

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. RSA-1803-1994
Reserved on: 18.04.2024
Date of decision: 24.06.2024

DAYA NAND AND ANOTHER ..Appellants

Versus

RAM DIYA AND OTHERS ..Respondents

2. RSA-4056-2005 (O&M)

LAL CHAND ..Appellant

Versus

RAM DIYA AND OTHERS ..Respondents

3. CR-6560-2015 (O&M)

LAL CHAND ..Petitioner

Versus

RAM DIYA (DECEASED) THROUGH LRS. & ORS.

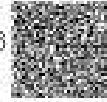
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Aggarwal, Advocate
for the appellant (in RSA-1803-1994).

Mr. S.K. Hooda, Advocate
for the appellant (in RSA-4056-2005)
for the petitioner (in CR-6560-2015).

Mr. Aman Raj Bawa, Advocate
for respondent No.1 (in RSA-4056-2005).



ANIL KSHETARPAL, J.

1. Brief facts of the case:-

1.1 With the consent of the learned counsel representing the parties, two connected regular second appeals and a civil revision petition shall stand disposed of by a common order.

1.2 After hearing the learned counsel representing the parties, the following order was passed on 05.04.2024:-

“Prima facie, the following interesting issue requires adjudication from the Court:-

“Whether the residential area of the village, commonly referred as the ‘Abadi area’, is subject to partition upon the request of village proprietors seeking a share in the ‘Abadi area’ beyond their existing property holdings?”

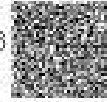
The learned counsel representing the parties are also requested to examine the effect and import of Section 2g(iv)(a) of the Punjab Village Common Lands (Regulation) Act, 1961, which was inserted by Haryana Act No.23 of 1973 with effect from 23.06.1973 and omitted by Haryana Act No.2 of 1981 and further reinserted by Haryana Act No.15 of 1983 with effect from 12.02.1981.

List on 18.04.2024, in the urgent list.

A photocopy of this order be placed on the files of the other connected cases.”

1.3 In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

1.4 Certain proprietors of village Siwanka, Tehsil Gohana, filed a suit for possession by way of partition of ‘*abadi deh*’ land. The area reserved for the residence of the proprietors as well as non-proprietors is ordinarily called the ‘*abadi*’ of the village. Vide judgment dated 22.07.1987, a preliminary decree for partition of land in dispute except the land owned and possessed by the non-proprietors of the village and the land falling



under wells, ponds, schools, grave yard, chaupal, Mandir was passed. In the proceedings for the preparation of final decree, a local commissioner was appointed. Significantly, a large number of objections were filed, however, the trial Court directed passing of the final decree in terms of the local commissioner report (Ex. LC-1, Ex.LC-2, Ex.LC-3 and Ex.LC-4.

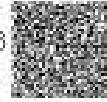
1.4 As many as four appeals were filed before the First Appellate Court. The Gram Panchayat was also made a party. It was contended by the certain objectors as well as the Gram Panchayat that the vacant land located in the '*abadi*' of the village vests in the Gram Panchayat, hence, that cannot be made a subject in the matter related to partition. However, the First Appellate Court dismissed the appeal. RSA-4056-2005 arises from a suit of permanent injunction, which has been dismissed by both the Courts below. In the aforesaid appeal, the plaintiff claims that in the partition proceedings, he has been allocated the suit property.

1.5 In CR-6560-2015, the decree holders have challenged the correctness of the Executing Court's order adjourning the proceedings *sine die* to await the decision of this Court in RSA-1803-1994.

2. **Arguments put forth by the learned counsel representing the parties:-**

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record.

2.2 The learned counsel representing the appellant submits that the vacant land located in '*abadi*' area of the village cannot be made the subject matter of the partition suit as it vests in the Gram Panchayat. He while relying upon the judgment of the Coordinate Bench passed in **Ram Chander**



Vs. Chanda and others, 1997(2) PLR 344, submits that the jurisdiction of the Civil Court to determine its nature, title or to partition the land is excluded and only the proceedings under Section 13-A of the Punjab Village Common Land (Regulation) Act, 1961 (hereinafter referred to as the '1961 Act'), can be instituted.

2.3 Per contra, the learned counsel representing the respondents has submitted that at the stage of final partition, the Court cannot adjudicate the question of title as the shares have already been determined while passing the preliminary decree. Hence, there is no ground to interfere.

