

(1998) 04 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 639 of 1980 and Civil Miscellaneous No. 600-C of 1980

Sarupa and Others

APPELLANT

Vs

The Panchayati Akhara and Others

RESPONDENT

Date of Decision : 29-04-1998

Acts Referred:

Limitation Act, 1963 — Article 113

Punjab Security of Land Tenures Act, 1953 — Section 18

Citation : (1998) 119 PLR 713 : (1998) 4 RCR(Civil) 454 : (1999) 2 RCR(Civil) 222

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

Bench : Single Bench

Advocate : V.K. Jain and J.L. Malhotra, for the Appellant; M.L. Sarin and Hemant Sarin, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—This is defendant's second appeal directed against the judgment and decree of the Courts below whereby suit of the plaintiff for declaration, has been decreed.

2. Plaintiff filed suit for a decree of declaration to the effect that order of the Collector dated 15.3.1961, declaring the land surplus and all subsequent orders are illegal, void and without jurisdiction and will not affect the rights of the plaintiff. Plaintiff also sought decree for possession in regard to the land measuring 576 kanals 8 marla which had been sold to defendants 4 to 11. The facts giving rise to the appeal as found by the Courts below are as follows :

3. Panchayat Akhara Kala Bara Udasian (plaintiff) was holding land measuring 1468 Bighas 3 Biswas in the year 1953 in village Bhawani Khera, Tehsil Thanesar. Collector, Agrarian vide his order dated 15.3.1961 declared 145 st. acres of land as surplus leaving 30 st. acres for self-cultivation of the Akhara. Plaintiff by filing a suit challenged the order of the Collector and contended that order was passed

ex-parte and therefore, the same is illegal, void and without jurisdiction. Plaintiff also contended that area measuring 356 bighas 3 biswas being Banjar Qadim on 15.4.1953, i.e. the appointed day, did not fall within the definition of "land" as described under the Punjab Security of Land Tenures Act (hereinafter referred to as the Act) and the same was wrongly considered for the assessment of surplus area. Plaintiff also challenged the order of the Authority allowing application u/s 18 of the of the Act filed by defendants 4 to 22 for the purchase of suit land being the tenants. On notice, defendants contested the suit. In the written statement filed by Haryana State, certain preliminary objections were taken, including the one in regard to suit being barred by time. Defendants contended that order of Collector dated 15.3.1961 and subsequent order passed by S.D.O. (Civil) and Naib Tehsildar were legal and they cannot be challenged in Civil Court. On the pleadings of the parties, the following preliminary issues were framed on 6.8.1968 :

1. Whether the suit is bad for multifariousness ?
2. Whether the relief sought in the plaint has not been correctly assessed for purpose of court-fee and jurisdiction ?
3. Whether the full particulars of the land have not been mentioned in the plaint?

Thereafter, on 15.3.1969, the following issues on merits were framed :

1. Whether Mahant Darshan Dass is competent to bring the suit on behalf of the plaintiff?
2. Whether the impugned Order dated 15.3.1961 passed by the Collector (Agrarian) Karnal is bad and illegal for the reasons stated in para No. 6 of the plaint ?
3. Whether the orders granting proprietary rights to defdts. No. 4 to 15 referred to in para No. 8 of the plaint are also illegal, void and without jurisdiction ?
4. Whether the suit is within time ?
5. Whether the Civil Court has jurisdiction to entertain and try the suit?
6. Whether no valid notice u/s 80 C.P.C. was served by the plaintiff ?
7. Whether the suit is bad for multifariousness ?
8. Whether the relief sought in the plaint has not been correctly assessed for purposes of court-fee and jurisdiction ?
9. Relief.

4. On consideration of evidence brought on record, trial Court decreed the suit by saying that the order declaring the land surplus is illegal and not binding on the plaintiff. Since the order declaring the land surplus was quashed, trial Court held that the order allowing the tenant to purchase the surplus area too cannot be

sustained. Resultantly, order of the Authority allowing defendants 4 to 11 to purchase land u/s 18 of the Act was also quashed. Suit was found to be within limitation. First appeal preferred by the defendants other than the State was dismissed. Hence, this second appeal.

