant Collector concerned, had assigned the espoused declaratory decree to the plaintiffs.

10. Annexure P-5, caused grievance to the aggrieved therefrom and led them to institute thereagainst Executive Revision No. 56 before the Commissioner concerned, who through Annexure P-6, proceeded to affirm Annexure P-5.

11. The instant writ petition is thus directed against the above made Annexures.

12. Imperatively, in terms of the apposite savings clause (supra), the plaintiffs were required to prove that they were holding independent cultivating possession over the suit lands prior to 1950, but yet from the jamabandi (supra), they were unnable to succor the said espousal, as thereins their predecessor-in-interest rather became

reflected to be holding a limited status as a *Gair Marusi* over the suit lands.

13. Necessarily, therebys, the said limited status when is not equivalent to that of their relevant predecessor-in-interest, thus holding independent cultivating possession over the suit lands, but prior to 1950, manners of cultivation whereofs, if pleaded, and, if becoming cogently proven, thus would bestow leverage upon the present petitioners to well claim that the benefit of the savings clause (supra), be assigned to them.

14. Though, a presumption of truth is carried by the said entries and though the said presumption was attempted to be scuttled but the said attempt was merely through a bald averment being made in the petition, and, but obviously the said bald averment, did not, *prima facie,* become proven through adduction of any cogent evidence, for therebys the above presumption of truth assignable to the revenue entries (supra), rather becoming ably rebutted, though therebys the predecessor-in-interest became disabled to contend that they were holding independent cultivating possession over the suit lands, thus in terms of the apposite savings clause (supra), to the definition of *shamlat deh* besides, *prima facie*, also became disabled to become assigned the benefit of the savings clause (supra).

15. Be that as it may, irrespective of the above, it is but necessary to delve into the legitimacy of attribution of evidentiary vigor to Exhibit P-10, by the Assistant Collector concerned vide his order drawn on 02.02.1994, whereby, he thus proceeded to assign the espoused declaratory decree to the plaintiffs. The assigning of evidentiary sanctity to the order rendered on 30.03.1967 by the

Assistant Director Consolidation, as embodied in Exhibit P-10, thus appears to be a well assigned sanctity thereto, as the said Exhibit became lent able corroboration, thus by the statement made by the Office Kanugoo before the Assistant Collector concerned. Necessarily, therebys, the presumption of truth, as was otherwise assignable to the entries (supra), as carried in the jamabandis (Annexures P-7 and P-8), whereins the predecessor-in-interest of the petitioner became entered as *Gair Marusi,* thus became denuded of vigor and/or the said presumption became repelled by Exhibit P-10.

16. Moreover, since the said exhibit made echoings that therebys the Assistant Director, Consolidation had assigned Khasra numbers 62/14/2(1-6), 62/1/17(2-5) total 3K-11M standard area from which simple area comes to 14 K-14M to the present petitioners in lieu of old khasra numbers 10/20, 11/1671 of the Gram Panchayat. Therefore, when the drawing of Exhibit P-10 appears to be by the Consolidation Department concerned, therefore, the makings of the said Exhibit is but to be concluded to be made, during the course of consolidation operations being conducted in the *mohal* concerned.

17. Moreover, since no evidence became adduced by the Gram Panchayat, so as to rebut the efficacy of Exhibit P-10. In sequel, it is but naturally to be concluded, that the khasra numbers spoken therein became assigned to the petitioners in pursuance to the finalized consolidation scheme, and, that the khasra numbers (supra), though manifestating themselves in the finalized consolidation scheme, yet did not find there occurrences in the revenue records concerned, whereas, they were to be occurring in the relevant revenue records.

18. As but a natural corollary thereto, the entries in the

jamabandis (Annexures P-7 and P-8) revealing the petitioners to be *Gair Marusi,* over the suit lands appear to be in derogation to Exhibit P-10, besides reiteratedly, therebys, the presumption of truth assigned to the said revenue entry, does become rebutted from Exhibit P-10.

19. In consequence, no sanctity is enjoyed by the entry of *Gair Marusi*, as carried in the jamabandis (supra).

20. Moreover, the assigning of authenticity to Exhibit P-10, by the Assistant Collector concerned appears to be sequel of an order made by this court on 28.04.1993 upon CWP No. 4748 of 1993, order whereof becomes extracted hereinafter.

> *"Contends that the authenticity of Ex.P-10 has been specifically challenged before the appellate Authority only and it was never doubted before the Authority below. The appellate Authority in the interest of justice to find out the authenticity of Ex.P10 has remanded the case to the authority below to that limited point only. We do not find anything in the impugned order from which the petitioner would suffer any injustice muchless an irreparable injury.*
>
> *We find no ground to interfere. The writ petition is accordingly dismissed."*

21. Therefore, when in terms of the order (supra), the Assistant Collector concerned, ensured that authentication becomes purveyed to Exhibit P-10, thus with the thereins above speaking, rather through his ensuring the stepping into the witness box of the Office Kanugoo concerned, who as stated (supra) corroborated the contents embodied thereins.

22. Consequently, it appears that, therebys, to the extent as manifestated in Exhibit P-10, the petitioners were able to, thus lead evidence both cogent and clinching to rebut the presumption of truth

carried by the revenue entries, vis-a-vis, those khasra numbers unfolded in Exhibit P-10.

23. In consequence, the non assigning of any evidentiary vigor to Exhibit P-10, through the makings of the impugned Annexures, respectively by the Collector, and, the Revisional Court concerned, thus appears to result in gross injustice being perpetrated upon the present petitioners.

FINAL ORDER OF THIS COURT.

24. In aftermath, this Court finds merit in the writ petition, and, the same is allowed. The impugned orders (Annexures P-5 and P-6) are quashed and set aside.

25. The order passed by the Assistant Collector, First Grade, Narnaul (Annexure P-4) is maintained and upheld.

26. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

19.02.2024
kavneet singh

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