
(2013) 11 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7674 of 1991

Chajju Ram (since deceased) through L.Rs.	APPELLANT
Vs	
Joint Director, Panchayat and Others	RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0080

Hon'ble Judges : Jasbir Singh, J;Gurmeet Singh Sandhawalia, J

Bench : Division Bench

Judgement

G.S. Sandhawalia, J.—This judgment shall dispose of two petitions i.e. CWP Nos. 7674 and 7675 of 1991 since parties are same and

common questions of facts and law are involved in both the petitions. The Gram Panchayat, Hamjheri-respondent No. 3 filed an application u/s 7

of the Punjab Village Common Lands (Regulation) Act, 1961 (in short "the Act") for ejectment of the petitioner from the land, detail of which is

given is given in the headnote of the petition, on the ground that the land vested in the Gram Panchayat and it was so recorded in the revenue

record and the petitioner was a lessee. The plea taken by the said petitioner was that he was in continuous possession since 26.01.1950 and the

land was never used for common purposes. The petitioner also filed an application u/s 11 of the Act claiming that he was in cultivating possession

before 26.01.1950 and staking title. It was pleaded that his father-in-law-Babu Ram was in possession of the land in dispute and by virtue of being

in adverse possession, the applicant had become the owner of the land in dispute. The title in the land had been perfected and the Gram Panchayat

had notice of the adverse possession, which was never disturbed or disputed.

The said claim of title was opposed by the Gram Panchayat. The Collector, Patiala dismissed the application of the petitioner u/s 11 of the Act wherein, title had been claimed on 31.01.1989, however, vide order of same date in the ejectment proceedings u/s 7 of the Act, it was held that the petitioner was liable to be evicted from 48 kanals and 1 marla of land only as the possession was illegal and the Gram Panchayat would be at liberty to file a case after getting the title decided.

2. Resultantly, the petitioner filed two appeals, one against the order passed by the Collector dismissing his claim regarding title and another against the ejectment ordered from 48 kanals and 1 marla of land. The Commissioner, vide order dated 21.12.1990, dismissed both the appeals and further ordered eviction of the petitioner from the entire land as detailed in para No. 2 of his order. Resultantly, the present writ petitions came to be filed and stay of dispossession was ordered when they were admitted vide order dated 27.05.1991.

3. Senior counsel for the petitioner has vehemently submitted that in the absence of any appeal being filed by the Gram Panchayat, the Appellate Authority had no jurisdiction to direct eviction from the balance portion of the land measuring 119 kanals and 18 marlas, from which eviction had not been ordered by the Collector. It is further submitted that no finding had been given that the land had vested in the Gram Panchayat and no ejectment could have been ordered as the land was Patti land and no finding was given regarding that. Reference was also made to the Jamabandi for the year 1954-55 (Annexure P-3). Accordingly, it was submitted that in the absence of any land vesting in the Panchayat, the petitioner had a right to continue and he could not be held to be in unauthorized possession and there was no finding recorded on the issue of adverse possession.

4. Counsel for the Gram Panchayat-respondent No. 3, on the other hand, submitted that the burden of proof lay upon the petitioner since he was claiming title. As per the pleadings, on the basis of which, application had been filed u/s 11 of the Act, the title of the Gram Panchayat stood admitted, since the claim was based on adverse possession. It was submitted that as per the Jamabandi for the year 1950-51 (Annexure P-5), the land in question was Gair Mumkin Abadi and thus, there was no cultivating possession. The name of the petitioner did not even figure in the

cultivating possession and, therefore, he could not claim any benefit of adverse possession on the strength of Section 4(3)(ii) of the Act. There was

no resolution of allotment in the favour of the petitioner and the land was depicted as Nagar Panchayat as per Jamabandi for the year 1958-59 and

Khatauni Ishtemal and Khatauni Pamaish had not been brought on record to show that the petitioner was entitled to claim title. The land had been

leased out and, therefore, u/s 116 of the Indian Evidence Act, 1872, the petitioner was deprived from claiming title.

