(1997) 03 P&H CK 0122

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2857 of 1979

Raj Kumar Mangla APPELLANT

Vs

Haryana State and Others RESPONDENT

Date of Decision : 18-03-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 21
Limitation Act, 1963 — Section 5
Punjab Land Revenue Act, 1887 — Section 42(2)

Citation : (1997) 117 PLR 601 : (1997) 3 RCR(Civil) 525

Hon'ble Judges : B. Rai, J

Bench : Single Bench

Advocate : Ravinder Arora and Arun Jain, for the Appellant; C.B. Goel, for the Respondent

Final Decision : Dismissed

Judgement

B. Rai, J.—This Regular Second Appeal has been directed against the judgment and decree, dated August 30, 1979 passed by the learned Additional District Judge, Gurgaon, reversing the judgment and decree, dated August 30, 1978 passed by the Subordinate Judge First Class, Gurgaon, dismissing the suit of the plaintiff, leaving the parties to bear their own costs throughout.

2. Brief facts of the case are that land measuring 210 Kanals fully described in Para 1 of the plaint, situated within the revenue estate of village Mohammadpur Gujar is partly Gair Mumkin Pahar and is owned by plaintiff Raj Kumar, The State of Haryana through the Director of Industries, Haryana, and Senior District Industries Officer, leased out the rights to extract stone metal etc. from the quarry situated in the suit land in favour of Sawaran Singh and Dal Chand, for the period from April 8, 1975 to March 31, 1976. Thereafter the said lessees started extracting stones etc. from the suit land through defendants 4 to 7, 10 and 11 which led Raj Kumar Plaintiff to file the suit. He pleaded that according to the Sharat Wajib-ul-Arz of the village the State has no right or interest to extract

stones from the suit land except to the extent it is required for personal requirement of the State and, as such, the State and its Officers have no right to auction the right of extraction of stones etc. from the suit land. It was further pleaded that on the same ground, defendants 4 to 11 have no right to extract stones from the suit land. On these allegations, he prayed that the defendants be restrained by means of perpetual injunction from extracting stones, road metal, bajri etc. from the suit land by blasting the hillock or otherwise and committing trespass in the suit land for this purpose.

3. The suit was contested by defendants 1 to 3 by filing a joint written statement. It was also contested by defendants 4, 5, 8, 9 and 11 by filing separate written statement. It was pleaded that on the basis of Sharat Wajib-ul-Atz of the village, the State is the owner of all the mines in the village which may be in existence or may be found in future. Therefore, the State and its Officers have right to exploit the mines and to lease out the right to quarry such mines. They further pleaded that the right of defendants 4 to 11 to extract stones etc. from the suit land was, therefore, affirmed on the basis of the lease granted by defendants 1 to 3 and it was perfectly legal. The claim of the plaintiff was, therefore, controverted.

4. From the pleadings of the parties, following Issues were framed:

(1) Whether the plaintiff is the owner is possession of the land in suit? OPP

(2) Whether the plaintiff has no locus-standi to file the present suit? OPD

(3) Whether the suit is bad on account of mis-joinder of parties and causes of action? OPD

(4) Whether the suit is bad on account of non-joinder of necessary parties? OPD

(5) Whether the suit is no maintainable in the present form? OPD

(6) Whether the plaintiff is estopped from filing the present suit on account of his acts and conduct? OPD

(7) Whether the suit has become in fructuous after 31.3.76? OPD

(8) Whether defendants 1 to 3 are not entitled to exploit mines and minerals in the suit land by way of auction? OPP (objected to)

(9) Whether the plaintiff is entitled to the injunction prayed for? OPP

(10) Relief.

After considering the evidence led by the parties, all the Issues were decided in favour of the plaintiff and his suit was decreed for perpetual injunction restraining the defendants from quarrying any stone metal etc., from the suit land.

5. On having preferred an appeal by the State, of Haryana, the judgment and

decree of the trial Court, dated August 30, 1978 were reversed and the suit of the plaintiff was dismissed, as stated earner.

6. It may be mentioned here that at the time of filing the appeal before the first appellate Court, only Raj Kumar plaintiff was impleaded as the sole respondent and the co-defendants of the appellant-Haryana State were not impleaded as respondents. The respondent''s counsel submitted an application that the appeal is time barred and is also liable to be dismissed because of non-impleading of all the defendants. At this, an application was made on behalf of the State of Haryana praying for condonation of delay in filing the appeal and further praying that the co-defendants be also impleaded as respondents. This application was opposed by the counsel for the plaintiff-respondent.