5. Learned counsel appearing on behalf of defendants (appellants herein) has contended that the Courts below have erred in law in not dismissing the suit being barred by time. It is contended that order declaring the land surplus was passed on 15.3.1961, but the suit having been filed on 4.5.1968 was clearly barred by time and should have been dismissed as such. Counsel contended that by not dismissing the suit being barred by time, the Courts below have committed a gross legal error. Against this, it is contended by counsel appearing on behalf of the plaintiff that the order passed by the Collector being void ab-initio and non-est can be challenged at any time. Counsel contended that the finding of the Courts below in this regard is correct and calls for no interference in second appeal.

Records perused and counsel for the parties heard.

6. A suit for declaration that the order of the Collector declaring the land surplus is illegal and void ab-initio, is not covered by any specific Article of the Limitation Act and therefore, it must fall within the residuary Article. Residuary Article 113 provides a period of three years for institution of a suit for which no period of limitation has been provided elsewhere in the Schedule of the Limitation Act. This period has to be reckoned from the date the right to sue accrues. Right to sue means a right to obtain relief by means of legal process. The question as to when a right to sue accrues, depends upon facts and circumstances of each case. In the present case, Collector Agrarian, Karnal, passed Order on 15.3.1961. According to his own averments made in para 9 of the plaint, plaintiff learnt about the order of the Collector Agrarian on 29.4.1963 during the proceedings of application u/s 18 of the Act, meaning thereby that the right to seek relief against Order dated 15.3.1961 accrued to the plaintiff on 29.4.1963. In para 10 of the plaint, plaintiff has averred that the plaintiff filed a revision against Order dated 15.3.1961 of the Collector Agrarian, firstly before the Commissioner which was dismissed on 24.6.1964, whereafter a revision was taken to the Financial Commissioner which too was dismissed on 19.9.1964. In para 12 of the plaint, plaintiff averred that the cause of action accrued to him on 29.4.1963 when he learnt about the ex-parte order passed by the Collector Agrarian (Karnal) and subsequently on 19.9.1964 when the Financial Commissioner refused to interfere. In other words, there was an infringement of the plaintiffs right, firstly on 29.4.1963 and finally on 19.9.1964 and the plaintiff filed the present suit on 4.5.1968. Plaintiffs suit having been filed after a period of three years from the date right to sue accrued, was patently barred by time. The contention that suit can be filed any time if the order sought to be a voided is void ab-initio, no longer holds good. Their Lordships of the Supreme Court in State of Punjab and Others Vs. Gurdev Singh, , countered this very argument by saying that "to say

that the suit is not governed by the law of limitation runs afoul of our Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or application instituted after the prescribed "period 1 of limitation" must subject to the provisions of Section 4 to 24 be dismissed although limitation has not been set up as a defence. Section 2(j) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 2(j) also defines, "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Act. The Court's function on the presentation of plaint is simply to examine whether, on the assume facts, the plaintiff is within time. The Court has to find out when the "right to sue" accrued to the plaintiff. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act. The residuary article is applicable to every variety of suits not otherwise provided for. Article (corresponding to Article 120 of the Act, 1908) is a residuary article for cases not covered by any other provisions in the Act. It prescribes a period of three years when the right to sue accrues. Under Article 120 it was six years which has been reduced to three years Under Article 113. According to the third column in Article 113, time commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by defendant against whom the suit is instituted." Their Lordships of the Supreme Court with approval noted the observations of Lord Redcliffe in *Smith v. East Elloe Rural District Council* AIR 1956 S.C. 736 and also summing up of the principle by Prof. Wade in *Administrative Law* 6th Ed. P.352, and held that the party aggrieved by the invalidity of the order has to approach the Court for the relief of declaration that order against him is, inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory times expires, the Court cannot give the declaration sought for. In the instant case, as seen earlier plaintiff has approached the Court after the prescribed period of limitation and therefore, is, not entitled to the declaration sought for.

7. No other point has been urged.

8. For the reasons recorded above, the appeal is allowed, judgment and decree of the Courts below is set aside and as a consequence thereof, suit of the plaintiff shall stand dismissed. No costs.