2025:PHHC:005450

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-313-1992(O&M)
Pronounced on: 16.01.2025

PEHALAD (DECEASED) THROUGH LRS AND OTHERS

…Petitioner(s)

Versus

GRAM PANCHAYAT YADUPUR AND ANOTHER

…Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Puneet Jindal, Sr. Advocate with
Mr. Rahul Bansal, Advocate for the appellants.

Mr. Amar Vivek Aggarwal, Advocate with
Mr. Abhishek Goyal, Advocate for respondent no.1.

TRIBHUVAN DAHIYA, J.

This is plaintiffs/appellants' first appeal against the judgment and decree of reversal, dated 15.01.1992, passed by the First Appellate Court.

2. The plaintiffs/appellants with defendant/respondent no.2 filed a suit for declaration and injunction, dated 19.12.1984, claiming to be owners/proprietors in possession of land measuring 532 kanals, 3 marlas situated within revenue estate of village Papri, Tehsil (now District) Palwal, as per their shares recorded in jamabandi for the year 1951-52. It was pleaded that during the consolidation of holdings the suit land had been given to them *in lieu* of their land comprising in khewat no.1, khatoni no.1 to 27. However, the authorities wrongly entered the name of defendant/respondent no.1/Gram Panchayat, Yadupur, in the revenue record as owner *qua* this land. This deletion of their names, as also of their predecessors-in-interest, as owners of the suit land was in violation of provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, 'the Act of 1948') and the rules made thereunder. There was no area of shamlat

deh in village Papri prior to consolidation, nor had the Gram Panchayat ever exercised its right of ownership against the suit land. Once they started threatening to interfere with the plaintiffs/appellants' possession on the basis of wrong revenue entries, the instant suit for declaration was filed.

2.1. The suit was contested by defendant/respondent no.1/Gram Panchayat, disputing the plaintiffs/appellants' claim of ownership. The suit land according to them was a shamlat deh land, which was reserved during consolidation proceedings and had been vested in the Panchayat for the benefit of village community and their common purposes. It was also pleaded that the orders of consolidation and revenue authorities to that effect were never challenged by the plaintiffs/appellants in any Court; the same attained finality and could not be challenged after a period of about thirty years.

2.2. On the pleadings of the parties, the following issues were settled by the trial Court:

1) Whether the plaintiffs are owners in possession of the suit land as alleged, if so, to what effect? OPP
2) Whether the civil court has got no jurisdiction to try the present suit? OPD
3) Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
4) Whether the plaintiffs are estopped by their acts and conduct to file the present suit? OPD
5) Whether the suit of the plaintiffs is false and frivolous and the same is liable to be dismissed with special costs? OPD
6) Relief.

2.3. The trial Court decreed the suit in the plaintiffs/appellants' favour holding them to be owners of the suit land and that Civil Court had jurisdiction to hear the matter. The Gram Panchayat went in appeal against it wherein the findings were reversed by the lower Appellate Court and the suit

was dismissed with costs vide impugned judgment and decree dated 15.01.1992. The trial Court judgment was reversed mainly on three grounds; firstly, it was held, as the order of consolidation authorities had not been challenged by the plaintiffs/appellants before the Appellate or Divisional Authorities under the Act of 1948, the same could not be assailed in the civil suit; secondly, the suit was held to be barred by limitation as it had been filed after thirty years of entry of mutation in favour of the Gram Panchayat and recording of the subsequent jamabandi; and, thirdly, the Civil Court had no jurisdiction to decide the issue as per the provisions of Section 44 of the Act of 1948.

3. In this factual background, learned senior counsel for the plaintiffs/appellants argued that the judgment passed by the lower Appellate Court was not sustainable since the Consolidation Scheme, though framed on 13.01.1954, had never come into effect. It was framed for village Papri which was in uninhabited/*bey chirag* village as per revenue record and never came into existence. Resultantly, the land which was reserved for common purposes by dividing the suit land in the consolidation could never be utilised, as Gram Panchayat of Papri was never formed. Therefore, there was no cause for the plaintiffs/appellants to challenge the Scheme before authorities under the Act of 1948. The cause of action to challenge the order of Consolidation Officer accrued to them only when the Panchayat tried to take over possession of the suit land. And as per the settled law, limitation does not start running from the date of mutation or entry in the revenue record; instead, it starts only when the rights of the parties are threatened. Since plaintiffs/appellants had undisputedly been shown as owners in the revenue record up to 1951-52, and continued to be so, their rights could not be extinguished upon passing of

orders by the consolidation authorities which never came into effect. In support of his submissions, he has relied upon the judgments in *Hazari and another* v. *Roop Narain*, 1974 AIR (Punjab) 347, and *Jaswant Kaur and others* v. *Faquiria*, 2012(4) PLR 713. Lastly, it has been contended by the learned senior counsel that in terms of law laid down by the full Bench in *Parkash Singh and others* v. *Joint Development Commissioner, Punjab and others*, 2014(2) RCR(Civil) 721, the Civil Court has jurisdiction to decide the suit, and the plaintiffs/appellants could not have been non-suited for want of jurisdiction.

