
(2011) 01 P&H CK 0220

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 221 of 2011 (O and M)

Mohammad Yunus and Others

APPELLANT

Vs

Shakur and Others

RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13

Citation : (2011) 01 P&H CK 0220

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.

CM No. 657.C of 2011

Allowed as prayed for.

CM No. 659.C of 2011

1. This is application for impleading L Rs of Mahmood Defendant No. 1, Net Ram Plaintiff No. 4 and Subhash Plaintiff No. 5 since deceased. It is alleged that Defendant No. 1 has left behind two sons Shakur and Sadeeq as his only legal heirs. It is alleged that Net Ram has left behind his son Moola as his only legal heir. It is also mentioned that Subhash Plaintiff No. 5 has also since died. His son Parveen has been mentioned as his legal heir in the memo of parties as proforma Respondent No. 8. The application is accompanied by affidavit. Accordingly, the application is allowed subject to all just exceptions and Shakur and Sadeeq sons of Mahmood Defendant No. 1 are ordered to be impleaded as his legal representatives and Moola and Parveen are ordered to be impleaded as legal representatives of their respective fathers Net Ram Plaintiff No. 4 and Subhash Plaintiff No. 5 for the purpose of this appeal.

RSA No. 221 of 2011 and CM No. 660.C of 2011

2. Plaintiffs No. 1 to 3, 6 and 7 having failed in both the courts below are in second appeal.

3. Plaintiffs alleged that they are in possession of the manure pits bearing killa No. 18/4(0-4), 22(0-10) and 23/1(1-0) total measuring 1 kanal 14 marlas and they are using the said manure pits since the time of their fore-fathers. During consolidation proceedings the suit property was reserved for Plaintiffs as well as inhabitants of the village in public interest. Plaintiffs store their dung cakes, fuel wood etc. in the suit property. Defendants No. 1 to 4 in collusion with Defendant No. 5 Municipal Corporation, Faridabad (in short, MCF) were bent upon to take forcible possession of the suit land and intended to open their gates in the suit land towards road by constructing market/shops illegally and unlawfully. Plaintiffs claimed to have become owners of the suit land by adverse possession. Accordingly, Plaintiffs sought declaration that they have become owners in possession of the suit land by adverse possession. They also sought permanent injunction restraining the Defendants from interfering in possession of the Plaintiffs over the suit land. In the alternative, mandatory injunction directing Defendants to remove their possession from the suit land if they succeed in taking possession illegally, was also claimed.

4. Defendants No. 1 to 4 contested the claim of the Plaintiffs and broadly denied the plaint allegations. It was alleged that Plaintiffs are neither owners nor in possession of the suit property. Defendant No. 5 - MCF being owner of the suit property constructed road through the suit land for public purpose. Plaintiffs never remained in possession of the suit land. Earlier the suit land was owned and possessed by Gram Panchayat and now it vests in MCF - Defendant No. 5. Later on Defendants No. 1 to 4 were proceeded ex parte in the trial court.

5. Defendant No. 5 - MCF also contested the suit and broadly denied the plaint allegations and pleaded that the suit property belongs to Defendant No. 5 and is being used for collection of garbage and drainage of rainy water etc. through Nala (drain) running through the suit land. Plaintiffs and Defendants No. 1 to 4 have no concern with the suit land. It was denied that the Plaintiffs are in possession of the suit land or they are using it as manure pits or for storing dung cakes or fuel wood etc. It was denied that Plaintiffs have become owners of the suit property by adverse possession.

6. Learned Additional Civil Judge (Senior Division), Faridabad vide judgment and decree dated 24.8.2006 dismissed the Plaintiffs' suit. First appeal preferred by Plaintiffs has been dismissed by learned District Judge, Faridabad vide judgment and decree dated 5.10.2010. Feeling aggrieved, Plaintiffs No. 1 to 3, 6 and 7 have filed the instant second appeal impleading L Rs of Plaintiffs No. 4 and 5 since deceased as proforma Respondents No. 7 and 8.

7. Along with the appeal, Appellants have moved application bearing CM No. 660.C of 2011 for additional evidence to place on record copy of "Sharat-Wajibul-Arz/consolidation scheme".

8. I have heard learned Counsel for the Appellants and perused the case file.

9. Learned Counsel for the Appellants contended that the suit land is not part of Shamlat Deh as it is excluded from the purview of Shamlat Deh under the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 (in short, the Act). It was also contended that Plaintiffs have been using suit land and have become its owners by adverse possession.

10. I have carefully considered the aforesaid contentions but find no merit therein. The Plaintiffs did not even allege that the suit land does not fall within the definition of Shamlat Deh as contained in the Act. Even otherwise for this purpose the Plaintiffs had to approach Assistant Collector under the provisions of the Act. Jurisdiction of civil court to determine this question is barred by Section 13 of the Act.

11. Plaintiffs have sought declaration that they have become owners of the suit land by adverse possession. However, no such declaration can be granted as held by this Court in two judgments namely Bhim Singh and Ors. v. Zile Singh and Ors. 2006(3) CCC 479 (P&H) and Dewaki and Ors. v. Dayawanti and Ors. 2006 (3) CCC 615 (P&H). On the contrary, adverse possession can be set up as defence and cannot be taken up as weapon of offence to seek declaration of acquiring title by adverse possession. Thus, the suit itself is not legally maintainable to claim this relief. Even on merits, the Plaintiffs have failed to establish their claim of adverse possession. Revenue record does not record the possession of the Plaintiffs over the suit land. On the contrary, earlier the Gram Panchayat was recorded to be owner in possession of the suit land and now MCF is recorded to be owner in possession thereof. There is, in fact, no reliable evidence to even depict that Plaintiffs are in possession of the suit land much less in adverse possession thereof for more than 12 years before filing of the suit. On the contrary, by claiming ownership by adverse possession, Plaintiffs have admitted that otherwise Defendant No. 5 MCF is owner of the suit land. Mere placing of dung cakes or fuel wood etc. as alleged by the Plaintiffs would not be sufficient to hold that Plaintiffs are in possession of the suit land, even if said averments are taken at face value. Thus, examined from any angle, the Plaintiffs have miserably failed to establish their case.

12. As regards additional evidence, the same is of no help to the Appellants. Relevant extract of "Sharat-Wajibul-Arz/consolidation scheme" being relied on by the Appellants simply states that proprietors and non-proprietors collect their cow-dung in their own manure pits and they themselves use the same. However, it does not state that the proprietors and non-proprietors would continue to use the same under the consolidation scheme or in pursuance of "Sharat-Wajibul-Arz". Moreover, as already noticed, there is no reliable evidence to prove that the Plaintiffs have been using the suit land as manure pits. There is also no explanation as to why the proposed additional evidence was not produced in the trial court or even in the lower appellate court. The Plaintiffs referred to the consolidation scheme in the plaint itself and therefore, the proposed additional

evidence was within the knowledge of the Plaintiffs since inception but inspite thereof the same was not produced. The said evidence is also not relevant to adjudicate upon the lis. Accordingly, the application for additional evidence is dismissed.

13. There is concurrent finding by both the courts below against the Plaintiffs. The said finding is based on proper appreciation of evidence and is justified by the evidence on record and is supported by cogent reasons recorded by the courts below. The said finding cannot be said to be perverse or illegal so as to warrant interference in second appeal. No question of law much less substantial question of law arises for determination in the instant second appeal. The appeal is found to be lacking any merit and is accordingly dismissed.