
(1967) 12 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1087 of 1967

Amin Lal and another

APPELLANT

Vs

Bajrang Dass and others

RESPONDENT

Date of Decision : 11-12-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : (1967) 12 P&H CK 0018

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : M.R. Agnihotri, for the Appellant; G.P. Jain and P.C. Jain, for the Respondent

Final Decision : Allowed

Judgement

P.C. Pandit, J.—This is a plaintiff's second appeal against the decision of the learned Additional District Judge, Hissar, confirming on appeal the order of the trial court dismissing their suit.

2. Amin Lal and Shankar, for themselves and as representatives of the residents of village Rawat Khera, district Hissar, brought a suit against Bajrang Dass and others, in a representative capacity under Order 1, rule 8 of the CPC for a mandatory injunction against the defendants restraining them from cultivating the land in dispute. Their allegations were that the land was reserved as opahan (catchment area) for the village ponds and as a grazing ground for the cattle of the villagers and for their common purposes. In view of the wajib-ul-arz of the village, no other person was authorised to reclaim it for any other purpose. It was also averred that the land in question was even during the consolidation proceedings, set apart for the above mentioned two purposes, namely for the grazing of the cattle and as catchments area. Consequently, the defendant could not reclaim it in any manner.

3. The suit was resisted by the defendants who denied the allegations made by

the plaintiffs and pleaded that they were the proprietors of village Rawat Khera and also the owners of the land in dispute. The Collector, Hissar, had served them with a notice under the provisions of the East Punjab Utilisation of Lands Act, 1949 (hereinafter called the Act). They had been asked to cultivate the suit land, otherwise its possession would be taken by the Government and the land would be allotted to some other tenants for cultivation. The defendants were, therefore, reclaiming the land under the order of the Collector and the civil court had no jurisdiction to entertain the suit of the plaintiffs. Some other objections were also taken with the result that the following issues were framed on the pleadings of the parties:

1. Whether the plaintiffs have got any locus standi to institute the present suit?
2. Whether the suit is bad for want of necessary parties, if so, to what effect?
3. Whether the land in suit is reserved for common purposes of the village as alleged, if so to what effect?
4. What is the effect of the proceedings by the Collector in respect of the land in suit under the Utilization of Lands Act, as alleged in the written statement?
5. Whether the Civil Court had got no jurisdiction to entertain the dispute in respect of the proceedings of the Collector, as alleged in the written statement. If so, to what effect?
6. If issue No. 3 is proved in favour of the plaintiffs then whether the plaintiffs are not entitled to the injunction prayed for on account of change in the circumstances. If so, to what effect?.
7. Relief.

The trial Judge came to the conclusion that the plaintiffs had locus standi to institute the present suit, but the same was bad for want of necessary parties, inasmuch as the plaintiffs had not impleaded the State through the Collector, as a defendant. On issues 3 and 6, his findings were that in view of the original uajib-ularz, the land in dispute had been reserved for common purposes of the village, but on account of the change in the circumstances, the plaintiffs could not seek any injunction against the defendants. With regard to issues 4 and 5, the finding was that the effect of the proceedings taken under the Act had been that the defendants had been rightly and legally vested with the right to reclaim the land in suit and in view of the provisions of section 15 of the Act, the jurisdiction of the civil court was barred. Besides, the plaintiffs had nowhere prayed for a declaration to challenge the proceedings taken under the Act. According to the trial court, the civil court had no jurisdiction to entertain the dispute relating to the decisions made by the Collector under the Act. On the basis of these findings, the suit was dismissed.

4. When the matter went into appeal before the learned Additional District Judge, the main question that was debated before him was about the effect of the order

of the Collector in respect of the land in suit under the provisions of the Act and whether civil court had jurisdiction to entertain the dispute inspite of the proceedings of the Collector. On this point, the findings of the learned Additional District Judge was that the plaintiffs in their plaint had not challenged the order of the Collector either as illegal or ultra vires and without challenging the said order, the civil court could not have any jurisdiction to entertain the suit. According to the learned Judge, the trial court had rightly held that there was no prayer for a declaration to challenge the order of the Collector under the Act and the civil court had thus no jurisdiction to entertain the suit. The appeal was, consequently, dismissed. The plaintiffs have come here in second appeal.