4. *Per contra*, learned counsel for the respondent/Gram Panchayat contends that filing of the suit is an abuse of the process of law, as it has been filed after unexplained delay of more than thirty years and is liable to be dismissed on this ground itself. Also, the plaintiffs/appellants are the second and third generation descendants of the original land owners, and there is no material on record to establish as to why their predecessors-in-interest did not approach the Court earlier. Secondly, in case there was any irregularity or illegality in the Consolidation Scheme, it was required to be challenged within a reasonable time by availing appropriate remedies under the Act of 1948 which the plaintiffs failed to do. Once the Scheme has attained finality it cannot be questioned. Thirdly, the Scheme of Consolidation earmarking the land for common purposes was made by the consolidation authorities, and the Panchayat was only a beneficiary, still the authorities have not been impleaded as parties to the suit. In their absence, the onus to establish legality or otherwise of the Scheme was on the plaintiffs which they failed to discharge. Accordingly, on account of non-joinder of necessary parties also the suit is liable to be dismissed. Fourthly, there is a presumption of truth

attached to the Consolidation Scheme, Exhibit P-6, dated 10.03.1954, under Section 90 of the Indian Evidence Act, as it is a more than thirty years old document. In fact, the document has been exhibited by the plaintiffs themselves, and it could not have been challenged by them. Further, one of the plaintiffs, Girraj, who appeared as PW4, admitted that he was present at the time of consolidation in 1955; presence of some other plaintiffs has also been recorded in Exhibit P-6. They cannot now turn around and challenge that very Scheme. This is a finding of fact recorded by the lower Appellate Court as well, which is not to be interfered with in second appeal. In support of the contentions, he has relied upon the law laid down by the Supreme Court in *Gram Panchayat, Kakran* v. *Additional Director of Consolidation and another*, 1997(8) SCC 484, wherein challenge to the Consolidation Scheme after an inordinate delay of about forty years without any specific explanation was declined.

5. Arguments advanced by learned counsel for the parties have been considered, and record has been perused.

6. Originally the suit land was part of one khewat which was under the ownership of the plaintiffs/appellants and the second defendant, as established by jamabandi for the year 1951-52, Ex. P-5. It is also a matter of record that village Papri is uninhabited, having no population. Consolidation of holdings was done in 1954-55, vide Ex. P-1 and P-2, and the suit land was reserved for common purposes as shamlat deh of village Papri, which was transferred/vested in the name of defendant/Gram Panchayat. There is an order by the Consolidation Officer, dated 13.01.1954, Ex. P-2, reserving the land as shamlat deh for common purposes. It was passed in the presence of land owners and read over to them as well. Another document, Ex.P-6, is also

on the file establishing that the land reserved as shamlat deh was mutated in the name of defendant/Gram Panchayat; and the mutation was sanctioned by the competent authority in the presence of plaintiffs Radhey Shyam, Husan Lal, Girraj and Devi Ram, Numberdar, on 07.09.1957. Subsequent jamabandis on that basis also stood recorded, viz., for the years 1963-64 and 1968-69, Ex. P-11 and P-12, respectively, wherein the Panchayat was shown as owner in possession of the suit land. Further, PW4/Girraj himself admitted that he was aware of the revenue entry/mutation sanctioned in 1957. The plaintiffs, accordingly, cannot be considered to be in possession of the suit land, as the unchallenged revenue record belies this claim. Resultantly, it cannot be claimed that no cause of action accrued despite framing of the Consolidation Scheme or entering of the mutation.

6.1. Besides, the aforementioned facts also establish that the plaintiffs were well aware of the entries in the revenue record, as the mutation was sanctioned in the presence of some of them, but they failed to challenge either the mutation or the subsequent jamabandi entries. And filed the instant suit for declaration, that too after more than thirty years in 1984 which was not maintainable being beyond limitation and rightly dismissed by the lower Appellate Court. The contention that the Consolidation Scheme was framed for a *bey chirag*/uninhabited village Papri and never came into existence, nor could the land have been utilised for common purposes of such a non-existent village in terms therewith, is without substance. It is because, the Scheme or its having been prepared for a non-existent village was never disputed by the plaintiffs, despite being aware of it. Nor did they challenge transfer of the reserved land to the defendant/Gram Panchayat at any stage. In case there was any irregularity or illegality about the Scheme or the transfer, it could not

have been corrected without being challenged which was never done. The Scheme thus attained finality and the plaintiffs had no right to challenge the same or the revenue entries recorded on that basis after thirty years by filing the suit.

