

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision:-31.8.2010

Kapoor Singh son of Singara Singh

...Appellant

Versus

Gram Panchayat village Badhana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE MEHINDER SINGH SULLAR

Present:- Mr.Raj Kumar Gupta, Advocate for the appellant.

Mr.Mahavir Sandhu, Advocate for respondent No.1.

Mehinder Singh Sullar, J.

The epitome of the facts, relevant for a limited purpose of deciding the core controversy involved in the present appeal and emanating from the record, is that appellant Kapoor Singh and proforma respondent No.2 Randhir Singh sons of Shingara Singh-plaintiffs (hereinafter to be referred as “the plaintiffs”) filed the suit for a decree of declaration to the effect that they are owners and in possession of the agricultural land in dispute, the order dated 31.5.1988 passed by the Collector, Jind on the application filed by the Gram Panchayat under Sections 4 and 5 of the Public Premises Act (for brevity “the P.P.Act”) and the order dated 17.4.1989 passed by the Commissioner, Hissar Division are null, void, without jurisdiction and are not binding on their rights, with a consequential relief of permanent injunction restraining the Gram Panchayat of village Badhana respondent No.1-defendant (hereinafter to be referred as “the defendant”) from dispossessing them from the suit land.

2. The case set up by the plaintiffs, in brief, in so far as relevant, was that they are permanent residents and are proprietors in the *Jumla Mustarka Malkan Arazi Hasab Rasad Rakba Khewat* of the village. As such, they are in actual, physical and cultivating possession of the land in dispute since 1971 continuously, without any interruption and payment of any rent or batai. They had

also become owners by way of adverse possession and the defendant has no right, title or interest in it. The suit land had never been used for common purpose of the inhabitants of the village. The plaintiffs claimed that the defendant filed an application under Section 4 of the P.P.Act for their ejectment from the land in dispute, which was accepted by the Collector, vide order dated 31.5.1988. The appeal filed by them was also dismissed by the Commissioner, vide order dated 17.4.1989, which were stated to be illegal, null & void and not binding on their rights.

3. Concisely, according to the plaintiffs that they are owners and in possession of the suit land, but the defendant intends to eject them illegally in the garb of indicated ejectment orders without any legal right. On the basis of aforesaid allegations, the plaintiffs filed the suit seeking a decree for declaration and permanent injunction against the defendant in the manner indicated here-in-above.

4. The defendant contested the suit and filed the written statement, inter-alia, pleading certain preliminary objections of, maintainability of suit, locus standi, cause of action of plaintiffs, jurisdiction of civil court and limitation. On merits, the defendant claimed that it (Gram Panchayat) is owner of the suit land, which is used for public purpose of all the inhabitants of the village. The possession of the plaintiffs over it is unauthorized. The ejectment orders were stated to be legal, valid and bindings on the plaintiffs. In the additional plea, the defendant averred that even if the land is held to be *Jumla Mushtarka Malkan*, its ownership vests in the Gram Panchayat under the provisions of Punjab Village Common Lands (Regulation) Act, 1961 (for short "the Act"). It will not be out of place to mention here that the defendant has stoutly denied all other allegations contained in the plaint and prayed for dismissal of the suit.

5. Controverting the allegations contained in the written statement and reiterating the pleadings of the plaint, the plaintiffs filed the replication. In the

wake of pleadings of the parties, the trial Court framed the following issues for proper adjudication of the case:-

- 1. Whether the land in dispute is the property of Jumla Mushtarka Malkan of village Badhana and was reserved for cultivating by the Jumla Mushtarka Malkan as alleged in the plaint?OPP*
- 2. Whether the plaintiffs being proprietors of village Badhana are in cultivating possession of the suit land as alleged in the plaint?OPP*
- 3. Whether orders dated 31.5.1988 passed by the Collector, Jind and dated 17.4.1989 passed by Commissioner Hissar are illegal, null and void and not binding and ineffective against the rights of the plaintiffs on the grounds mentioned in the plaint?OPP*
- 4. Whether the civil court has no jurisdiction to try this suit?OPD*
- 5. Whether the plaintiffs have no locus standi to file the suit?OPD*
- 6. Whether the suit is barred by limitation?OPD*
- 7. Whether the suit is not maintainable in the present form?OPD*
- 8. Relief.*

6. In order to substantiate their respective pleaded stands, both the parties to the litigation, brought on record the oral as well as documentary evidence.

7. Taking into consideration the entire evidence on record, the trial Court decided issue Nos.1 to 3 against the plaintiffs, while issue No.4 was answered in favour of the defendant. As issue Nos.5 to 7 were not pressed during the course of arguments, therefore, the same were accordingly decided against the defendant. On ultimate analysis of evidence on record and in view of findings on various issues, the trial Court dismissed the suit of the plaintiffs, by virtue of judgment and decree dated 26.9.1994.

