
(1998) 12 P&H CK 0128

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 985 of 1997

Faridabad Complex Administration

APPELLANT

Vs

Amitabh Adhar and Others

RESPONDENT

Date of Decision : 03-12-1998

Acts Referred:

Faridabad Complex (Regulation and Development) Act, 1971 — Section 4(3)
Haryana Village Common Lands (Regulation) Act, 1961 — Section 2
Specific Relief Act, 1963 — Section 34

Citation : (1999) 121 PLR 208 : (1999) 2 RCR(Civil) 451

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : Ashok Aggarwal and Rakesh Garg, for the Appellant; M.L. Sarin and Hemani Sarin, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—This is defendant's second appeal directed against the judgment and decree of the first Appellate Court whereby on appeal preferred by the plaintiffs, judgment and decree of the trial Court has been set aside and in consequence thereof suit of the plaintiffs has been decreed.

2. Plaintiffs filed suit for declaration against the defendant, namely, Faridabad Complex Administration praying for grant of decree of declaration to the effect that the plaintiffs are absolute owners in possession of land measuring 341 Kanals 9 Marias situated in village Lakkarpur, Tehsil Ballabgarh, District Faridabad and revenue entries in the column of ownership of Jamabandi in favour of Faridabad Complex Administration are wrong and liable to be rectified. Plaintiffs also prayed for a decree of permanent injunction restraining the defendant from interfering in their peaceful possession and enjoyment by leasing out or auctioning the suit land. The principal contention of the plaintiffs was that after the provisions of Haryana Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 1961 Act) were struck down by this Court,

shamilat deh land could not vest in the Municipal Committee or the Faridabad Complex Administration. The plaintiffs claiming themselves to be proprietors, claimed to be the owners of the suit land.

3. Defendant, on appearance, contested the suit. In its written statement, defendant denied the averments made in the plaint and inter-alia contended that the suit is bad, frivolous and vague. Defendant pleaded that on coming into existence of Faridabad Complex Administration, suit land which constituted as part of Panchayat Deh of the erstwhile Gram Panchayat vested in the defendant-administration.- Defendant submitted that the plaintiffs have absolutely no right, title and interest in the suit land and have no cause of action to bring the suit.

4. In replication, the assertions made in the plaint were reiterated. On the pleadings of the parties, the following issues were framed by the trial Court:-

1. Whether the plaintiffs are owners in possession of the land ? OPP
2. Whether the revenue entries in the column of Jamabandi in favour of the defendants are wrong and against facts. If so, to what effect ? OPP
3. Whether the defendants are threatening to interfere in the possession of plaintiffs and are attempting to lease out or auction the land in suit ? OPP
4. Whether the plaintiffs have no cause of action in his favour ? OPP
5. Whether the plaint is vague. If so, to what effect ? OPD

5-A. Whether the suit is within limitation ? OPP

5-B. Whether the civil court has no jurisdiction to try the present suit? OPD 5-C. Whether the suit is bad for want of notice as required u/s 52 of the Haryana Municipal Act, 1973 ? OPD

6. Relief.

5. While the suit was pending with the trial Court, plaintiff No. 5 Sri Bharta son of Sri Daryao died and the plaintiff, namely, Amitabh Adhar applied for being impleaded as legal heir of Sri Bharta on the basis of will. Vide order dated 12.5.1986, trial Court disallowed the application of Amitabh Adhar. However, vide order dated 7.5.1987, this Court in revision set aside order of the trial Court and allowed the revision petition filed by Amitabh Adha and ordered that Amitabh Adhar be impleaded as legal representative of Sri Bharta deceased. In the meantime, however, suit had already been dismissed and appeal against decree dated 2.3.1987 was pending with the learned Additional District Judge. Learned Additional District Judge remanded the case to the trial Court for fresh decision by ordering that Amitabh Adhar be given an opportunity to lead evidence in support of his case. Consequently, on remand, parties led evidence and by judgment dated 22.1.1993, trial Court dismissed the suit of the plaintiffs by holding that neither they were owners nor in possession of the suit land. Plaintiff (respondent No. 1 herein) preferred appeal against the aforesaid judgment and

decree dated 22.1.1993 which was allowed by the Additional District Judge, Faridabad vide judgment dated 8.11.1996. Hence, this second appeal.