6.2. A reference in this regard can be made to the *Gram Panchayat, Kakran* case (*supra*), holding as under:

> 4. This, however, cannot be understood as enabling the party which is aggrieved by the scheme or by repartition to make an application under Section 42 after an unreasonably long lapse of time. Even where no period of limitation is prescribed, the party aggrieved is required to move the appropriate authority for relief within a reasonable time. In fact this Court in the case of *Gram Panchayat* v. *Director, Consolidation of Holdings*[2] dealing with Rule 18 itself, said that when no limitation is prescribed for an application under Section 42 dealing with confirmation of the scheme, the application should be made within a reasonable time and this question will have to be decided on the facts of each case. In that case the delay of about 3 years and 8 months in filing an application under Section 42 by the Panchayat was held to be not unreasonable. In the present case, however, the delay is of 40 years. We have tried to ascertain from the 2nd respondent whether there is any explanation for this unreasonable and inordinate delay. But no satisfactory explanation appears to be there for this inordinate delay in making the application under Section 42. The only contention which has been urged before us by Respondent 2 relates to the application of Rule 18 and the period of limitation prescribed therein not being applicable where the challenge is to the consolidation scheme and repartition. But even if Rule 18 is not directly attracted, an application which is made after such inordinate delay ought not to have been entertained. It is also contended by the 2nd respondent that the appellants have no locus standi to challenge the order of the Additional Director of Consolidation in a writ petition because

> the land in question continued to remain in the name of the proprietory body. He drew our attention to Rule 16(ii) of the said Rules. Rule 16(ii), however, quite clearly provides that the management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietory party and the Panchayat shall have to utilise the income and the benefits of the estate or estates concerned. Even before the Additional Director, the appellants were made a party-respondent. This contention, therefore, has no merit.

6.3. The lower Appellate Court has recorded a finding on issue no.2 that under Section 44 of the Act of 1948 Civil Court has no jurisdiction to go into the validity of repartition/consolidation proceedings. In case re-partition was against the Consolidation Scheme, the proper course for the plaintiffs was to approach the consolidation authorities. The finding is contrary to law laid down by the full Bench in *Parkash Singh* case, wherein it has been held that s*hamlat deh and jumla mushtarka malkan* are two distinct varieties of common land; the former was in existence before consolidation, whereas the latter was created during the consolidation. It has further been held that the Act of 1948 does not provide a forum for a person to agitate his rights against wrongly reserving the land for common purposes during consolidation, and only Civil Court is the appropriate forum for such a dispute. A reference can be made to paragraph 63 of the judgment in this regard, which is as under:

> 63. The question that now remains is to identify the forum, a person who raises a plea that the land is not “Jumla Mushtarka Malkan” or that it was created by applying an illegal pro rata cut or that the land was not reserved for common purposes during consolidation, would be required to approach. After due consideration of the entire matter, we find no provision in the 1961 Act, the 1976 Act or the Consolidation Act that provides a forum to a person who raises such a plea and, therefore, in the

> absence of any fora for deciding such a dispute a person may have to approach a Civil Court but Section 44 of the Consolidation Act prohibits a Civil Court from entertaining any matter which the State Government or any officers are empowered by the Consolidation Act to determine or dispose of. Section 44, however, cannot be read to prohibit Civil Courts from deciding a question of title relating to "Jumla Mushtarka Malkan" as what is prohibited by Section 44 is matters that fall to the jurisdiction of State Government or to any officer duly empowered by the Consolidation Act to decide. The Consolidation Act does not confer power whether on the State Government or the officers empowered thereunder to decide a question of title. The jurisdiction of a Civil Court to entertain a dispute regarding "Jumla Mushtarka Malkan" is, therefore, not barred by Section 44 of the Consolidation Act. The only forum available to a person, who raises a dispute regarding title in "Jumla Mushtarka Malkan" is the principal Court of civil jurisdiction having jurisdiction in the matter, as provided by Section 9 of the Code of Civil Procedure, i.e., a Civil Court.

Accordingly, finding of the lower Appellate Court on issue no.2 to the extent it holds that the Civil Court has no jurisdiction to try this suit, is set aside being contrary to the law laid down by the full Bench.

6.4. The reliance placed by the learned senior counsel for the plaintiffs/appellants on the judgments in *Hazari* case and *Jaswant Kaur* case, is misplaced as the same have no application to the facts of the instant case. The judgments lay down, if adverse entries have been made against a person in the revenue record despite being in physical possession of the property, he is under no obligation to bring a suit. It is only when his rights are actually jeopardised and there is a clear threat to infringe the possession, that he must take resort to proceedings within three years therefrom. In the instant case, however, in the face of jamabandi entries recording the Gram Panchayat in

possession over the suit land, it cannot be said there was no threat of infringement of possession to the plaintiffs and the cause of action did not accrue to them. Besides, their actual physical possession over the land has also not been established, as discussed herein before. Therefore, the suit is barred by limitation and has rightly been dismissed by the lower Appellate Court.

6.5. In view of the discussion, the second appeal is dismissed by upholding the impugned judgment, dated 15.01.1992, passed by the lower Appellate Court, except its finding on issue no.2. The plaintiffs/appellants' suit, accordingly, stands dismissed with costs.

7. Pending miscellaneous application(s), if any, shall also stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

16.01.2025
Ad

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*