

A

SUKHDEV SINGH & ORS.

v.

GRAM SABHA BARI KHAD & ORS.

January 28, 1977

B

[P. K. GOSWAMI AND P. N. SHINGHAL, JJ.]

Punjab Village Common Lands (Regulation) Act 1961, S. 2(g) proviso (iv), application to land under possession of owners.

C

The appellants filed a suit for a declaration that the suit land inherited by them was not "shamlat deh" within the meaning of section 2(g) of the Punjab Village Common Land (Regulation) Act, 1961, because it was excluded by virtue of proviso (iv) to the clause. They contended that the revenue records describing the land as "shamlat deh" also stated it to be "in possession of the owners", showing that it was not used as "shamlat deh", and furthermore, that it had been partly purchased and partly received as gift by their ancestor before 26th January, 1950, and thereby came within the scope of s. 2(g) proviso (iv) of the Act. The appellants failed before the Trial Court, Court of first appeal, and the High Court in second appeal.

D

Dismissing the appeal by special leave, the Court,

HELD : (1) The fact that in 1914-15 it was recorded in the 'jamabandi' as "shamlat deh", shows that that particular character of the land was recognised even so far back, and it could not detract from that nature of the land merely because it was further stated in the 'jamabandi' that it was in the possession of the owners "as per respective shares in khewat". [863 F-G]

E

(2) Proviso (iv) requires that in order to be excluded from the category of "shamlat deh", the land should have been acquired by purchase or in exchange for proprietary land from a co-sharer in the "shamlat deh", which is not so in the case of the appellants. [863 G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 527 of 1975.

Appeal by Special Leave from the Judgment and Order dated the 6-9-74 of the Punjab and Haryana High Court in R.S.A. No. 933 of 1970.

F

K. L. Gosain, N. N. Goswamy and Arvind Minocha for the Appellant.

Gokal Chand Mittal, J. D. Jain, Arun Jain and (Miss) K. Miglani for Respondent.

G

The Judgment of the Court was delivered by

H

SHINGHAL, J.—The plaintiffs who have been unsuccessful in the trial court, the court first appeal, and the High Court in second appeal, have filed the present appeal by special leave. They raised their suit for a declaration that the suit land continued to be in their ownership in spite of the provisions of the Punjab Village Common Lands (Regulation) Act, 1961, hereinafter referred to as the Act. They pleaded that the land had been purchased by their ancestor Udham Singh, who founded the village, from Raja Sansar Chand of Dholwaha, some time before 1884, and that some other land was

gifted to him by one Smt. Dhani. They claimed that what they had thus acquired was not "shamlat deh" within the meaning of clause (g) of section 2 of the Act because it was excluded by virtue of sub-clause (iv) of the proviso to the clause. That contention has been negatived all through, and the short question for decision is whether any interference is called for with that view.

It has not been disputed before us that the land in question was described in the revenue records as "shamlat deh", and excluded "abadi deh." That has in fact been amply proved by the 'jamabandi' of the year 1914-15 which has been produced by the plaintiffs themselves and its genuineness has not been controverted before us. As such, by virtue of the definition of "shamlat deh" in clause (g) of section 2, the suit land fall within the definition of "shamlat deh". The question remains whether it was excluded from that definition by virtue of sub-clause (iv) of the proviso to clause (g) which reads as follows.—

"(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 shamlat deh is so recorded in the jamabandi or is supported by a valid deed;"

It has been argued by counsel for the appellants that as the suit land was recorded in the aforesaid Jamabandi as "village shamlat", in possession of the owners, it should be held that the land was not used as "shamlat deh." Counsel has argued further that as the land was purchased by the plaintiffs' ancestor Udham Singh who had founded the village, from Raja Sansar Chand, and a part of it was received by way of gift from Smt. Dhani, before January 26, 1950, and it was so recorded in the 'jamabandi', the suit land was excluded from the definition of "shamlat deh" by virtue of the aforesaid sub-clause (iv) of the proviso. The argument is however untenable because of two reasons. Firstly, the entry in the 'jamabandi' of 1914-15 which recorded that the land was in possession of the owners, was quite innocuous, because it was made for the reason that it was in nobody's possession. The fact that even then it was recorded in the 'jamabandi' as "shamlat deh" shows that that particular character of the land was recognised even as far back as 1914-15, and it could not detract from that nature of the land merely because it was further stated in the 'Jamabandi' that it was in the possession of the owners "as per respective shares in khewat". Secondly, the aforesaid sub-clause (iv) requires that in order to be excluded from the category of "shamlat deh", the land should have been acquired by purchase or in exchange for proprietary land from a co-sharer in the "shamlat deh." It is not in controversy before us, and is not even the case of the appellants, that the suit land was acquired by purchase or in exchange for proprietary land from any co-sharer in the "shamlat deh." Then there is the further fact that the appellants have not been able to prove that the suit land was recorded

A in the 'Jamabandi' as having been so acquired; and they have not been able to produce any valid deed of purchase or exchange from any such co-sharer. We are therefore unable to think that the view taken in the impugned Judgment of the High Court requires reconsideration.

The appeal fails and is dismissed with costs.

B

M.R.

Appeal dismissed.