7. Defendants 4 to 11 also made an application to the effect that they are also interested in the result of the suit and they be impleaded. This application was opposed by Raj Kumar plaintiff-respondent. The learned Additional District Judge, Gurgaon afforded opportunity to the parties to lead evidence on these applications by means of affidavits. Affidavit of Dhan Singh Government Pleader was filed whereby he had sworn that it was due to his bona fide mistake that the appeal was filed in the Court of District Judge. No other evidence was led. After considering all the aspects of the application and the controversy involved, the application for condonation filed u/s 5 of the Limitation Act was allowed and the delay in filing the appeal was condoned. Applications under Order XLI, Rule 20, CPC filed on behalf of the State of Haryana and defendants 4 to 11 were allowed and it was ordered that the said defendants 4 to 11 be impleaded as respondents in the appeal and amended title of the Memo of Appeal be filed within three days from the date of order, i.e. August 9, 1979. The appellant before this Court has challenged the correctness of this order as well.

8. I have heard the learned counsel for the parties and have carefully gone through the records. The judgments and decrees of both the Courts below and the order, dated August 9, 1979 have also been perused.

9. It was argued by the learned counsel for the appellant that appeal before the first appellate Court was time barred. Even all the defendants were not impleaded as respondents. No sufficient cause was made out to condone the delay in filing the appeal and the lower appellate Court should have not condoned the delay and allowed the State to implead other defendants as respondents as well. I do not find any substance in these contentions. After going through the impugned order and keeping in view the provisions of Section 5 of the Limitation Act and Order XLI, Rule 20, Code of Civil Procedure, I find that the first appellate Court has exercised the discretion in a very judicious manner in condoning the delay and allowing the impleadment of other defendants as respondents. The discretion exercised by the lower appellate Court does not call for any interference.

10. It was argued by the learned counsel that the appellant is the exclusive

owner of the land measuring 210 Kanals situated within the revenue estate of village Mohammadpur Gujar and if any minor mineral or quarry is there, owner of it has the right to quarry out the same. The land was reserved by him for plantation of trees etc. Therefore, the State Government has no right or interest therein. In case the State Government required stone metal etc. it could quarry out the same for its own use as per the entries in the record-of-rights viz. Sharat Wazib-ul-Arz of the village, but could not lease out rights to other persons. Despite that, a lease was created by the State Government in favour of respondents 8 and 9 who started quarrying the Stone metal from the mines. It was also submitted that if a quarry including minor mineral according to Sharat, Wajib-ul-Arz completed before November 18, 1871 is recorded as belonging to land owner and if the Wajib-ul-Arz does not show that a specific right vests in the Government, then presumption has to be drawn that it vests in the proprietor of land, and only such of the quarrying mines could vest in the State Government as were explored subsequent to the preparation of the Wajib-ul-Arz. Therefore, there was no warrant for a finding that the State Government was authorised to lease out the quarry rights in the suit land for commercial purposes. It was further argued that the trial Court after considering the matter minutely, held that the appellant was the owner in possession of the land and had rightly decreed the suit of the appellant, whereas the first appellate Court reversed the findings without proper appreciation of the evidence and the law and slipped in error in arriving at the conclusion contrary to the findings recorded by the trial Court. He has referred to Exhibits P3, P30 and P34 and pointed out that entries in the Sharat Wajib-ul-Arz go to show beyond doubt that it merely authorised the State Government to quarry the stones needed for its own use and the State had no right to auction the right of extraction of stones etc. from the suit land. In support of his contentions, reliance has been placed on the decisions of this Court in Mam Chahd and Anr. v. State of Haryana and Ors. 1972 L.L.J. 36 an Mangat Ram v. The State of Haryana and Ors. 1974 R.L.R. 574.

11. The contentions raised by the learned counsel for the appellant were hotly contested by the learned counsel for private respondent No. 2.

12. The submissions made by the learned counsel for the appellant lack persuasive force in substance. Sub-section (1) of Section 42 of the Punjab Land Revenue Act, 1887 provides that when in any record-of-rights completed before the eighteenth day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied, deserted or waste land, spontaneous produces or other accessory interest in land belongs to the landowners, it shall be presumed to belong to the Government. Under Sub-section (2) it is further provided that when in any record-of-rights, completed after that date it is not expressly provided that any forest or quarry or any such land or interest belongs to the Government, it shall be presumed to belong to the landowners. In the instant case, the appellant has relied upon Sharat Wajib-ul-Arz Exhibits P34 of the year 1887, P30 of the year 1939-40 and P3 of the year 1955-56. The Sharat, Wajib-ul-Arz for the years 1877 and 1939-49 are almost the same as Sharat

Wajib-ul-Afz for the year 1955-56 which when translated in English, reads as under:

"...In this village no other land or building is owned by the State. However, in future if any mine of any nature is discovered/explored the it will be owned by the State. The State shall have the absolute rights in such mines. However, right holders shall be entitled to claim "compensation for the damage done to the surface of the land as a result of working the mines therein. The State is also entitled to extract stone for its necessity without payment of any compensation from the hillock or river bed."