5. After hearing counsel for the parties, we are of the view that the petition is liable to be partly accepted qua the order of Commissioner dated

21.12.1990 whereby, he also ordered ejectment from the land measuring 119 kanals and 18 marlas in the appeal of the petitioner even though, the

Gram Panchayat had not filed any appeal against the initial order dated 31.01.1989 partly ejecting the petitioner. The Appellate Authority

examined the record at length and came to the conclusion that as per the revenue record from the year 1950-51 onwards till 1983-84, the land in

question was Shamilat Deh land and the mutation was in the favour of the Gram Panchayat. The possession of the petitioner could have only been

protected u/s 4(3)(ii) of the Act, if it was before 04.05.1949, which the petitioner failed to prove. As per the record, 79 kanals and 18 marlas of

land had been taken on lease @ Rs. 50/- per acre and, therefore, ownership of the Panchayat could not be challenged. Accordingly, the claim for

title was rejected. Relevant portion of the Appellate Authority rejecting the claim for title reads as under:-

I have heard both the parties at length and have examined the record of the case thoroughly. The Gram Panchayat has produced on record

jamabandi for the year 1950-51, 1953-54, 1958-59, 1961-62, 1968-69, 1978-79, 1973-74, 1983-84. From these revenue records, entries, it is

clearly proved that the disputed land was shamlat Deh previously, after that mutation of this land was entered in the name of Gram Panchayat. As

against these entries, appellant has not produced any evidence. So far as the contention of the counsel for the appellant to the effect that the

appellant is in possession of the disputed land, there is no force in it because his possession could be protected only if his possession was before

4th May, 1949 according to Section 4(3)(ii) of Punjab Village Common Lands (Regulation) Act, 1961. It is clear from the record produced in this

case that the appellant took 79 kanals 18 marlas out of disputed land in 1978-79 at the rate of Rs. 50/- per killa on chakota. Shri Chhaju Ram had

been cultivating the land of the Panchayat as Chakotedar. He took the land from the Panchayat at Chakota admitting it to be the ownership of the

Panchayat and his contention at this stage that his "kabja" is according to rules is not correct. His possession is unauthorized and forcible. There is

no force in the appeal, therefore, this appeal is dismissed. The order is pronounced in the presence of the parties today on 21.12.1990.

6. The submission of the counsel that the land did not vest in the Gram Panchayat is without any basis since he himself admitted in his application

u/s 11 of the Act that his possession was adverse and his father-in-law was in possession prior to 26.01.1950. Relevant portion of his pleadings

read as under:-

2. That the possession of the applicant on the land aforesaid is actual, uninterrupted, continuous, since before 26.1.1950 coupled with the

possession of his predecessors. Before the applicant, his father-in-law Shri Babu Ram was in possession of the same. Shri Babu Ram and

applicant also used to cultivate the land jointly.

3. That by virtue of adverse possession the applicant has become the owner of the land in dispute. His title in this land has been perfected. The

respondent Gram Panchayat has notice of the adverse possession of the applicant. It was never disturbed or disputed by the respondent.

7. Once it was the case of the petitioner himself that the title was of the Gram Panchayat and thus, he was only seeking the benefit of adverse

possession on the strength of Section 4(3)(ii) of the Act, which provides that any person who is in possession for more than 12 years preceding the

commencement of this Act without payment of rent or payment of charges, then the land would not vest in the Panchayat in that case. Said

provision reads thus:-

4. Vesting of rights in Panchayat and non-proprietors.-

(1) and (2) xxx xxx xxx

(3) Nothing contained in clause (a) of sub-section (1) and in Sub-section (2) shall affect or shall be deemed ever to have affected the;-

(i) xxx xxx xxx

(ii) rights of persons in cultivating possession of Shamilat deh, for more than twelve years 1[immediately preceding the commencement of this Act]

without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

(iii) xxx xxx xxx

8. As noticed above, the Commissioner has already recorded a factual finding that there is nothing on record to show the fact that the petitioner's

predecessor-in-interest was in cultivating possession more than 12 years preceding the commencement of the Act in the year 1961. Once that is

so, the petitioner could not be held to be owner on the strength of the claim for adverse possession. Even otherwise, it is settled proposition that

once adverse possession is claimed, the title is admitted to be of the person against whom the said claim is made. The Hon'ble Apex Court in T.

