
(1992) 08 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No.3 Of 1980

Balbir	Vs	APPELLANT
Assistant Collector, Ist Grade, Jhajjar		RESPONDENT

Date of Decision : 18-08-1992

Acts Referred:

Citation : (1992) 2 CurLJ 641 : (1992) PLJ 499 : (1993) 1 RRR 63

Hon'ble Judges : R.S.MONGIA, J

Advocate : Miss Tarun Jain & Miss Veena Lee, Advocates., Mr. R.S. Mittal, Sr. Advocate, Advocates for appearing Parties

Judgement

R.S. Mongia, J. (Oral)

1. The petitioners" claim that their predecessors in interest were the owners in possession of the Shamlat land from the year 1871 in village Godhari, Tehsil Jhajjar, District Rohtak According to the petitioners they will continue to be owners in possession of the same land. The petitioner had filed an application on 17.7.1978 under Section 13B of the Punjab Village Common Lands (Regulations) Act, 1961 (as applicable to Haryana also) before the Assistant Collector Ist Grade, Jhajjar claiming that they were owners in possession of Khasra Nos. 127 or 128 measuring 15 "Bighas Phukta which was shamlat of Pana Brahminan Hasab Paimana Milkiat. The area was situated outside the Abadi Deh. Out of this land an area measuring 5 Bighas 6 Biswas was left for storing water for irrigation purposes and the remaining area measuring 10 Bighas 4 Biswas was kept for joint cultivation. This application was contested by the Gram Panchayat and the following issues were framed by the Assistant Collector Ist Grade, Jhajjar.

1. Whether the plaintiffs are the owners of the suit land? OPP
2. Whether the suit property has vested in the Gram Panchayat Defendant. If so to what effect ? OPP.
3. Whether suit is not maintainable in the present form as alleged in addl. plea No. 3 & 4 in the written statement ? OPD.

6. Whether the suit is barred by time ? OPD.

7. Whether the defendants are entitled to special costs? OPD.

8. Relief.

2. Both sides led evidence and arguments were heard. The applicant was dismissed by the Assistant Collector Ist Grade on October 29, 1979. It was observed in the Order as under :

"After hearing the arguments adduced by the learned counsel for both the parties and perusal of the file I have come to this conclusion that this suit has no force and dismiss the suit of the appellants. The parties will bear their own costs. Order pronounced. The file may be consigned to the Record after necessary action. "It is this order that has been impugned by the petitioners in the present case.

3. The primary argument of the learned counsel for the petitioners is that a lot of documentary and oral evidence was led before the Assistant Collector Ist Grade to show that the petitioners were owners in possession of the land in dispute and arguments were also addressed on the various issues. However, nothing has been discussed by the Learned Additional Collector and the application was dismissed by making the observations referred to above. According to the learned counsel, the order being a wholly nonspeaking order, was liable to be quashed.

4. Learned counsel for the Gram Panchayat could not successfully argue that the impugned order is a speaking order. I may observe that when the application was filed by the petitioners under Section 13B of the Act, as it existed at the relevant time, no appeal lay against that order though after the amendment of the Act now an appeal lies.

5. From a bare perusal of the impugned order it is evident that the Assistant Collector Ist Grade did not discuss the arguments and the evidence on the record as to why he came to the conclusion that the application had no force. The Order is wholly nonspeaking one and has to be quashed.

6. For the foregoing reasons, I allow this writ petition and quash the impugned order of Assistant Collector Ist Grade dated 29.10.1979 and remand the case to him for fresh decision on merits in accordance with Law by passing a speaking order. The evidence already on record would be taken into consideration as also the parties will be given a chance to lead any further evidence. Parties through their counsel are directed to appear before the Assistant Collector Ist Grade, Jhajjar, on 21.9.1992. There will be no order as to costs.

7. Before parting with the judgment, I may observe here that 5 persons namely :

1. Prabhu adopted son of Hans Ram;

2. Deep Chand S/o Rup Chand;

3. Sheo Narain S/o Phul Singh;
4. Hari Singh S/o Prabhu;
5. Parmanand S/o Ram Phul;

Brahmin residents of village Godhari Tehsil Jhajjar, District Rohtak.

had filed a suit against the Gram Panchayat of the village before the Assistant Collector Ist Grade for permanent injunction restraining the Gram Panchayat from interfering in their possession. This suit was filed in a representative capacity under Order 1 Rule 8 C.P.C. The said suit was dismissed on 5.11.1976. There are some observations in the order regarding the ownership of the petitioners in that case. Since that was a suit for permanent injunction for restraining the Gram Panchayat from interfering in the possession of the petitioners in that case, any observation regarding ownership in that case will have no binding effect between the parties and will not constitute ResJudicata. The Assistant Collector would come to an independent finding regarding ownership on the basis of the evidence already adduced by the parties or that may be adduced now on remand of the case.