The plaintiff-appellant has not produced any Sharat Wajib-ul-Arz of Village Mohammadpur Gujar which might have been prepared earlier to November 18, 1871. Therefore the provision of Sub-section (1) of Section 42 the Punjab Land Revenue Act, 1887 are inapplicable in this case. Sub-section (1) c) makes it clear that in the absence of entry in the record-of-rights that any quarry in the land discovered or explored subsequently shall belong to the Government, the quarry which may be discovered/explored in the land later on shall belong to the landowner. It is specifically provided in the Sharat Wajib-ul-Arz relied upon by the appellant that any quarry which may be discovered/explored in the village in future shall belong to the State and not to the right holders; and the State shall alone have the right to work that mine. Therefore, in view of the specific recital in the d Sharat Wajib-ul-Arz the landowners of Village Mohammadpur Gujar have no right in the miner minerals which may be found in the land otherwise recorded in their ownership. The entry in the Sharat Wajib-ul-Arz to the effect that the State shall have the right to extract stones from hillock and the river bed free of costs, relates only to those sites which were being worked as mines at the time of preparation of Sharat Wajib-ul-Arz and do not relate to the mines which maybe discovered or explored subsequent to the preparation of the record-of-rights. The Sharat Wajib-ul-Arz does not disclose that the mines which may be discovered or explored subsequent to the preparation of record-of-rights would belong to the right holders and in those mines the State shall have limited right to extract stones for its personal use. As recited in the Sharat Wajib-ul-Arz, the right holders have only limited right to claim compensation for the damage done to the surface of the land by working the quarry. The appellant has not produced any records or reports made by the assessing officer at the time of assessment to rebut the Presumption created by Sub-section (1). In the absence of any evidence rebutting the presumption it has to be held that the forest, quarry, land or interest shall be held to belong to the Government In Mam Chand''s case (supra), the petitioners had relied upon Sharat Wajib-ul-Arz in respect of village Arangpur prepared in the years 1908-09 and 1940-41 which was couched in identical language. In that Sharat Wajib-ul-Arz it was not expressly mentioned that mineral rights belonged to the Government. On the other hand, the manner in which chalk and Kankar were dealt with in the Sharat Wajib-ul-Arz negatives the ownership of the Government even to chalk and kankar both of which commodities were stated to be available for extraction either by the Government or by the proprietors according to their respective needs. As a fact till the years 1939-40 the proprietors were extracting the chalk to serve as a source of income for themselves which negatives any right of ownership of that mineral vesting in the Government. As regards kankar, although that was not the case in relation to kankar, the position of the Government in regard thereto is no better in view of the absence of any express statement in the Wajib-ul-Arz that it belonged to the Government. Mangat Ram''s case (supra) relates to the lands in Villages Khewra and Palra. The owners of the two parcels of the land situated in the above said villages claimed that they were entitled to win over sub-soil and were also competent to transfer all the rights which they possessed. They transferred that right in favour of Mangat Ram and when he was carrying on the business of extracting sand and was engaged in that activity, the Officers of the State Government stopped him from carrying on the quarrying operations on the ground that the right of ownership of the sand quarries belonged to the State Government. In that context, the Wajib-ul-Arz relating to those villages came to be considered and it was found that there was no mention of the word "sand'' therein. Accordingly, as provided in Sub-section (2) of Section 42 of the Punjab Land Revenue Act, right to quarry sand must be held to belong to the right holders concerned. Therefore, on facts, case law relied upon by the learned counsel for the appellant is not applicable. In the plain itself, it is averred by the plaintiff that he had kept reserved the suit land for plantation of trees and growing, of grass. The stones etc. were not being extracted from the suit land by the plaintiff or his predecessors at the time of preparation of record-of-rights, i.e., Sharat Wajib-ul-Arz Exhibit P3. Admittedly, the stones etc. are being quarried from the suit land. In this view of the matter, the learned Additional District Judge rightly came to the conclusion that it has to be presumed that in this case the mine for extracting the stones has been discovered/explored after the preparation of the record-of-rights. Thus, the mine vested in the State absolutely and the State had the right to work the, mine and to lease out such rights.

13. No other point has been raised or canvassed

14. In view of the discussion above, the appeal being without merit is dismissed. The findings recorded by the learned Additional District Judge are affirmed.

In the circumstances of the case, the parties are left to bear their own costs.

