

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3349 of 2010 (O&M)

Date of decision: 29.10.2010

Hassan Deen and others

.....Appellant(s)

Versus

Union of India

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE RAKESH KUMAR GARG

* * *

Present: Mr. C.M. Munjal. Advocate for the appellants.

Rakesh Kumar Garg, J. (Oral)

This is plaintiffs' second appeal challenging the judgment and decrees of the Lower Appellate Court whereby their suit for declaration with consequential relief of permanent injunction to the effect that they have become owner of the suit land on account of the occupancy rights, was dismissed.

It is the case of the plaintiff-appellants that they are in actual and continuous cultivating possession of the suit land as Gair Marusi for the last more than 100 years under the defendants on payment of land revenue. The suit land was Banjar at the time of inception of tenancy and the same was made cultivable by them. At the time of tenancy, the defendants and their predecessors promised that the plaintiffs and their predecessors will never be ejected from the suit land and now the plaintiffs have acquired the occupancy rights under the provisions of Punjab Tenancy Act and Section 3 of the Punjab Occupancy of Tenants (Vesting of Proprietary Rights) Act and the defendants had got no right and title in the suit land. The defendants on the basis of wrong and illegal entries in the revenue record were threatening to dispossess the plaintiffs.

Hence the present suit.

Upon notice, defendant No.6 i.e. Union of India (Rehabilitation Department) through Tehsildar (Sales) Gurgaon, put in appearance and filed written statement. In the written statement, it was pleaded that the plaintiffs had not complied with the provisions of Section 80 CPC prior to filing of the suit. It was further submitted that the suit land was recorded as Shamlat Deh in the revenue record and therefore, Panchayat Department was necessary party and the appellants had not arrayed Gram Panchayat knowingly. It was further submitted that the suit land does not belong to the Rehabilitation Department despite that the appellants made them as party and thus, the suit was liable to be dismissed for misjoinder of necessary party. The prayer for dismissal of the suit was made.

The remaining respondents did not contest the suit and were proceeded against ex parte.

Both the Courts below on appreciation of evidence have recorded a finding of fact that either way the suit of the appellants was not maintainable as if assuming for the sake of argument that the land in dispute pertains to Shamlat Deh then Gram Panchayat, who was the necessary party, was not arrayed as such and in case the appellants had filed the suit against defendant No.6 considering them as the owner of the suit property then the Union of India should have been sued through the competent authority which was not done in the present case and thus, the suit was dismissed.

Still not satisfied, the appellants has filed the instant appeal submitting that the following various substantial questions of law arise in this appeal:

- “i) Whether the learned Lower Appellate Court has committed perversity in not believing the revenue

records which have been proved in accordance with law i.e. under Section 68 of the Indian Evidence Act whereby the appellants have been found to be in cultivating possession of the suit land through their predecessor for more than 100 years?

ii) Whether the judgment of the learned Lower Appellate Court suffered not only from misreading and mis-directing all the oral and documentary evidence on record though on conjoint reading of the same which has been consistently proved that the appellants have become the owners as per the provisions of Punjab Tenancy Act as well as Punjab Occupancy (Vesting of Property Right) Act?

iii) Whether the approach of the learned Lower Appellate Court in holding that the suit has been filed only against the Union of India and not through the Secretary of the Union of India has no effect to the factual position of the case as Union of India has contested the case hotly, therefore, the said findings have got no value in the eyes of law?

iv) Whether ignoring the testimony/statement of witnesses as a whole would amount to erroneous findings given right to substantiate question of law?

I have heard learned counsel for the appellants and perused the impugned judgment and decree.

It is useful to refer to a judgment of the Hon'ble Supreme Court of India in **Chief Conservator of Forests, Government of A.P. v. Collector & Ors**, AIR 2003 SC 1805, wherein it has been observed as

under:

“In a lis dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution and S.79 of C.P.C., viz., in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy of the posts in the Government set-up, from the lowest to the highest, is not recognized as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis, in any court or a necessary party to the lis, in any court or Tribunal. This principle does not apply to a case where an official of the Government acts as a statutory authority and sues or pursues further proceeding in its name because in that event, it will not be a suit or proceeding for or on behalf of a State/Union of India but by the statutory authority as such.”

Relying upon the aforesaid judgment, this Court in CR No.269 of 2009 (**State of Punjab through the Land Acquisition Collector versus Charan Singh**) decided on 6.7.2010, has observed as under:

“Section 79 of the Code of Civil Procedure (hereinafter 'CPC') specifically deals with suits by and against the Government and provides that in suits by and against

the Government, the authority to be impleaded as the plaintiff or defendant, would be the Union of India or Central Government or the State or State Government.

Rule 1 of Order XXVII CPC deals with suits by or against the Government or by officers in their official capacity. It provides that in any suit by or against the Government, the plaint or the written statement shall be signed by such person as the Government may like by general or special order authorize in that behalf and shall be verified by any person whom the Government may so appoint.”

Thus, assuming for the sake of argument that land in dispute belongs to Union of India, it was not sued through the competent Authority. Therefore, either way, the suit of the plaintiff-appellants was not maintainable as if assuming for the sake of argument that the land in dispute pertains to Shamlat Deh then Gram Panchayat, who was the necessary party, was not arrayed as such and in case the appellants had filed the suit against defendant No.6, considering them as the owner of the suit property then the Union of India should have been sued through the competent authority which was not done in the present case and thus, the suit was rightly dismissed.

Thus, I find no merit in this appeal.

No substantial question of law arises.

Dismissed.

October 29, 2010
ps

(RAKESH KUMAR GARG)
JUDGE