6. The first Appellate Court decreed the suit of the plaintiffs primarily on two counts. Firstly, that the suit land being not Shamilat Deh did not vest in Gram Panchayat. The learned Additional District Judge opined that it could have vested in Panchayat only if it had been used for common purposes as provided u/s 2(g) (v) of Punjab Village Common Lands (Regulation) Act, 1961. Secondly, it did not vest in Faridabad Complex Administration under the provisions of Section 15 of the Faridabad Complex (Regulation and Development) Act, 1971 on the abolition of village Panchayat and the same reverted back to the proprietors of the village. It held that the plaintiffs are in possession to the extent of their share in the Shamilat Deh and, therefore, they are owners in possession of the suit land.

7. Shri Ashok Aggarwal, Senior Advocate, counsel for the defendant-administration has contended that the finding of the first Appellate Court is clearly erroneous and illegal inasmuch as the plaintiffs have failed to bring any evidence on record for proving that they are owners of the suit land since the time of their forefathers and even prior to the year 1954 or when the Punjab Village Common Land (Regulation) Act, 1961 came into force. It is contended that the first Appellate Court clearly fell in error in holding that on cessation of Gram Panchayat, Shamilat Deh which had earlier vested in Panchayat, had reverted in the proprietors instead of Faridabad Complex Administration.

8. Against this, it is contended by Mr. M.L Sarin, Senior Advocate, counsel appearing for the plaintiffs that the ancestors of the plaintiffs were the owners of the suit land and they are continuing in possession since times immemorial and the entries in the revenue record showing, firstly Panchayat to be the owner, and then Faridabad Complex Administration, are clearly erroneous and the plaintiffs have rightly been granted declaration that they are owners in possession of the suit land, it is contended that from the revenue record it stands proved that the suit land is uncultivable and being Gair Mumkin Pahar, would be taken to be Banjar Qadim and deemed to have vested in Panchayat only if it is proved that the same was being used for common purposes of the village. It is contended that the defendant failed to bring any evidence on record to prove that the suit land was ever used for common purposes.

9. I have gone through the entire record and heard the learned counsel for the parties at great length.

10. In plaint, plaintiffs claimed titla over the suit land alleging that they being proprietors are owners in possession of the suit land since the time of their forefathers and even prior to the year 1954 when Punjab Village Common Lands (Regulation) Act, 1953 came into force. Plaintiffs have further asserted that the suit land never vested in the Gram Panchayat, so the question of its having been taken over by the Faridabad Complex Administration did not arise. Plaintiffs further pleaded that the suit land, by mistake or because of collusion between

the revenue authorities and the defendant, has wrongly been described in the column of ownership firstly in the name of Panchayat and then in the name of Faridabad Complex Administration.

11. Section 45 of the Punjab Land Revenue Act, 1887 provides that if any person considers himself aggrieved as to any right to which he is in possession by an entry in a record-of-rights, or in an annual record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1963. In Chapter VI of the Specific Relief Act, 1963 Section 34 entitles a person to come to Court for a declaration, if that person is entitled to (1) any legal character; or (2) any right to any property. It also provides that no Court shall make such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Suit by the plaintiffs out of which present appeal has arisen is the one u/s 45 of the Punjab Land Revenue Act, 1887. Plaintiffs, in order to prove that they are owners in possession and the entries in the column of ownership are wrong and against facts, were required to prove as to in what manner they or their ancestors acquired title to the suit land. Revenue record before 1954 has not been produced. In the Khasra Girdwari from Kharif, 1954 to Rabi 1956, land is shown to be Shamilat Deh. In Jamabandi for the years 1956-57, 1960-61 and 1964-65 (Exhibits P-10, P-11 and P-12 respectively), Panchayat Deh is shown to be the owner. In the Jamabandi for the years 1967-68 and 1969-70 (Exhibits P-13 and P-14 respectively), again Panchayat Deh is mentioned to be the owner of the land. In fact, the plaintiffs themselves are not sure of their own case. In pleadings they have firstly stated that from the very beginning, they are owners of the suit land but in para 8-A of the plaint, plaintiffs alleged that the suit land which was Shamilat Deh, has been mutated in the name of Gram Panchayat but the said mutation is illegal. Mutation on the basis of which Panchayat came to be entered as owner on enforcement of Punjab Village Common Land (Regulation) Act, 1953 has not been brought on record.