3. **Discussion by this Court:-**

3.1 It shall be noted here that under the '1961 Act', as applicable to the State of Haryana, a significant amendment was incorporated in Section 2(g) of the 1961 Act. Sub Clause 4(a) was inserted by Haryana Act No.23 of 1973 with effect from 26.06.1973. It was omitted by Act No.2 of the 1991 but reinserted with effect from 12.02.1981 by Haryana Act No.15 of 1983.

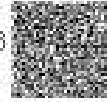
3.2 At this stage, it will be appropriate to extract the definition of expression '*Shamlat Deh*' provided in Section 2(g), Section 13 and Section 13-A of the 1961 Act as applicable in the area of the **State of Haryana:-**

"2(g)" shamilat deh " includes (1) lands described in the revenue records as [Shamilat deh or Charand] excluding abadi deh;

(2) shamilat tikkas;

(3) lands described in the revenue records as shamilat, tarafs, pattis, pannas and tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

(4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within the sabha area as defined in clause (mmm) of section 3 of the Punjab Gram Panchayat Act, 1952, excluding lands reserved for the common purposes of a village under section 18 of the



East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under section 23 A of the aforesaid Act) (4a) vacant land situate in abadi deh or gorahh deh not owned by any person]

(5) lands in any village described as banjar qadim and used for common purposes of the village according to revenue records,

[-----]

but does not include land which

(i) becomes or has become shamilat deh due to river action or has been reserved as shamilat in villages subject to river action except shamilat deh entered as pasture, pond or playground in the revenue records,

(ii) has been allotted on quasi - permanent basis to a displaced person, [((ii-a) was shamilat deh, but has been allotted to any person by the Rehabilitation Department of the State Government, after the commencement of this Act but on or before the 9th day of July, 1985]

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950,

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh and is so recording in the jamabandi or is supported by a valid deed;

(v) is described in the revenue records as shamilat taraf, pattis, pannas, and thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

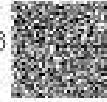
[(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, house or for cottage industry, immediately before the commencement of this Act;]

(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) is used as a place of worship or for purposes subservient thereto; [(6) lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under section 23-A of the aforesaid Act.

Sec 13. Bar of Jurisdiction-- No civil court shall have jurisdiction-



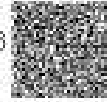
*(a) to entertain or adjudicate upon any question whether
(1) any land or other immovable property is or is not
shamlat deh;
(ii) any land or other immovable property or any right,
title or interest in such land or other immovable property
vests or does not vest in a Panchayat under this Act
(b) in respect of any matter which any revenue court,
officer of authority is empowered by or under this Act to
determine; or
(c) to question the legality of any action taken or matter
decided by any revenue Court, Officer or authority
empowered to do so under this Act .]*

*13-A Adjudication - (1) Any person or in the case of a
Panchayat, either the Panchayat or its Gram Sachive, the
concerned Block Development and Panchayat Officer,
Social Education and Panchayat Officer or any other
officer duly authorised by the State Government in this
behalf, claiming right, title or interest in any land or
other immovable property vested or deemed to have been
vested in the Panchayat under this Act, may file a suit for
adjudication, whether such land or other immovable
property is shamlat deh or not and whether any land or
other immovable property or any right, title of interest
therein vests or does not vest in a Panchayat under this
Act, in the Court of the Collector, having jurisdiction in
the area wherein such land or other immovable property
is situated*

*Provided that no suit shall lie under this section in
respect of the land or other immovable property, which is
or has been the subject matter of the proceedings under
section 7 of this Act under which the question of title has
been raised and decided or under adjudication.*

*(2) The procedure for deciding the suits under sub -
section (1) shall be the same as laid down in the Code of
Civil Procedure, 1908 (5 of 1908)”*

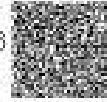
3.3 In substance, through these proceedings, the efforts of the proprietors of the village are to take over the vacant land located in the residential area of the village, which is neither occupied by the proprietors nor by the non-proprietors. In the residential area, the non-proprietors are entitled to reside and they are deemed to be owners of the property to the extent, which is in their possession.