8. Appellant-plaintiff Kapoor Singh did not feel satisfied with the judgment and decree of the trial court and filed the appeal, which was dismissed as well and the first appellate Court ordered the return of the plaint for presentation before the proper Forum, vide impugned judgment dated 14.8.1997, the operative

part of which is as under:-

“The findings of issue No.4 are affirmed holding for reasons above that the civil court has no jurisdiction to try the matter. The lower court should have returned the plaint as it had held the issue against the plaintiff. Any how, the defect is being cured here.

No findings should have been advanced by the lower court on the other issues because any finding given by the court which is not vested with jurisdiction to do so, is obviously without jurisdiction. For similar reason other issues are not being touched here and also in view of Order 20 Rule 5 C.P.C.

The appeal fails with costs. However, since the civil court has no jurisdiction in the matter, the plaint shall be returned to the plaintiff-appellant for presentation before the proper Forum and he shall collect the same within one week from today.”

9. The appellant-plaintiff No.1 still did not feel satisfied with the impugned judgment of Ist appellate Court and filed the present appeal. That is how, I am seized of the matter.

10. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the appeal.

11. Ex facie, the argument of learned counsel for the appellant-plaintiff that since the first appellate Court has wrongly dismissed his appeal and returned the plaint for presentation before the proper Forum, so, the impugned judgment is illegal, is neither tenable nor the observations of this Court in case Jai Singh and others v. State of Haryana **2003 H.R.R. 357** are at all applicable to the facts of the present case, wherein, it was held that “all land reserved for 'common purpose' whether utilized or un-utilized shall vest in the Government or the Gram Panchayat even though such lands are entered in the column as *Jumla Mustarka Malkan Wa Digar Haqdarani Hasab Rasad Arazi Khewat etc.*” Sequently, in case

Kala Singh v. Commissioner Hissar Division and others 1984 P.L.J. 169, in which, it was observed that “the land reserved for common purpose of proprietors during consolidation proceedings, is not a shamilat deh as defined in Section 2(g) of the Act.”

12. Possibly, no one can dispute with regard to the aforesaid observations. As the issue whether the land in dispute vests or does not vest in the Gram Panchayat and question of title is yet to be decided by the competent authority, therefore, the aforesaid judgments would not come to the rescue of the appellant in this context.

13. As is evident from the record that the plaintiffs filed the suit for a decree of declaration and permanent injunction claiming the ownership of the suit land being the proprietors of the *Jumla Mustarka Malkan Arazi Hasab Rasad Rakba Khewat* of the village. On the contrary, the defendant Gram Panchayat claimed that the land in dispute is Shamilat deh and vested in it. Whether the plaintiffs or defendant are owners of the suit land is the moot point to be decided. Meaning thereby, the determination of question of title between the rival parties is involved in the lis.

14. Section 13 (as applicable to Haryana) of the Act postulates that “no civil court shall have the jurisdiction to entertain or adjudicate upon any question, whether any land or other immovable property is or is not *shamlat deh*; 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; in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or 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.”

15. Likewise, Section 13-A of the Act posits that “any person 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 shamilat deh or not and whether any land or other immovable property or any right, title or 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.”

16. A co-joint reading of these provisions would reveal that if any question of title is involved, then the jurisdiction of the civil Court is explicitly barred and only Collector is competent to decide the same in this relevant connection. Reliance in this regard can also be placed on the judgments of Hon'ble Apex Court in cases Ram Singh and others v. Gram Panchayat, Mehal Kalan and others AIR 1986 Supreme Court 2197 and Gram Panchayat Nurpur v. State of Punjab 1997 (2) P.L.R. 694. Once, it is proved that the civil Court did not have the jurisdiction to entertain and try the suit, then the plaint ought to have been returned by the trial Court to be presented before the appropriate Court as contemplated under Order 7 Rule 10 CPC. Thus, I am of the view that the first appellate Court has rightly directed the return of plaint to be presented in the appropriate Forum to determine the question of title between the parties in this relevant connection. Therefore, the contrary arguments of learned counsel for the appellant “stricto sensu” liable to be and are hereby repelled and the impugned judgment of Ist Appellate Court deserves to be and is hereby maintained, in the obtaining circumstances of the case.

17. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

18. In the light of the aforesaid reasons, as there is no merit, therefore, the instant appeal is dismissed.

31.8.2010
AS

(Mehinder Singh Sullar)
Judge

Whether to be referred to reporter? Yes/No