5. The learned Additional District Judge, in his order, had remarked that the plaintiffs in their plaint had not challenged the order of the Collector under the Act as illegal or ultra vires and without doing so, the civil court could not have any jurisdiction to entertain the suit. In the first place, it would be noticed that in paragraph 3 of the replication dated 28th June 1966, filed by the plaintiffs, they had clearly mentioned that the defendants had in collusion with the authorities got a notice under the Act issued to them and that the plaintiffs themselves had also filed objections regarding the same before the Collector. Further, the Collector had no jurisdiction to order reclamation of the land in dispute which was reserved as the catchment area for the ponds. The East Punjab Utilisation of Lands Act, 1949, had no application to the land in dispute and if the Collector would pass any order regarding the land it would be without jurisdiction. Thus, it would be seen that the case of the plaintiffs in the pleadings was that the provisions of the Act did not apply to the land in dispute and the Collector had no jurisdiction to pass any order regarding the same. It is note-worthy that the plaintiffs also had filed objections before the Collector and I was informed by the Learned Counsel for the appellants that they were still pending before him. In the plaint, they naturally could not refer to the order of the Collector or the proceedings that were being taken by him under the Act, because they came to the court with the simple allegation that the land in dispute had been reserved since ages for two purposes, namely as a grazing ground for the cattle of the residents of the village and as catchment area for the village ponds. They based their title on the entries in the wazib ul-arz and also contended that during the consolidation proceedings that took place in the village, the land had been set apart for those very purposes. Since the defendants were trying to bring the land under cultivation, they brought the suit for an injunction restraining them from doing so and for a declaration of their rights in it. In the written statement the defendants denied the allegations made by the plaintiffs and also added that they were going to reclaim the land under the orders of the Collector who had sent notice to them u/s 3 of the Act. It was in reply to that assertion that the above-mentioned averments were made by the plaintiffs in the replication. Since the plaintiffs had come to the civil court claiming certain rights in the land, naturally it had to be determined whether they did possess those rights or not. It cannot be disputed that the civil court is the proper forum for the determination

or those rights. It might be true that a notice u/s 3 of the Act was issued to the defendants who were the owners of the land in question. It might also be correct that the Collector had asked them to reclaim the land, even with the aid of the police if the plaintiffs were interfering and preventing them from doing so. But the plaintiffs were not parties" proceedings taken by the Collector and as a matter of fact their case was that they were not affected by any proceeding taken by the Collector regarding the land under the Act. According to them, the Collector was not a necessary party to the litigation, because they were claiming their own rights in the land in dispute against the defendants. Several issues had been framed by the trial Judge and he had given findings on all of them while dismissing the suit. The plaintiffs, in my opinion, were entitled to a decision on all the issues by the learned Additional District Judge as well. He had to decide as to whether the plaintiffs had those rights which they were claiming in the said land. This suit, in my view could not have been thrown out merely on the ground that the civil court had no jurisdiction to entertain it because no prayer had been made to challenge the order of the Collector. In the first place, as I have already mentioned above, the plaintiffs had challenged the said order in their replication which was admittedly a part of the pleadings and issue No. 4 framed in the case could cover the point. Secondly, the plaintiffs had claimed rights in the land and it was the civil court which had to determine whether their allegation was true or whether they had lost those rights or whether they could enjoy them in the entire land in suit or only in a part thereof. Thirdly Learned Counsel for the respondents could not point out any law under which the plaintiffs were bound to get the order of Collector which was admittedly not inter partes, set aside, before they could get their rights in the land determined by the civil court or before any relief could be granted to them.

6. I would, therefore, accept this appeal set aside the judgment of the learned Additional District Judge and remit the case to him for decision on all the issues arising in the case. In the circumstances of this case, however, I will leave the parties to bear their own costs in this Court as well.