3.4 Sir W.H. Rattigan (14th edition), examined the concept of ‘*abadi*’ in the village in his digest of customary law. Para 234 provides that a mere possession of the vacant site in ‘*abadi*’ area confers no absolute right on the possessor to dispose of the same to a non-proprietary resident. In para 236, it has been expressly mentioned that in the absence of a well-established custom, a non-proprietary resident in a village cannot dispose of the same, on which his house is built or a right to residence in the house without the consent of the proprietors of the village but he is ordinarily entitled to sell the material and the purchaser must remove the same within the reasonable time. After interpreting the aforesaid paras, it can be stated that before the Punjab Village Common Land Acts came into force, the proprietary right of the ‘*abadi*’ area vested in the proprietors and not in the non-proprietors. In the Punjab Settlement Manual, 1899, written by J.M. Douie, contains the gist of instructions issued from time to time, the term ‘*abadi*’ has been defined in para 131, which reads as under:-

“131. The abadi.- The houses of the members of the brotherhood and of their dependents are usually built close together in some convenient part of the village. It may be noted that this inhabited site or abadi is excluded from the operation of the Land Revenue Act “except so far as may be necessary for the record, recovery, and administration of village cesses.” The house of the village menials are usually placed on the outskirts of the abadi, and those occupied by men of impure castes sometimes occupy a separate site or sites at a little distance from it.”

3.5 In Punjab Tenancy Act, 1877, the word ‘land’ excludes land, which is occupied as the site of any building in a town or village. Similarly, under Section 2(d) of the East Punjab Holdings (Consolidation and



Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the ‘1948 Act’), the word ‘land’ has been defined in the similar manner.

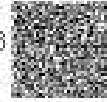
3.6 Thereafter, the joint State of Punjab, which included the areas of State of Haryana, Delhi and Himachal Pradesh came out with the Punjab Village Common Lands (Regulation) Act, 1953 (hereinafter referred to as the ‘1953 Act’). In Section 3(b), for the first time, the non-proprietors were recognized as the owners of the property, with respect to the plots that were the houses owned by the non-proprietors. The aforesaid provision is extracted as under:-

“3. Vesting of rights in panchayats and in non-proprietors.- Notwithstanding anything to the contrary contained in any other law for the time being in force, and notwithstanding any agreement, instrument, custom or usage or any decree or order of any Court or other authority, all rights, title and interest whatever in the land -

(a)

(b) which is situated in the Abadi Deh of a village and which is under the house owned by a non-proprietor, shall at the commencement of this Act vest in the said non-proprietor.”

3.7 The ‘1953 Act’ was substituted by the ‘1961 Act’. Under Section 4(1)(b), the provision made under Section 3(b) continued in its new form. While defining ‘shamlat deh’ under Section 2(g), the Act originally excluded ‘abadi deh’ from ‘shamlat’ land, however, under Sub Clause 4, it was provided that the lands used or reserved for the benefit of village community including street, lanes, playgrounds, drinking wells or ponds within the ‘abadi deh’ or ‘gorah deh’ shall form part of the ‘abadi deh’. Subsequently, Section 2(g)(4)(a) was inserted by Haryana Act No.23 of 1973 with effect from 26.06.1973 and omitted by Haryana Act No.2 of 1981 and



reinserted with effect from 12.02.1981 by Haryana Act No.15 of 1983,
which read as under:-

“Haryana Act No.23 of 1973:

(4a) vacant land situated in abadi deh or gorah deh not owned by any person;

Haryana Act No.2 of 1981:

(a) sub-clause (4a) shall be omitted;

Haryana Act No.15 of 1983:

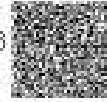
(4a) Vacant land situate in abadi deh or gorah deh not owned by any person;”

3.8 By Haryana Act No.9 of 1992, Sub Clause 4 of Section 2(g)
was substituted with the following provisions:-

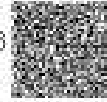
“(4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within the sabha area as defined in clause (mmm) of section 3 of the Punjab Gram Panchayat Act, 1952, excluding lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under section 23-A of the aforesaid Act;”

3.9 Thus, it is evident that by a tactical shift, the statute has acknowledged that not only the land used or reserved for benefit of village community, located within ‘*abadi deh*’ falls in the definition of *shamlat deh* but even the vacant land situated in the ‘*abadi deh*’ or ‘*gorah deh*’ of the village, not owned by any person is also included in the definition of ‘*shamlat deh*’. In recent times, the expression ‘land situated in ‘*abadi deh*’ is owned by possessor and not only restricted to proprietors in common parlance.

