
(2006) 05 P&H CK 0116

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 3568-C of 2006, R.S.A. No. 1578 of 1990

Civil Panchayat Nathupur

APPELLANT

Vs

Nain Singh and others

RESPONDENT

Date of Decision : 24-05-2006

Acts Referred:

Citation : (2007) 1 PLR 197 : (2006) 4 RCR(Civil) 515

Hon'ble Judges : Nirmal Yadav, J

Advocate : Mr. Amit Jhanji, Advocate. Mr. Sanjiv Bansal, Advocate., Advocates for appearing Parties

Judgement

Nirmal Yadav, J.

1. The applicantrespondent No. 8 has filed the present Civil Miscellaneous Application for dismissal of the appeal in the light of subsequent development and also on account of the amendment made in Section 3 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act"), substituted by Act No. 13 of 1996. It is pleaded that challenge in the appeal filed by the Gram Panchayat is to the order of Additional District Judge dated 7.5.1990 vide which the appeal filed by the applicant/proprietors was accepted and judgment and decree passed in favour of Gram Panchayat by the SubJudge IInd Class, Gurgaon dismissing the suit filed by the applicant/plaintiffs was set aside. The regular second appeal was admitted on 14.11.1990.

2. The facts, in brief, are that plaintiffs filed a suit for declaration alleging that they have been in cultivating possession of the suit land measuring 3 bighas 16 biswas situated in the revenue estate of Village Nathupur District Gurgaon since long. It was pleaded that predecessorsin interest of the plaintiffs were actually in possession of the land as occupancy Tenants prior to coming into force of the Punjab Occupancy Tenants (Vesting of Propriety Rights) Act, 1953. After coming into force of the said Act, the predecessorsininterest of the plaintiffs became proprietors with all rights and title in the suit property. It was pleaded that consolidation of holdings took place in village Nathupur more than 30 years ago.

Prior to consolidation, plaintiffs/their predecessors in interest continued to be in possession despite its allotment having been made to the Gram Panchayat. The Gram Panchayat never recovered the possession from the plaintiffs. The entry made in the column of ownership in favour of Gram Panchayat is wrong, against facts and ineffective. The trial court failed to take into consideration that predecessors in interest of the plaintiffs were in possession of the suit land as occupancy tenants and they have become proprietors as of their own right. The finding of the trial Court that plaintiffs being tenants cannot claim right to adverse possession against a true owner is, thus, erroneous and against the facts on record. It is argued that in the column of rent it was clearly mentioned that no rent is payable as possession is due to Sabka Hissedari i.e. previous co-sharership. It is well settled that if possession over a part or parcel of a property of one co-sharer remains under the possession of another, the possession of the latter shall become adverse from the date of partition against the person to whom that parcel was allotted in partition.

3. Learned counsel for the applicant respondent argued that the present regular second appeal filed by the Gram Panchayat deserves to be dismissed in view of amended provisions of Section 3 of the Act substituted by Act No. 13 of 1996, as applicable to the State of Haryana, according to which rights and interests in the shamilat property would vest in the proprietors of the village. He further referred to Section 3(2)(i) of the Act, which is reproduced as under :

"(2) Notwithstanding anything contained in subsection (1) of Section 4,

(i) Where any land has vested in a Panchayat under the shamilat law, but such land, other than excluded under subclause (iia) of clause (g) of Section 2, has been excluded from shamilat deh as defined in clause (g) of Section 2, all rights, title and interest of the Panchayat in such land shall, as from the commencement of this Act, cease and such rights, title and interest shall be reverted in the person or persons in whom they vested immediately before the commencement of the shamilat law; and the panchayat shall deliver possession of such land to such person or persons."

It is not in dispute that the respondents or their successors in interest are in possession of the suit land till date. The column of rent further shows that no rent is payable by the respondents or their predecessors in interest as the possession is due to Sabka Hissedari (previous co-sharership). In support of his contentions, learned counsel for the applicant respondent referred to a judgment of Full Bench of this Court in the case of Jai Singh v. State of Haryana, 2003(2) RCR(Civil) 578, wherein, while concluding the discussion, it is held as under :

"iii) the lands which have been contributed by the proprietors on the basis of prorata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and entered in the column of ownership as Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad

Arazi Khewat and in the column of possession with the proprietors, shall not vest with the Gram Panchayat or State Government, as the case may be on the dint of subsection (6) of Section 2(g) and the explanation appended thereto or any other provisions of the Act of 1961 or the Act of 1948."

4. Since the land has not been utilised or earmarked for any common purpose, it shall revert back to the proprietors in view of the amendment and legal position as referred to above. Learned counsel for the appellant has nothing to say contrary to the aforesaid factual position.

5. In view of the above, the appeal has no merit and the same is hereby dismissed.