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(2013) 03 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13603 of 2010 (O and M)

Sucha Singh APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Citation : (2013) 2 PLR 645

Hon'ble Judges : Rekha Mittal, J;Rajive Bhalla, J

Bench : Division Bench

Advocate : Gaurav Mohunta, for the Appellant; Sudeepti Sharma, D.A.G., Punjab for the Respondent Nos. 1 to 3 and Dhirinder Chopra, Advocate for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Rekha Mittal, J.—The petitioners pray for issuance of a writ of certiorari for setting aside orders dated 19.10.2004 and 30.12.2009 (Annexures P3 and P5), passed by the Collector-cum-Divisional Deputy District Director, Rural Development and Panchayat, Patiala and the Commissioner, Rural Development and Panchayat, Punjab, respectively, u/s 11 of the Punjab "the 1961 Act"). Before proceeding to adjudicate the rights of the parties, it would be appropriate to narrate the relevant facts. The petitioners filed a suit for declaration of their ownership in respect of land, measuring 25 bighas 1 biswa, situated in the revenue estate of village Janetpur, Tehsil Derabassi, District Patiala, by pleading that they are in continuous possession of the land, in dispute before 26.01.1950, it is excluded from ''shamilat deh''. The petition filed by the petitioners was dismissed by the Collector, by holding that they have failed to establish their continuous possession since 1950. The petitioners preferred an appeal before the Appellate authority but the same was also dismissed.

2. The petitioners claim ownership of the land, in dispute, mainly, on two counts;

a) the land has been partitioned and brought under cultivation by individual land

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holders before 26.01.1950 (Section 2(g)(iii) of ''the 1961 Act''); and

b) the land has been in cultivating possession of co-sharers before 26.01.1950 and the same is not in excess of their share in ''shamilat deh'' (Section 2(g)(viii) of ''the 1961 Act'')

3. Counsel for the petitioners has placed reliance upon the jamabandi for the year 1940-41, to substantiate his contention that Inder Singh, predecessor-in-interest of the petitioners has been recorded to be in cultivating possession of land, in dispute. The jamabandi for the year 1960-61 records pre and post consolidation khasra numbers and the land, in dispute was allotted in lieu of khasra numbers previously in cultivating possession of said Inder. It is submitted that the Collector and the Commissioner have failed to appreciate the revenue record and wrongly ignored the entries in the jamabandies, showing continuous cultivating possession of the petitioners prior to 26.01.1950.

4. Counsel for the Gram Panchayat submits that as the petitioners failed to establish their plea of cultivating possession of the land, in dispute before 26.01.1950 much less any evidence that ''shamilat khewat'' was partitioned amongst the proprietors of the village before 26.01.1950, the Collector and the Commissioner have rightly held against the petitioners. It is further prayed that the writ petition filed by the petitioners is liable to be dismissed.

5. We have heard counsel for the parties, perused the impugned orders and the paper book.

6. The dispute in the present case, is whether the land, in dispute, is ''shamilat deh'' as defined u/s 2(g) of ''the 1961 Act'' or is excluded therefrom by virtue of Section 2(g)(iii) or (viii) of ''the 1961 Act''. The petitioners urge that the land is excluded from ''shamilat deh'' by Section 2(g)(iii) and/or Section 2(g)(viii) of ''the 1961 Act''. It would, therefore, be appropriate to reproduce relevant extracts from Section 2(g) of ''the 1961 Act'', which read as follows:-

2(g) "shamilat deh" includes-

(1) lands described in the revenue records as shamilat deh or charand excluding abadi deh;

(2) XX XX XX

(3) XX XX XX

(4) XX XX XX

(5) XX XX XX

2(g) but does not include land which-

(i) XX XX XX

(ii) XX XX XX

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

(iv) XX XX XX

(v) XX XX XX

(vi) XX XX XX

(vii) XX XX XX

(viii) was shamilat 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;

7. Section 2(g)(1) of ''the 1961 Act'' contemplates that ''shamilat deh'' includes land described as ''shamilat deh''. Section 2(g)(iii) of ''the 1961 Act'' provides that the land that has been partitioned and brought under cultivation by individual land holders before 26.01.1950 shall be excluded from ''shamilat deh''.

8. A person claiming that his land is excluded from ''shamilat deh'' u/s 2(g)(iii) of ''the 1961 Act'', shall be required to prove that (a) the land was partitioned before 26.01.1950; and (b) was brought under cultivation by individual land holders.

9. The petitioners rely upon jamabandis for the years 1940-41, 1960-61, 1980-81, 1990-91, 1995-96 and 2005-06. A perusal of these documents does not reveal any reference to a partition much less a partition of the ''shamilat khewat'' whether by revenue authorities or by way of a private partition. The jamabandi for the year 1940-41 clearly records that the land is ''Shamilat Deh Hasab Rasad Halsari'' and one Inder is recorded as a co-sharer. The recording of Inder, the alleged predecessor-in-interest of the petitioners, as a co-sharer, clearly negates the plea of partition. If the land had been partitioned, Inder would not have recorded as co-sharer but as an ordinary owner.

10. The petitioners, in the alternative, have claimed their ownership on the premise that the land is excluded from ''shamilat deh'' u/s 2(g)(viii) of ''the 1961 Act''.

