

RSA-1732-1991(O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

143

RSA-1732-1991(O&M)

Date of decision: 04.03.2024

Gram Panchayat Nurpur Kalan & ors.

...Appellants

Versus

Jagan Nath (since deceased) through LRs & ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Parminder Singh Kanwar, Advocate, and
Mr. Vivek Chauhan, Advocate,
for appellant No.1.

Mr. M.L. Sarin, Senior Advocate with
Ms. Hemani Sarin, Advocate,
for respondent No.1.

VINOD S. BHARDWAJ, J. (Oral)

The present appeal has been filed against the judgment and decree dated 12.04.1991 passed in Civil Appeal No.29 of 05.05.1988 by the Court of Additional District Judge, Ropar, allowing the appeal and setting aside the judgment and decree dated 26.04.1988 passed by the Sub Judge, Ist Class, Anandpur Sahib.

Briefly stated the facts of the present case are that the appellant-plaintiffs filed the Civil Suit No.114 of 1985 for exclusive possession of 568/640 share of the land measuring 2 kanals 2 marlas as owners, by partition amongst the co-sharers alongwith recovery of Rs.900/- as arrears of rent from defendant No.1-Jagan Nath.

The case of the plaintiffs is that land measuring 2 kanals 2 marlas, situated in Village Nurpur Bedi, is under joint ownership of the

RSA-1732-1991(O&M)

-2-

parties in the following shares:-

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|------|---|--|
| I) | Plaintiff No.1. | 544/640 shares |
| ii) | Jagdish Ram, Hussan Chand, Banwari lal, Behari Lal plaintiffs No.2 to 5 | 12/640 shares |
| iii) | Tilak Raj & Ramesh Chand plaintiff Nos.6 & 7. | 12/640 shares |
| iv) | Jagan Nath defendant No.1. | 30/640 shares |
| v) | Harmohinder Singh defendant No.2. | 30/640 share (share of Bimla Devi 12/640 and of Rattan Chand, Ranbir Chand 18/640) |
| vi) | Girdhari Lal defendant No.3. | 12/640 share |

Though this land is entered in the revenue record, yet it is not assessed to any land revenue. In the record of rights, it is entered as Ghair Mumkin abadi and, therefore, it can be partitioned by the civil court. In the year 1939, Smt. Ganga Devi widow of Hira Mal, Amar Chand, Harish Chand, Jagan Nath sons of Sunder were the owners of majority share in the suit land. They gifted it orally for a Sarai and mutation No.912 dated 30.08.1939 was sanctioned in favour of the sarai. At that time its khewat number was 185 and khasra number was 900. Previously the sarai in the suit land was under the management of Amar Chand son of Sunder. The sarai building was in a bad condition. In order to improve its finishing and structural condition, Amar Chand rented out ½ share (eastern part) of the sarai to defendant No.1 Jagan Nath for putting up a flour mill, on an annual rent of Rs.300/-. Defendant No.1 also executed a rent deed dated 12.9.1967 and came in possession of the land as tenant under the sarai. Defendant No.1 was required to reconstruct the western part of the sarai but the

needful was not done. The plaintiffs had filed a suit for partition of the suit land in this Court earlier, but the same was withdrawn on 05.02.1985 with permission to file a fresh suit on the same cause of action on costs of Rs.40/-, which the plaintiffs are prepared to pay in the court. In that suit defendant No.1 denied the title of the plaintiff No.1 Gram Panchayat and of the Sarai and put up his own title on the basis of hostile possession. As such the tenancy under the sarai stood terminated.

It was also pleaded that arrears of rent from September, 1982 to September, 1985 were due from defendant No.1-respondent. Since the 'Sarai' was for a public purpose, it being a public place, every member of public has a right to go there. It hence vests in the Gram Panchayat under the Gram Panchayat Act of 1952. Since the defendant was misusing the property, hence, a partition of the same was sought.