Anjanappa and Others Vs. Somalingappa and Another, held that concept of the principle of adverse possession amounted to admitting the other's

right, but denying the same and excluding the right of the owner from the enjoyment of the property. The relevant portion reads as under:

The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the

true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle

of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his

possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a

person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in

wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right

excluded him from the enjoyment of his property.

9. A Single Judge of this Court in Jagat Singh and Others Vs. Sri Kishan Dass and Others, has held that such a plea taken amounts to admitting

that the title is of the other side. The relevant paragraphs read as under:

5. The question that the plaintiff has not established the identity of the suit land or the property cannot be identified, is not borne out from the

record. The defendant-appellants have raised a plea of adverse possession. Once a plea of adverse possession is raised, it pre-supposes the title

over the suit land of the plaintiff. The title of the plaintiff is deemed to be admitted, the argument that the property is not identifiable falls to the

ground. Therefore, the argument raised by learned counsel for the appellants that in-fructuous decree could not be passed, is not made out in view

of the plea of adverse possession over the suit land raised by the appellants.

6. The argument that the plaintiff has seen the defendants raising construction and thus estopped to claim possession, is not tenable. The appellants

have asserted title on the basis of purchase. However, neither the alleged vendor nor their title nor any document of title has been produced. In the

absence of any document of title in their favour, the argument that the defendants are in possession of the suit land as owners and that they have a

legal right to retain it, is not made out. Once the defendants have raised a plea of adverse possession, the plaintiff is presumed to be owner of the

suit land. Under Article 65 of the Limitation Act, 1963, the defendants have to allege and prove that their possession over the suit land is hostile to

the knowledge of the true owners for a continuous period of 12 years. In fact, there is no plea or evidence that the defendants entered into

possession of the suit land to the knowledge of the plaintiff. The possession was not hostile at the time of inception. The possession, howsoever

long, does not confer any right or title in favour of the defendants. Therefore, the plea of estoppel cannot be raised as the defendants could defeat

the claim of the plaintiff only on proof of adverse possession.

10. The submission of the counsel for the petitioner that land in question was Patti land and, therefore, under exception (v) of Section 2(g) of the

Act, the land did not fall within the definition of Shamilat Deh, is without any basis and the submission made is a result of a fertile legal mind.

Admittedly, as noticed, there was no such plea in the application u/s 11 of the Act and the whole claim of title was based on the strength of Section

4(3)(ii) of the Act to bring the case within the ambit of the said Section. The Hon"ble Apex Court in *Puran and Others Vs. Gram Panchayat,*

Faridabad, has held that three conditions have to be fulfilled once claim for title is raised under the said provision.

The relevant portion reads as under:-

8.....Sub-section (3) of section 4 makes it clear that neither sub-section (1) (a) nor (2) of section 4 will affect the rights of the three categories

of persons mentioned therein. It is not the case of Appellants that they were accorded a status similar to occupancy tenants by custom or otherwise

(though not entered as occupancy tenants in the revenue record), such as Dholdars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, and

Muqararidars. Nor are appellants mortgagees in favour of whom, the land had been mortgaged with possession prior to 26.1.1950. Therefore,

neither clause (i) nor (iii) of sub-section (3) will apply. That leaves only clause (ii) of section 4(3). Clause (ii) of section 4(3) will be attracted only if

the following 3 conditions are satisfied : (i) the person must be cultivating land which is part of the Shamilat deh of a village, (ii) he should be

cultivating such land for a period of 12 years immediately preceding the commencement of the Act; and (c) he should be cultivating such land

without payment of rent or payment of charges in excess of the land Revenue and cess. Let us consider whether appellants fulfilled the said three

conditions.

xxx xxx xxx xxx

11. If section 3 of the Proprietary Rights Act is inapplicable, the question that remains for consideration is whether they are entitled to the relief

sought merely because the names of Sarjit and Jivan Lal (father of appellants 1 to 3 and father of appellants 4 and 5 respectively) were shown as

cultivating the lands for some years from 1966-67. To get excluded from the vesting u/s 4(1) of the Common Lands Act, by relying on section 4(3)