12. The burden of proving that they are owners in possession was on the plaintiffs as they are the ones who were desiring the Court to give declaration in their favour regarding ownership of the suit land and to declare that the entries recorded in the record-of-rights are wrong. It was the plaintiffs who had to bring good and admissible evidence for proving their title to the property because in absence of any evidence with regard to title, Court cannot give declaration merely on asking. Plaintiffs in this case have failed to bring on record even a single document to prove that either their ancestors or they had any title to the suit land at any time. There being no evidence showing plaintiffs or their ancestors to be owners of the suit land, I am in agreement with the finding of the trial Court that the plaintiffs have failed to prove that they are owners of the suit land. The findings of the first Appellate Court to the contrary is erroneous.

13. In order to appreciate the argument of Mr. Sarin that the land described as Banjar Qadim would be deemed to be Shamilat Deh only if apart from being

described as such, the same is used for the common purposes of the village, it is necessary to notice the definition of Shamilat Deh given in Section 2(g) of the 1961 Act. It reads as under: -

"2(g) Shamilat Deh includes-

(1) lands described in the revenue records as Shamilat deh or Charand excluding abadi deh."

(2) Shamilat taikkas;

(3) lands described in the revenue records as shamilat, tarafs, patties, pannas and thols and used according to revenue records for the benefits of the village community or a part thereof or for common purposes of the village;

(4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within the sabha area as defined in clause (mmm) of Section 3 of the Punjab Gram Panchayat Act, 1952, excluding lands reserved for the common purposes of a village u/s 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government u/s 23-a of the aforesaid Act;)

(4a) vacant land situate in abadi deh or gora deh not owned by any person;

(5) lands in any village described as banjar qadim and used for common purposes of the village according to revenue records; but does not include land which-

(i) becomes or has become shamiiat deh due to river action or has been reserved as shamilat in villages subject to river action except shamilat deh entered as pasture, pond or playground in the revenue records;

(ii) has been allotted on quasi-permanent basis to a displaced person;

(iii) has been partitioned and brought under cultivation by individual land-holders before the 26th January, 1950;

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh is so recorded in the jamabandi or is supported by a valid deed;

(v) is described in the revenue records as shamilat taraf, pattis, pannas and thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

(vi) lies outside the abadi deh and was used as gitwar, bara, manure pit or house or for cottage industry immediately before the commencement of the Act;

(vii) is shamilat deh of villages included in the fourteen revenue estates called Bhojes of Naraingarh Tehsil of Ambala District;

(viii) was shamiyat deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950; or

(ix) is used as a place of worship or for purposes subservient thereto;

14. Sub-section (2) of the Section 4 of 1961 Act provides that any land which is vested in Panchayat under the Shamilat law shall be deemed to have vested in Panchayat under this Act.

15. From the combined reading of the various clauses of Section 2(g) and sub-section (2) of Section 4, it is manifest that if the land falls in any one of the clauses, that would be sufficient to bring it within the definition of Shamilat Deh and it would vest in Panchayat. The contention that in case of Banjar Qadim land, Clause (5) alone will be applicable, is erroneous. In *Tel Ram and Ors. v. Gram Sabha Manakpur and Ors.*, 1976 P.L.J. 628, a Division Bench of this Court in this context, opined that "if it was really the intention of the framers of the Act that Clause (5) alone was applicable to the land described as Banjar Qadim, there could have been no difficulty in making a provision to this effect. In fact, all clauses are quite independent of each other and recourse can legitimately be had to any one of them to the exclusion of the other." To the similar effect is the judgment in *Ram Singh and Ors. v. Joint Director Panchayats, Punjab and Ors.* 1990 P.L.J. 245. In the present case, as noticed earlier, in Khasra Girdawaris from Kharif 1954 of Rabi 1956, suit land is recorded as Shamilat Deh and in Jamabandis for the years 1956-57, 1960-61, 1964-65, 1967-68 and 1969-70, land is shown to be owned by Panchayat Deh. In view of these entries in the Khasra Girdawaris and Jamabandis, the conclusion is obvious that the suit land is Shamilat Deh falling in clause (1) of Section 2(g) of the 1961 Act and vested in Panchayat. In order to prove to the contrary, it was for the plaintiffs to bring their case within any of the Exceptions to Section 2(g) of the 1961 Act. This, they have miserably failed to do. The finding of the first Appellate Court that the suit land is not Shamilat Deh falling in clause (1) of Section 2(g) of the 1961 Act because the same has not been proved to be used for the common purposes, thus is erroneous.