The defendant No.1-respondent filed his written statement and claimed himself to be owner in possession of the suit property for the last more than 36 years. The possession being continuous, open, peaceful, without any interference and was adverse and hostile to the knowledge of plaintiffs. Thus, title has been acquired by way of adverse possession. Construction of boundary house and other structures has been done by him with complete and exclusive control to access of the property. The property was originally used as a residential property but later was being used commercially. He continued to do all acts on the property as are available to a true owner and with no objection from the plaintiffs. It was further submitted that mutation would not confer title and that possession of the property was never transferred as a sarai. Possession and right of Amar

Chand were also denied. It was also denied that possession was ever delivered by Amar Chand and that all his machinery existed at the place prior to 1967. The execution of rent deed was denied.

On completion of pleadings, following issues were framed:-

1. Whether 568/640 shares of the suit land was orally gifted by Ganga Devi, Amar Chand, Hussan Chand and Jagan Nath for the purpose of sarai and mutation No.912 was validly sanctioned? OPP
2. Whether the suit property vests in the plaintiff No.1? OPP
3. Whether Ramesh Dutt has the authority to file this suit on behalf of the Gram Panchayat? OPP
4. Whether defendant was inducted as a tenant by Amar Chand in the suit property at a monthly rental of Rs.300/- vide rent deed dated 12.09.67? If so to what effect? OPP
5. Whether the plaintiffs are entitled to recover the arrears of rent from the defendant? If so how much? OPP
6. Whether the defendant has become the owner of the suit property by adverse possession? OPD
7. Whether the plaintiffs are estopped by their act and conduct from bringing the present suit? OPD.
8. Whether the suit is not maintainable? OPD
9. Whether the suit is liable to be rejected for want of particulars? OPD.
10. Relief.

Parties led their respective evidence, whereupon learned Sub Judge, Ist Class, Anandpur Sahib, decreed the civil suit filed by the Gram Panchayat. Upon consideration of the evidence, the finding on issues No.1 and 2, which were dealt with by the trial Court, were recorded in favour of the plaintiffs and against the defendants. The Gram Panchayat was held

entitled to title over the suit property and the same was declared to have deemed to be vested with the Gram Panchayat. So far as the findings on the remaining issues are concerned, the same were decided in favour of the plaintiffs and against the defendants. In relation to issues No.4 and 5 pertaining to that the defendant being inducted as a tenant in suit property by Amar Chand at a monthly rent of Rs.300/- vide rent deed dated 12.09.1967, it was held that there is no evidence that the Gram Panchayat had authorized Amar Chand to induct defendant No.1 as tenant in the suit property and therefore, any relationship created between defendant No.1 and Amar Chand does not devolve upon plaintiff-Gram Panchayat. It, thus, could not be said that defendant No.1 was tenant on the suit property under the plaintiffs and they cannot claim any arrears of rent from defendant No.1. Accordingly, issues No.4 and 5 were decided against the Gram Panchayat. While recording the finding on issue No.6 raised by the respondent-defendant as to whether he became owner of the suit property by adverse possession or not, it was concluded that the possession of defendant No.1 over the suit property was only as a tenant and same could not be held to be adverse. It was also noticed that defendant No.1 was arraigned in the entries as tenant and merely claiming long possession, is not sufficient to establish the adverse possession. It was only in 1973-1974 that defendant No.1 purchased 2 marlas of land out of the suit land from the previous co-sharer Gurdas, Harish Chand and Harbans Lal and till that time defendant No.1 had not claimed himself as owner of the suit land by adverse possession. The case had been filed on 11.05.1985 i.e. within a period of 12 years from 05.07.1974 when the sale deed had been executed in favour of

defendant No.1. As such, his possession over the suit property was only in the capacity of a co-sharer and not in the capacity of owner by way of an adverse possession. Hence, the said pleading was not established. It was also noticed that the Gram Panchayat or the other co-sharers did not object to the construction raised by defendant No.1 over the suit property for long period of time because construction remained under control of the sarai and as such, it was quite possible that they were not aware of their status. Even the rent notes (Exhibits P-1 and P-20) show that the property was leased out because sarai was in dilapidated condition and from that income Amar Chand wanted to make improvements and further construction in the sarai. Thus, the possession had been transferred by consent and the plea of adverse possession thus cannot be claimed to have been established. The possession was also deemed to be permissive and since no construction was placed over the entire suit property so as to display an ouster of the other co-sharers, even on the said account, the plea of adverse possession is not established.