(ii), the Appellants should prove that they and their ancestors were cultivating such land for a period of at least 12 years prior to the

commencement of the Common Lands Act. The Appellants have not produced any document prior to 1966 to show that they were in possession

or cultivating the suit land. The oral evidence is also of no assistance. As against the pleading that the land was given to appellants' forefathers

about a century prior to the filing of the suit, Appellant No. 1 (PW-3) admitted in his evidence that no record was available to show that they were

so cultivating the land prior to 1966. In his cross-examination, he admitted that neither his grandfather nor his great grandfather cultivated the suit

land. He stated that he was cultivating the land for about 25 years and earlier his

tau (father's elder brother) was cultivating the land. PW-2 (Aged 35 years) has stated in his evidence (recorded in the year 2000) to his knowledge appellants and earlier Sarabjit (father of appellants 1 to 3) was cultivating the land. His knowledge obviously cannot exceed 25 to 30 years. To same effect is the evidence of PW-1 who was aged 40 years when he gave evidence in 2000. There is thus no oral or documentary evidence to show possession or cultivation of suit land by appellants or their parents/ancestors prior to 1966. The evidence at best shows that for a few years between 1966-67 and 1986-87 and that too not continuously, the appellants (or the father of Appellant 1 to 3 and father of Appellant 4 & 5) unauthorisedly cultivated some portion of suit land. That does not entitle them to protection u/s 4(3)(ii) of the Act. Consequently, the vesting u/s 4(1) in the Panchayat cannot be questioned. In view of the above, it is unnecessary to go into the defence evidence that appellants were ejected in the year 1976-77 and that thereafter, appellants again illegally cultivated the land for a few years.

12. The suit is based on title. Title is not made out. As a consequence, the dismissal of the suit by the first appellate court, affirmed by the decision of the High Court in Second Appeal, cannot be said to suffer from any infirmity. The appeal is, accordingly, dismissed.

Appeal dismissed.

It is a settled proposition that parties have to plead and prove their cases and an application u/s 11 of the Act is akin to civil suit. Once, such a plea was not taken and neither any evidence was led in that regard and neither the Gram Panchayat got any opportunity to rebut the said plea, the said argument cannot be allowed to be raised for the first time under Article 226 of the Constitution of India and resultantly, the same is outrightly rejected.

Counsel for the Gram Panchayat's contention that once the land was given on lease and, therefore, the petitioner could not claim title, is also well founded in view of Section 116 of the Indian Evidence Act, 1872 which reads as under:-

116. Estoppel of tenant; and of licensee of person in possession.--No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of

such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

A Division Bench of this Court in *Inder Singh and another v. State of Punjab and others*, 1988(1) R.R.R 250 : 1987 PLJ 614 has held that tenant

who claims title against the owner has firstly to surrender possession and then only claim title. The relevant paragraphs read as under:-

The petitioner got into possession of the land, in dispute as a successful bidder in the auction and by virtue of provision of Section 116 of the

Evidence Act, the petitioner is not entitled to challenge the status of the Gram Panchayat in regard to its right to possess it and auction it to

whomsoever it likes. Since the petitioner had taken the possession of the land from the Gram Panchayat the petitioner had to give back the

possession to the Gram Panchayat.

The submission of the counsel for the petitioner that in this appeal the Appellate Authority was not justified in ordering eviction from 119 kanals

and 18 marlas of land, however, merits acceptance. Admittedly, the Gram Panchayat had never filed any appeal against order dated 31.01.1989

wherein, eviction had been ordered only from 48 kanals and 1 marla of land. The detail of the land from which the petitioner was evicted has been

mentioned in the impugned order and the detail of the land is Khasra Nos. 81//3/2, 4, 8, 22, 23 and 83//2, 5 and 7. Thus, the Appellate Authority

had no jurisdiction to order eviction from the rest of the land also till the proceedings of title became clear. Once the petitioner's claim for title has

now been finalized against him before the Appellate Authority and upheld by this Court, it would be open to the Gram Panchayat to seek eviction

by filing an application u/s 7 of the Act from the balance land of 119 kanals and 18 marlas.

Accordingly, CWP No. 7674 of 1991 is partly allowed and the eviction order passed by the Appellate Authority dated 21.12.1990 (Annexure P-

7) is set aside. However, eviction order from 48 kanals and 1 marla of land detailed by the Collector vide order dated 31.01.1989 (Annexure P-

5) is maintained. CWP No. 7675 of 1991 claiming title in the land in dispute by

the petitioner is dismissed.