16. Learned counsel for the defendant is also right in contending that the learned Additional District Judge has wrongly equated the various provisions of Haryana Municipal Common Lands (Regulation), 1974 Act with the provisions of Section 15 of the Faridabad Complex (Regulation and Development) Act, 1971. By virtue of Haryana Municipal Common Lands (Regulation) Act (15 of 1974), land purchased by the petitioners therein being part of the Shamilat Deh, was sought to be vested in Municipal Committee without payment of any compensation. The land so purchased was in actual possession of different share-holders of village Shamilat Deh who were entitled to transfer the same. Their Lordships of the Full Bench in case *Rajinder Prasad v. State of Haryana* 1979 P.L.J. 263 declared Haryana Municipal Common Lands (Regulation) Act (15 of 1974) as unconstitutional because the Act provided for acquisition of land without payment

of compensation. Their Lordships held that the Act neither directed to agrarian reform simpliciter nor for ancillary purposes of development of rural economy and thus could not enjoy protection envisaged by Section 31-A(1)(a) of the Constitution. This, however is not the position in this case. Suit land being Shamilat Deh, on the commencement of the Punjab Village Common Lands (Regulation) Act, 1953 which came into force with effect from 9.1.1954, vested in Panchayat and continued to be so on the enforcement of the 1961 Act. Suit land was situated within the Sabha area of Serai Khaja. Sabha area of Serai Khaja was included in the Faridabad Complex under the Faridabad Complex (Regulation and Development) Act, 1971. On inclusion of the Sabha area in the Faridabad Complex, Gram Panchayat ceased to exist and its assets and liabilities vested in the Administration of Faridabad Complex by virtue of sub-section (3) of Section 4 of the Gram Panchayat Act, 1952. It provides as under :-

" (3) xxx xxx xxx xxx xxx If the whole of the Sabha area is included in the Faridabad Complex under the Faridabad Complex (Regulation and Development) Act, 1971 the Gram Panchayat shall cease to exist and its assets and liabilities shall be the assets and liabilities of the Administration of Faridabad Complex."

17. Correspondingly, Section 15 of the 1971 Act provides that all properties, movable or immovable and assets belonging to the Municipal Committee and Gram Panchayat of the Municipality and Sabha areas respectively, specified in Schedule-I to this Act shall vest in the administration. The vires of Punjab Gram Panchayat Act and Punjab Village Common Lands (Regulation) Act have already been upheld upto the Apex Court. In *Ranjit Singh and Others Vs. State of Punjab and Others*, , their Lordships held that all the provisions were part of a general scheme to agrarian reform and were consequently protected by article 31-A of the Constitution. In this view of the matter, the finding of the first Appellate Court that Haryana Municipal Act is para materia with the provisions of Section 15 of Faridabad Complex (Regulation and Development) Act, 1971 is thus clearly erroneous.

18. The contention of learned counsel appearing on behalf of the plaintiffs that plaintiffs are in possession and thus entitled to the grant of injunction restraining the defendant from interfering in their possession is not acceptable. In the revenue record, suit land has been described as Gair Mumkin Pahar and it is also the finding of learned Additional District Judge that the land is Banjar Qadim and it has not been cultivated since long. Plaintiffs, in the column of possession, though have been shown as tenants put the entries showing the land as barren or vacant indicate that it was never in the physical possession of the plaintiffs. One of the plaintiffs, Devi Ram while appearing as PW-4 fairly conceded that the suit land had never been cultivated. In view of the admission of PW-4 and the entries in the revenue record showing the land to be barren or vacant, plaintiffs cannot be held to be in possession and thus are not entitled to the injunction sought for.

19. Learned counsel for the defendant also challenged the correctness of the

findings of the first Appellate Court with regard to the suit being barred by time and jurisdiction of Civil Court to entertain the suit but I need not go into these contentions because the suit of the plaintiffs otherwise too deserves to be dismissed for the reasons recorded above.

20. Resultantly, this appeal is allowed and judgment and decree of the first Appellate Court is set aside and that of the trial Court is restored with no order as to costs.