Suit was thus decreed against defendants for exclusive possession of 568/640 shares in the suit property by way of partition amongst the co-sharers, however, the suit towards recovery of arrears of rent was dismissed.

Defendant-respondent No.1 preferred an appeal before the Additional District Judge, Rupnagar. Vide its judgment dated 12.04.1991, learned Additional District Judge, Ropar allowed the appeal and reversed the findings recorded by the Sub judge, Anandpur Sahib on issues No.1 and 2 and suit was accordingly dismissed with costs. The operative part of the

judgment reads thus:-

“8. In my opinion, apart from the doubtful admissibility of the document Ex.P-17, the mutation which say admissiblity of the document Ex.P-17, the mutation which say dedication by its owners of 17/20 share in favour of sarai, the document taken on the face of it does not prove any dedication in favour of sarai. The mutation is in favour of Sarai Deh Haja Kabja Ba Tamam Amar Chand. The entries would show that a sarai was proposed to be constructed by the owners under the management of one of its owner Amar Chand. It never said that sarai was to be used for common purposes by the villagers including the non-proprietors and that its management was vested in the Gram Panchayat or any committee, made for that purpose. The trial Court has held that the consistent entries upto the jamabandi 1953-54 show the lease existence of gair mumkin khola abadi sarai in the suit property and it is only in the year 1968-69 that gair mumkin makan came to be shown in the column of jamabandi. Simple because there was an entry in the mutation of a sarai does not mean that any sarai was dedicated by the owners or that any land was dedicated for the construction of a sarai. There is evidence on record that sarai was never in existence, rather it was only a khola which was never reconstructed into a sarai. The word sarai in itself does not connote that it cannot be said to be the property of a private individual. A private individual may have his own property to be used for religious or other purposes and for that purpose may make any temple or sarai and it does not by itself mean that it is to be used for the general public or in any other public authority by virtue of its name only. It has to be shown specifically that the land was dedicated for the construction of a sarai by the owners. Admitteldy, the land in dispute is

not recorded to be shamlat deh in the revenue record nor the Gram Panchayat is recorded to be its owner. Therefore, it cannot be said that the land in dispute vests in the Gram Panchayat by virtue of the provisions of Section 2 (g) of the Punjab Village Common Lands (Regulations) Act, 1961.

9. There should be an evidence of common use by the villagers including the non-proprietors. It is not confined to the benefit of the co-owners or owners of the land in the patti. The village community as a whole including the non-proprietors and tenants etc. must be using the said property to make it a property to be used for common purposes. Rather there should be entries as such in the revenue record that the land reserved for common purposes is being used as such by the village community. There is no evidence on the file by the plaintiffs that the land in dispute was ever used for common purposes or that any sarai came into existence over it. It is the case of the plaintiffs that part of the suit land was rented out to the defendant for raising funds for the construction of the sarai, but the evidence on the file is otherwise. The plaintiff has examined as many as 9 witnesses but none of them has stated that the land in dispute was ever used for sarai by the village community. PW-2 is the son of Amar Chand and has stated that the money collected by his father from Jagan Nath or other tenants was being deposited by him in his own name and after his death. Om Parkash PW-2 has been depositing the same in his own name. No account of the sarai was opened nor any money was kept separate for the construction of it. Sulekh Chand PW-4 has stated on 22.11.1986 that defendant Jagan Nath had been in possession of the suit property for the last 20-25 years. The possession of defendant dates back to the year 1961

and it falsifies the case of the plaintiff that defendant came into possession in the year 1967 under a rent note. PW-5 is the sarpanch of the Gram Panchayat and he also admits the possession of the defendants since 1963. He admits that the land is not recorded to be owned by Gram Panchayat in the records of the Panchayat or in the revenue record. PW-6 Ex-Sarpanch of the Gram Panchayat and he has stated that the Gram Panchayat never spent any money over the sarai nor any resolution was passed by the panchayat regarding the sarai in question. PW-6 has stated that the land in dispute never came into possession of the Gram Panchayat. PW-6 has gone to the extent of saying that the land in dispute was never used as a sarai. In the light of the above evidence led by the plaintiff. The trial Court should not have given a finding that the land in dispute was ever used as a sarai or was kept reserved for sarai to be used by the village community. Such a land can never vest in the Gram Panchayat unless it is used for common purposes and is reserved as such.

