
(2005) 09 P&H CK 0119

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 13 of 2002

Bant Singh and Others

APPELLANT

Vs

Baba Daya Nath Chella Baba Pritam Nath, Mohtmim Dera
Smadh Baba Girdhari Nath and Others

RESPONDENT

Date of Decision : 01-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, 100
Punjab Village Common Lands (Regulation) Act, 1961 — Section 12, 13, 2, 7

Citation : (2006) 142 PLR 639 : (2006) 2 RCR(Civil) 157

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : R.S. Longia, for Arun Walia, for the Appellant; Rakesh Gitpta, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is defendants' appeal filed u/s 100 of the Code of Civil Procedure, 1908 (for brevity "the Code"), challenging concurrent findings of fact recorded by both the Courts below holding that the plaintiff-respondents were entitled to a decree for possession of land fully described in para 1 of the plaint in their personal capacity as well in their representative capacity on behalf of inhabitants of village Then Banehra. It has been concurrently found that Khasra No.105, measuring 1 Kanal 19 Maras was kept for the purposes of Samadh of Baba Girdhari Nath. The aforementioned fact has been proved by producing Entry No. 18 of an order Ex.P5 issued by competent statutory authority. A copy of Sharat Wazb-Ul-Araj of village Then Banehra, Ex.P4, has also been placed on record showing that no co-owner enjoyed any right to use the aforementioned land for any other purpose nor any co-owner has any right to get the land partitioned. A copy of jamabandi Ex.P3 also proved the fact that the land is in possession of the co-owners and the entry mentioned the land as gair mumkin Samadh of Baba Girdhari Nath. A demarcation report of Kanungo (Ex.PI) has also been proved on record showing that the land measuring 6 Maras forming part of

Khasra No.105 is in illegal possession of the defendant-appellants. The aforementioned fact has also been proved by the report and site plan prepared by the Block Development and Panchayat Officer, Guhla (Ex.P-6 and Ex.P-7). It has been concluded that earlier also a part of Khasra No.99, which was kept reserved for Johar (pond) of village as per Ex.P5 was encroached upon by the defendant-appellants. However, the possession was taken after orders were passed by the competent authority. The aforementioned fact has been admitted by one of the defendant-appellant Bant Singh. It has also been conceded that the defendant-appellants were not the original residents of the village and they shifted to that village in the year 1952. The argument of the learned Counsel for the defendant-appellants that the plaintiff-respondents did not have any locus stand to file the suit in representative capacity under Order 1 Rule 8 on behalf of the inhabitants of the village has also not found favour with the Courts below.

2. Mr. R.S. Longia, appearing for Mr. Arun Walia, learned Counsel for the appellants, has submitted that the Civil Court inherently lacks substantial jurisdiction to adjudicate on the controversy raised by the plaintiff-respondents because the land necessarily has to be regarded as Shamlat Den because the land is vested in the Panchayat. According to the learned Counsel such like disputes have to be adjudicated by the competent authorities u/s 7 or 13 of the Punjab Village Common Lands (Regulations) Act, 1961 (as applicable to Haryana). Learned Counsel has also argued that the findings are perverse.

3. Mr. Rakesh Gupta, learned Counsel for the plaintiff-respondents, has submitted that the Issue No.6 regarding the jurisdiction of Civil Court although was framed but it was not pressed before the trial Court. He has drawn my attention to para 27 of the judgment of the trial Court. He has further submitted that no argument regarding aforementioned issue was raised before the learned lower Appellate Court. Mr. Rakesh Gupta, learned Counsel has further argued that these are findings of fact, which cannot be gone into in exercise of jurisdiction u/s 100 of the Code, especially when there is ample evidence to support the findings.

4. Having heard learned Counsel for the parties and perusing the judgments of both the Courts below, I am of the considered view that the instant appeal is without any merit and is liable to be dismissed. Both the Courts below have concurrently found that the land belonged to Samadh of Baba Girdhari Nath. The aforementioned fact has been proved by ample evidence in the form of exhibits P3, P4 and P5, which are documents belonging to 1st revenue entries. It has further been proved that the defendant-appellants have encroached upon a part of Khasr?. No. 105 and have been found in illegal possession. The aforementioned fact has been proved by the report of the Block Development and Panchayat Officer, Guhla, Ex.P6, and site plan, Ex.P7. The aforementioned evidence is in addition to the oral evidence led by the parties. In view of the fact that the findings are based on documentary as well as oral evidence, it would not" be open to this Court to reopen those findings by re-appreciating evidence

and in fact, there is hardly any room to undertake such an exercise. Therefore, the findings recorded by both the Courts below deserve to be affirmed.

5. With regard to the objection of jurisdiction of the Civil Court, it is pertinent to mention that Issue No.6 was not pressed by the defendant-appellants before the trial Court. Even before the learned lower Appellate Court this issue was not pressed because in para 17, the argument raised was with regard to locus standi to file the suit by the plaintiff-respondents as well as the absence of Gram Panchayat of the village as party. It is in this context that argument was raised that the plaintiff-respondents did not have locus standi to file the suit under Order 1 Rule 8 or the Court did not have any jurisdiction to entertain the suit in the absence of Gram Panchayat of the village as a party respondent. The aforementioned argument has been dealt with the rejected in the following words:-

19. Sufficient documentary evidence has been placed on record by respondents/ plaintiffs in order to prove the fact that Khasra No. 105 measuring 1 Karal 19 Marias was kept for specific purpose i.e. for Samadh Baba Girdhari Nath. This fact has been proved as per entry No. 18 of order issued u/s 12 of istaimal of 1949 copy of which is Ex.P.5. Further perusal of copy of Fard Sarat Wazibul Arz of Village Theh Banera Ex.P.4 shows that no co-owner was having any right to use the said land for any other purpose and that no co-owner was also having any right to get the same partitioned. Copy of Jamabandi Ex.P.3 also shows that Khasra No. 105 has been recorded in possession of all the co-owners and the same has been mentioned as Gair Mumkin Samadh Baba Girdhari Nath. Further from demarcation report of Kanungo Ex.PI, it is duly proved that land measuring 6 Marias forming part of Khasra No.105 is in illegal possession of appellants-defendants. This fact is also proved from the report of B.D.P.O. Guhla Ex.P6 and site plan Ex.P7 prepared by him. From the documentary evidence it is also proved that previously as well a part of Khasra No.9 which was kept for Johar of Village as per Ex.P5 was encroached upon by appellants-defendants and however, they were dispossessed as per order of competent authority. This fact has also been admitted by one of defendants Bant Singh. Appellants-defendants are not original residents of village. As per own deposition of Bant Singh, they shifted in the year 1952. Hence, there is no force in the arguments of learned Counsel for appellants that the land in dispute is owned by Gram Panchayat and that Gram Panchayat is necessary party....

6. In view of the above, I do not find any merit in the second contention of the defendant-appellants as well. Even otherwise the defendant-appellants are the rank en-croachers according to the documentary evidence. The land has been allocated to the Samadh of Baba Girdhari Nath. The land cannot be regarded as Shamlat Deh, which could be covered by Section 2(g) of the Act. Therefore, for this additional reason also there is no merit in the aforementioned arguments.

For the reasons aforementioned, this appeal fails and the same is dismissed.