11. A person claiming that his land is excluded from ''shamilat deh'' u/s 2(g)(viii) of.

12. The only document in regard to the plea of cultivating possession of the petitioners prior to 26.01.1950, is the jamabandi for the year 1940-41, wherein, Inder, a co-sharer, has been recorded to be in possession of certain khasra numbers, extracted herein below:-

13. Inder, a co-sharer, has also been recorded in possession of land comprising other khasra numbers but the nature of that land has not been described. A relevant extract in regard to possession of Inder, a co-sharer, in other khasra numbers reads as under:-

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14. Thus, there are two sets of khasra numbers recorded in possession of Inder but land measuring 7 bighas 3 biswas alone recorded as barani is the cultivated land. The petitioners were required to substantiate their plea that Inder was in ''cultivating possession'' of land comprised in other khasra numbers as well, but in the absence of any evidence of the nature of the land, we cannot hold that Inder was in cultivating possession of the other khasra numbers. No other jamabandi, relevant in the present context, to prove cultivating possession of Inder before 26.01.1950 has been produced.

15. As regards 7 bighas 3 biswas, the petitioners have to cross a few other hurdles before we can consider whether any relief can be granted.

16. As the petitioners did not produce any document to establish the identity of the land, in dispute viz-a-viz the pre consolidation numbers in cultivating possession of Inder, therefore, this Court passed an order dated 19.09.2012, which reads thus:-

A perusal of the revenue record appears to prima facie suggest that predecessors of the petitioners were in "cultivating possession" of the land, in dispute, prior to 26.01.1950, as recorded in jamabandi for the year 1940-41. In the absence of any evidence to establish the identity of pre and post consolidation numbers, we cannot, at this stage, hold in favour of the petitioners.

Faced with this situation, counsel for the petitioners prays for time to place material on record so as to tally pre and post consolidation numbers.

Adjourned to 16.10.2012.

17. The petitioners, in order to comply with this order, produced jamabandi for the year 1960-61 (Annexure A-1), available at page 119 of the paper book. The relevant entries of this jamabandi in column Nos. 4 to 8 are extracted for facility of reference:-

18. A perusal of jamabandi for the year 1960-61 reveals that khasra number 1375/27 and 1376/27 are the only khasra numbers which were recorded to be in cultivating possession of Inder, as per jamabandi for the year 1940-41. The other khasra numbers shown below the heading ''previous'' are not proved to be in possession much less cultivating possession of Inder prior to 26.01.1950. In lieu of previous (old) khasra No. 1375/27, land comprising khasra No. 7, measuring 4 bighas (barani) was allotted and for khasra No. 1376/27 and 28, land measuring 4 bighas 6 biswas (barani) in khasra No. 14 has been allotted.

19. Another significant ingredient to seek exclusion of land, in dispute from ''shamilat deh'' u/s 2(g)(viii) of ''the 1961 Act'' is that the land in the individual cultivating possession of a co-sharer is not in excess of his (Inder''s) share in such ''shamilat deh''.

20. The petitioners have failed to adduce any evidence in respect of shareholding of Inder in ''shamilat deh'' in order to substantiate their plea that the land in

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possession of Inder was not in excess of his share in such ''shamilat deh''. The following order was passed on 3.08.2010:-

Counsel for the petitioners prays for time to place on record, a revenue document disclosing the petitioners shareholding.

Adjourned to 12.08.2010.

21. In response thereto, the petitioners filed an application (CM No. 10782 of 2010) to place on record copy of mutation (Annexure P6), showing the extent of their shareholding. The petitioners were allowed to place on record, a copy of mutation in vernacular (Annexure P6) and its translation (Annexure P6/T). A perusal of these documents reveal that they pertain to sanction of mutation on the basis of inheritance vide registered will bearing No. 267 dated 28.11.1995 with regard to inheritance of Babu Singh son of Gian Singh son of Inder Singh, 1/4th share in favour of petitioners Sucha Singh and others. The document does not reveal the shareholding of Inder or of the petitioners in ''shamilat deh''. The petitioners have failed to prove one of the essential ingredients of Section 2(g)(viii) of ''the 1961 Act'', namely the shareholding of Inder or of the petitioners in ''shamilat deh''.

22. Any will purported to be executed by Babu Singh, grand son of Inder Singh in favour of the petitioners has neither been pleaded nor produced before the authorities under ''the 1961 Act'' or in the present proceedings. Thus the petitioners have failed to establish their plea that they are the successors-in-interest of Inder.

23. This apart, there is no evidence on record that the land in cultivating possession of Inder before 26.01.1950 was assessed to land revenue, except khasra number 1375/1272 min (0-4). As none of the khasra numbers, in dispute, was allotted in lieu of khasra No. 1315/1272 min, assessment of land revenue in regard to khasra No. 1375/1272 is of no avail or significance. On the contrary, the petitioners have failed to adduce any evidence that land comprising khasra No. 1375/27 and 1376/27 (old) proved to be in cultivating possession of Inder before 26.01.1950 in lieu whereof land, in dispute, comprising khasra No. 7(4-0) and 14(4-6) was allotted during consolidation, was assessed to land revenue before 26.01.1950.

24. The petitioners are the sons of Babu Singh son of Gian Singh son of Didar Singh. The petitioners have not averred much less adduced any legal or tangible evidence to establish their relation with said Inder. Even presuming but not accepting that the petitioners are successors-in-interest of Inder, they have failed to adduce any evidence in respect of the share of Inder in such ''shamilat deh'' and further that the land in cultivating possession of Inder comprising khasra No. 1375/27 and 1376/27 was assessed to land revenue. In this view of the matter, the petitioners have miserably failed to substantiate their plea that they have become the owners of the suit land by virtue of its exclusion u/s 2(g)(iii) and/or 2(g)(viii) of ''the 1961 Act''. In view of what has been discussed here-in-above,

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the petition is dismissed, the impugned orders passed by the Collector and the Commissioner are affirmed. No order as to costs.

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