10. The trial Court has referred to “**Nura and others Vs. Emperor**” 89 Indian Cases 975 but the facts of that case are entirely different. That was a case where the point in controversy was as to whether a sarai used as stand for hackney carriage was a public place within the meaning of Punjab Gambling Act. It was not a case of a land being used or a sarai being used for common -purposes. It was held therein that even if a sarai is owned by a private person but if it is being used as a public place for the purposes of Section 13 of the Punjab Gambling Act. As already observed the question in the present case is not as to whether the sarai was a public place or not and apart from this fact, there is no evidence of the alleged sarai being used as such. The facts of the case, therefore, could

not be imported in the present case.

11. The judgments Ex.C-1 to C-3 again are wholly irrelevant for deciding the controversy in question. The perusal of these judgments show that there was no dispute as to the nature of the property as it was admittedly a sarai. One of the room was given by the Gram Panchayat for running a Rural Dispensary to the State of Punjab and a suit was filed by the alleged owner that the Gram Panchayat had no right to lease out one of the room to the Punjab Government as the sarai was constructed by him for stay of marriage parties and travellers. It was on these grounds that the suit was filed and the question involved in that case was not as to whether the sarai being used for common purposes could be said to have been vested in the Gram Panchayat. There was no dispute about its vesting and there was evidence that it was being used for the common purposes such as stay of marriage parties and travellers etc. whereas in the present case there is absolutely no evidence that the sarai was ever used for common purposes.

12. In view of the discussion made above, the decision on issues No.1 and 2 rendered by the trial Court cannot be sustained and are liable to be reverse and are hereby so reversed.”

Hence, the present appeal.

Learned counsel for the appellant-plaintiff has argued that the property in question vested to the Gram Panchayat in the year 1939 by virtue of oral gift deed and since then it is used as a Sarai for public purposes. The mutation bearing No.912 was also recorded to this effect on 20.08.1939. The lease of the property was given to defendant No.1 in the year 1967 and it was thereafter that the mutation had been changed as ‘Gair

Mumkin Makan'. However, the rent in question had not been paid. He submits that the Additional District Judge, Anandpur Sahib, fell in an error while reversing the findings recorded by the Sub Judge on the issue of the sarai being a public property and holding that there was no dedication of the sarai for public cause and that in the absence of the same having been transferred to the Gram Panchayat or having been dedicated to the public cause, it would not vest with the Gram Panchayat. It is submitted that the abovesaid findings recorded by the Additional District Judge, Anandpur Sahib are not based upon the correct appreciation of the evidence and that the said sarai was also used for common purposes and even PW-2-Om Parkash son of Amar Chand, the predecessor-in-interest, specifically deposed that the management and control of the said sarai had been transferred to the Gram Panchayat. He submits that the said finding has remained uncontroverted and that by virtue of transfer of the management and control, the factum of gift of the abovesaid land for public purposes stands fully established and corroborated. The revenue record was more than 30 years old as on the date of institution of the suit and as such, it was not required to be established by leading any other evidence in view of Section 90 of the Indian Evidence Act, 1872. In the event, respondent-defendant No.1 had any objection against the entry in the revenue record, the burden to dispel the validity and authenticity of the said evidence was on defendant No.1-respondent.

