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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-27592-2023
Date of decision:05.02.2024

MOHAR PAL AND ANR
...Petitioners

Versus

STATE OF HARYANA AND OTHERS
...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Rahul Vohra, Advocate and
Mr. Aditya Jain, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. The present petitioners instituted a declaratory suit, cast under Section 13-A of The Punjab Village Common Lands (Regulation) Act, 1961, whereby they claimed the making of a declaratory decree in their favour, thereby pronouncing them to be the lawful owners in possession of the suit lands.
2. The learned District Collector concerned, as revealed by Annexure P-1, through a decision made, on 06.09.2012, on the said declaratory suit, proceeded to decline the espoused declaratory relief to the plaintiffs.
3. A reading of the findings, which became returned on the relevant issues, reveals that the learned Collector concerned came to a

conclusion, that the plaintiffs were not able to bring forth tangible evidence whereupon they could be construed to be prior to 1950, thus holding independent cultivating possession of the suit lands, rather for theirs being concluded to save the disputed lands from vestment in the *shamlat deh*.

4. On the other hand, a graphic speaking is made in Annexure P-1, qua the predecessors-in-interest of the present petitioners becoming recorded as *Gair Marusi* over the disputed lands, and, that the derivation of interest as lessees, by the present petitioners over the disputed lands, was through a lease deed, thus running over a period of 99 years, becoming executed in favour of the present petitioners by their respective predecessors-in-interest i.e. Panni Lal and Roshan Lal, and, who were entered as *Ba Hissa Gair Marusi* over the suit lands. Therefore, since the status of the predecessors-in-interest (supra), of the plaintiffs was thus not as absolute owners of the disputed lands, rather was that of *Gair Marusi*, thereupon the persons (supra), became completely dis-empowered to create a lawful deed of alienation in favour of the plaintiffs. Moreover, with a limited capacity, thus of the predecessors-in-interest (supra), of the plaintiffs, hence over the disputed lands, thereby they could not even create a sub lease lasting upto a period of 99 years, in favour of the plaintiffs, as thereby given the above prolonged duration of the lease period, thus thereby there was a complete deprivation of right, title and interest over the disputed lands, rather not only in the Gram Panchayat concerned, but also in the other members of the village proprietary body concerned, to make common users of the disputed lands.

5. Furthermore, the aggrieved from Annexure P-1 reared thereagainst an appeal, before the Commissioner concerned. It is apparent on

a reading of paragraph 13 of Annexure P-3, whereby the learned Commissioner concerned, declined relief on the relevant statutory appeal, as became preferred by the aggrieved plaintiffs, that the said appeal was barred by a period of 577 days, and, that the said appeal became unaccompanied with an application for condonation of delay, and, but obviously, when the said delay remained unexplained, thus thereafter he came to a conclusion, that it is a time barred delay. If so, the learned Commissioner concerned, was not required to enter into the merits of the case rather was required to dismiss the appeal merely on the ground (*supra*).

6. Be that as it may, even if an adjudication on the merits of the case has been made, and, the said adjudication on the statutory appeal, is adversarial to the present petitioners, who are the plaintiffs in the original suit, yet a reading of the *ad nauseam* discussion made in Annexure P-3, makes clear echoings, that the derivation of interest, by the plaintiffs, thus as sub lessees, over the suit lands, rather spanning over a period of 99 years, from their respective predecessors-in-interest one Panni Lal, and, Roshan Lal rather was legally inapt, and, as therebys there was an untenable conferment of rights vis-a-vis the plaintiffs, even as sub lessees over the disputed lands. Reiteratedly, when the said predecessors-in-interest themselves were *Gair Marusi* on the suit lands, thus thereby they were incompetent to induct sub tenants thereons, unless expressly permitted to do so by an apposite condition embodied in the *patta* or in the lease deed which became drawn in their favour by the Gram Panchayat concerned. However, no such *patta* or lease deed, as became drawn in their favour by the Gram Panchayat concerned, or as became executed rather with a condition therein, expressly permitting them to induct sub lessees over the suit lands, and, that

too for a spell of about 99 years, rather remained unadduced on record. Therefore, not only the sub lease was impermissible but also the lease deed executed by incompetent lessees i.e. the predecessors-in-interest, who in law were completely dis-empowered to alienate right as sub lessees to the petitioners, and, that too, ranging over a span of 99 years, but obviously was also impermissible. The reason being that the consequent curtailment of the rights of the Gram Panchayat concerned, and, other estate holders to make complete enjoyment or common user of the disputed lands, but obviously does also completely snatch such rights, and, that too for an elongated spell of time. Resultantly, the said curtailment or ouster is not legally justifiable, and, was required to be undone, as done, through the makings of concurrent verdicts of dismissal, as respectively embodied in Annexure P-1 and P-3, rather upon the plaintiff's suit for a declaratory decree vis-a-vis the suit lands becoming assigned to them.

7. In consequence, the said sub lease executed in favour of the present petitioners by their predecessors-in-interest who rather were themselves *Gair Marusi* over the suit lands, did naturally not confer any valid right, title and interest, nor they held any right to retain them. However, the termination of their lease deed, is yet permissible, through the Gram Panchayat concerned, or any member of the village proprietary body concerned, who has a right to make common use of the disputed lands, thus forthwith instituting a petition seeking the eviction of the plaintiffs from the suit lands. On such a petition being instituted, at the instance of the Gram Panchayat concerned, or by any member of the village proprietary body concerned, before the learned Assistant Collector concerned, the same shall

be decided within 2 months, but after hearing all the affected persons concerned.

8. In consequence, there is no merit in the instant petition, and, the same is dismissed.

(SURESHWAR THAKUR)
JUDGE

05.02.2024

(SUDEEPTI SHARMA)
JUDGE

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