3.10 A careful study of the statement of objects and reasons of the ‘1953 Act’ depicts that the legislator in order to create rights of the non-proprietors in the ‘*abadi deh*’ declared that the non-proprietors are required



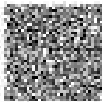
to be given an opportunity to live with security and self-respect in the villages. The expression '*shamlat deh*' was not defined in '1953 Act', however, it was specifically provided under Section 3(b) that the parcel of plot located in '*abadi deh*', which is under the houses owned by a non-proprietors vests in the said non-proprietors from the date of commencement of the Act i.e. 01.01.1954. This was a tactical shift from the previous/original position that the '*abadi deh*' land only belongs to the proprietors. Subsequently, '1953 Act' was substituted by '1961 Act', wherein, the expression '*shamlat deh*' was defined under Section 2(g). The definition of 2(g) is an inclusive definition. Under Sub Clause 1, it excludes '*abadi deh*', however, under Sub Clause 4, the land used or reserved for the benefit of the village community including streets, lanes, play grounds, schools, drinking wells or ponds located within '*abadi deh*' or '*gorah deh*' was made part of the *shamlat deh*. The scope of Sub Clause 4 was further extended by Haryana Act No.9 of 1992, in which while excluding the lands reserved for the common purpose of the village under Section 18 of the 1948 Act, the lands used or reserved for the benefit of village community including streets, lanes, play grounds, schools, drinking wells or ponds were included in the definition of '*shamlat deh*'. By inserting Sub Clause 4(a), the parcels of vacant plots situated in '*abadi deh*' or '*gorah deh*' not owned by any person were also included in the definition of '*shamlat deh*'. Under Section 4(1)(b), it has been provided that the land underneath the house owned by a non-proprietor, shall on commencement of the '*shamlat*' land be deemed to have vested in such non-proprietor. Section 4(1)(a) again provides that the scope of expression '*shamlat deh*' has been expanded and the '*shamlat deh*' land



which has not vested in the Gram Panchayat under the '*shamlat*' land shall also at the commencement of the '1961 Act' would vest in the Gram Panchayat.

3.11 All these steps were taken in order to bring about the agrarian reforms, which was the vision of framers of the Constitution. It is also evident that under Section 4(1)(a) of 1961 Act, the scope of expression '*shamlat deh*' was expanded and the parcels of land that were never included in the '*shamlat*' land were also included.

3.12 Now, the question that remains for adjudication is that 'whether the Civil Court should permit the partition of '*abadi deh*' land, which is reserved for residence and for the benefit of the village community including proprietors as well as non-proprietors?' In the area known as '*abadi deh*', the Panchayat has the responsibility to construct Panchayat Ghar, Schools, streets, play grounds, drinking wells, ponds for the benefit of the village community. If partition of such property is permitted, it would lead to chaos and the villages would have no scope for future developments. With the changing time, the requirement of the inhabitants of the village undergoes a constant change. Hence, dividing the property amongst the proprietors would stop the scope of future developments. In these circumstances, it would not be appropriate to allow partition of the property located in the vacant area in the '*abadi deh*' of the village. In fact, by Sub Clause 4(a) of the Act, the effort has been made by the legislator to include the vacant parcels of land located in the '*abadi*' of the village, which is of course subject to the fact that it is not owned by any person. While interpreting Section 2(8)(4)(a), it is held that the proprietor is not entitled to seek



partition of the area, which is not in his possession. In the year 2024, the requirement of the society has changed rapidly and the provisions of the statute shall be interpreted accordingly.

3.13 In any case, under Section 13 and 13-A of the 1961 Act, the jurisdiction of the Civil Court is barred to decide such issues. Once, the suit for partition is filed with respect to open parcels of land located in the village, the inevitable question that arises for adjudication is “whether the parcel of land is or is not ‘*shamlat deh*’? To decide the aforesaid question, the jurisdiction of the Civil Court is barred, whereas, there is enabling power with the Court of Collector under Section 13-A of the 1961 Act. This position was reiterated in *Ram Chander’s case (supra)*.

3.14 This Court is also of the view that appropriate remedy for the defendant was to file a suit only under Section 13-A of the 1961 Act.

4. Decision:-

4.1 Keeping in view the aforesaid facts and discussion, both the regular second appeal as well as civil revision petition are allowed. It is held that the suit for partition of the property shall stand dismissed.

4.2 All the pending miscellaneous applications, if any, are also disposed of.

June 24th, 2024

(ANIL KSHETARPAL)
JUDGE

Ay

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