Learned Senior counsel for respondent No.1-defendant has on the other hand argued that the contention of the appellant-plaintiffs is unsustainable for the following reasons:-

i) that the revenue record/entry of 1939, which has been relied upon by the plaintiff-appellant was to the effect that 'Sarai Deh Haja Kabja Ba Tamam Amar Chand'. Hence the same was only the entry reflective of usage of land and not with respect to the transfer of the land or its dedication for a public purpose.

ii) It is further submitted that the above said mutation also shows that Amar Chand was in continuous occupation of the above-said property and that possession of the same had never been transferred to the plaintiff-Gram Panchayat.

iii) He submits that the evidence of PW-2-Om Parkash before the Court also shows that 3-4 years back, the possession was statedly handed over to Gram Panchayat. The said witness also does not depose that the property was ever dedicated for public cause or that it was to continue to remain as a public property. A mere change of user of the property from the agriculture land to the sarai would not automatically vest the title thereof with the Gram Panchayat.

iv) It is also argued that the dedication would require establishment of an intent coupled with sufficient corroborating documents either in the form of primary or secondary/circumstantial evidence, which would establish the intent of the party and establish that the said intent had also been acted upon. Once the actual physical possession of Amar Chand (although claimed to be in his capacity as a Manager) is acknowledged by Gram Panchayat itself, hence, the question of transfer of the property in favour of Gram Panchayat by virtue of a mutation entry made in the year 1939, does not arise. The pre-requisites for establishing dedication of a

property for public cause thus have not been established.

v) He further submits that the claim of the Gram Panchayat for receiving rent has already been settled against it. He makes a reference to the rent note of 1967 and contends that the said rent note has not been proved as the signatures of the respondents are not there.

vi) He further submits that as per the findings recorded by the Sub Judge, Anandpur Sahib, even the said rent note was executed between Amar Chand and defendant No.1 and was not between the Gram Panchayat and defendant No.1. Even though the finding in this regard was against the Gram Panchayat, it never raised a challenge to the said findings which have now become final. Hence, the Gram Panchayat was correctly held to be disentitled to rent as having never inducted respondent No.1 as a tenant. As neither the ownership nor the rights of the Gram Panchayat as a land owner/manager of the property has been established, the Gram Panchayat would not have any entitlement to seek exclusive possession of the property on the basis of either the vesting/dedication of the property in the year 1939 or by any subsequent act and conduct.

vii) It is further argued that appellant-Gram Panchayat has failed to adduce any evidence on the basis whereof it can be ascertained that possession of the above said property was delivered to the Gram Panchayat either by way of any resolution/any receipt or acknowledgment. It also failed to show that respondent No.1 had acknowledged the status of the Gram Panchayat as landlord of the premises/property.

viii) It is further argued that the abovesaid factual aspect recorded by the Court ought not to be ordinarily disturbed in the regular second

appeal.

He also places reliance on the judgment of the Hon'ble Supreme Court in *Deity Pattabhiramaswamy Vs. S. Hanymayya & ors. reported as AIR 1959 SC 57*, to contend that "There is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, however, gross or inexcusable the error may seem to be." He also relied upon the judgment of this Court in *Bawa Singh Vs. Haqiqat Singh & ors. reported as 2005 SCC Online P&H 545* to contend that "The second appeal cannot be decided on mere equitable grounds. The concurrent findings of facts, howsoever erroneous, cannot be disturbed by the High Court in exercise of the powers under this Section. In a case where from a given set of circumstances two inferences are possible, one drawn by the Appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the First Appellate Court were erroneous and contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court or was based upon inadmissible evidence or arrived at without evidence".

In rebuttal, learned counsel for the appellant-plaintiff contends that the respondent is only an owner to the extent of two marlas of land as per the sale deed executed in his favour in the year 1973-1974 and that he is in possession of an area beyond his share and that it is not only the Gram Panchayat which has instituted the said suit and the other co-sharers are also co-plaintiff/appellants. He further contends that claim of partition in any

case could not have been denied since the respondent is undisputedly in possession of an area beyond his share i.e. 2 marlas that was purchased by him by virtue of sale deed executed in the years 1973 and 1974 respectively.

I have heard learned counsel for the parties and perused the documents along with the impugned judgment herein.

It is evident from perusal of the record that reliance of the Gram Panchayat is entirely on the entry made in the revenue record in 1939, which was to the effect as under:-

“Sarai Deh Haja ba Kabja Amar Chand”.

It is also not in dispute that Amar Chand is successor in interest of late Ganga Devi. The change of entry in 1939 vide mutation No.912, dated 30.08.1939 was only towards change of user of the land as a sarai and that the abovesaid sarai in the suit land was under the management of Amar Chand son of Sunder. The rent deed in question is also stated to have been executed by Amar Chand in favour of respondent-defendant No.1. The factum of change of mutation would not *ipso facto* establish that the land would have been dedicated for public cause. The pre-requisites of dedication mandate that the intent of such dedication ought to have been transfer of title and interest in the suit property for larger public interest. It has been so held in judgment of ***Kuldip Chand and anr. Vs. Advocate-General to Government of H.P. and ors., reported as (2003) 5 SCC 46*** that the dedication is required to be established from the circumstances and evidence led by the respective parties. The dedication of the aforesaid land for the purposes of sarai to be dedicated for larger public welfare, has not been established either from the conduct of the parties or from any

contemporaneous evidence. Hence, it cannot be deemed that merely because an entry of sarai had been made, it is sufficient to prove the intent of the parties. Had it been the intent on the part of the owners to dedicate this land for welfare of the Gram Panchayat, the gift deed would have translated into execution of the said intent in the revenue record and column of owner would have undergone a change which would have reflected in the ownership of the Panchayat Deh/Shamlat deh.

Further, even though the plaintiff-appellant submits that PW-2 Om Parkash had acknowledged Gram Panchayat to be in possession of the suit land, however, he could not refer to the relevant extract of testimony as per which PW-2 Om Parkash had acknowledged that the predecessor-in-interest intended to transfer/dedicate the abovesaid land for Gram Panchayat welfare. The only relevant aspect of the testimony is to the effect that the possession of the land had been handed over to the Gram Panchayat for management, supervision and control about four years back to his deposition/testimony before the Court. Hence, the dedication, if any, at best can be presumed against its owners with effect from the date when such vesting took place and not prior thereto. Thus, the prayer of the appellant for seeking a declaration in its favour on the strength of the mutation of 1939 does not find favour. The Gram Panchayat may at best claim such vesting and dedication in favour of the Gram Panchayat by virtue of subsequent deposition made by Om Parkash, which is at best binding against him and can seek a declaration of such ownership, having been vested by the true owners, in favour of the Gram Panchayat. However, as the suit in question has not been instituted on the basis of transfer of

possession in favour of the Gram Panchayat by the true owners and is rather claimed that it was owner by virtue of the gift deed and the status of the respondent-Amar Chand/Om Parkash as manager had been admitted. The Gram Panchayat may take recourse to its remedies for seeking exclusive possession of the aforesaid land on the basis of possession, in view of the deposition of respondent No.2- Om Parkash.

It is settled position in law that the mutation in revenue record merely gives rise to a presumption, which is rebuttable and that mutation is not a declaration of rights. The respondent having denied the rights of the Gram Panchayat, burden lay upon it to prove its case.

The Gram Panchayat claimed to have become owner by way of gift deed. No gift deed has been established or brought on record. The mutation does not establish transfer of title. There is no entry in the roznamcha as per which possession may be assumed to have been transferred to the Gram Panchayat. Rather, the possession continued to be with true owners who is alleged to have given the same on lease and even the rent was to be received by him. Thus, even the actual physical or symbolic possession has not been established to be delivered to the Gram Panchayat.

No rent had ever been received by the Gram Panchayat and it exercised no dominion or control over the property and it is also established that it was never put to any use for a public cause.

A mere change of entry as 'Sarai' does not *per se* establish dedication for a public cause and even the said entry is nothing more than a paper entry. The same was never acted upon. The owners never renounced

their title or possession and continued to exert the same.

Besides, the rent deed itself has not been established.

The circumstances notices by the ADJ, Rupnagar, are well founded and are born out of the record.

I find that reversal of finding by the Additional District Judge by placing reliance upon the complete mutation entry, as against the partial entry read by the Sub Judge, Anandpur Sahib, was based on correct reading and interpretation. The findings do not suffer from any illegality, impropriety or perversity.

The present appeal is, accordingly, dismissed and the judgment and decree of the Additional District Judge,Ropar, are hereby affirmed.

04.03.2024
monika

(VINOD S. BHARDWAJ)
JUDGE

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