

Ram Singh and Others

Vs

Gram Panchayat Mehal Kalan and Others

Special Leave Petition (Civil) No. 7309 of 1986

(E. S. Venkataramiah, V. Khalid JJ)

22.09.1986

ORDER

VENKATARAMIAH, J. -

1. The petitioners were plaintiffs. They instituted a suit in representative capacity under Order 1 Rule 8 of the Code of Civil of Procedure in the Court of the Additional Senior Sub-Judge, Barnala for a declaration that they were the owners in possession of the suit land along with some others, that the Gram Panchayat, Mehal Kalan, Tehsil Barnala, District Sangrur in the State of Punjab (hereinafter referred to as 'the Panchayat') had no sort of right in the suit land and that the suit land had been wrongly shown as belonging to the Panchayat by the entries made in the revenue records which were not binding on the plaintiffs and for an injunction, restraining the Panchayat from interfering with their possession. The Panchayat in the course of its written statement inter alia pleaded that the court before which the suit had been instituted had no jurisdiction to try it by virtue of the provisions of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (Punjab Act 18 of 1961) (hereinafter referred to as 'the Act'). The trial court framed an issue relating to its jurisdiction and tried it as a preliminary issue. It held that since the question involved in the suit was simply one of title to the suit land and it was not necessary to decide whether the suit land was shamlat deh of not and whether the land had validly vested in the Panchayat or not being shamlat deh, it had jurisdiction to try the suit. Aggrieved by the said finding recorded by the trial court, the Panchayat filed a revision petition before the High Court of Punjab and Haryana in Civil Revision Petition No. 571 of 1986. The learned Judge who heard the revision petition came to the conclusion that the issues involved in the suit were not treble by a civil court by virtue of Section 11 read with Section 13 of the Act and accordingly he held that the suit was not maintainable before this civil court. The plaintiffs have preferred this petition before this Court under Article 136 of the Constitution of India requesting the Court to grant leave to prefer an appeal against the decision of the High Court.

2. Section 2(g) of the Act defines the expression 'shamlat deh' as under :

2(g) 'shamlat deh' includes -

(1) lands described in the revenue records as shamlat deh excluding abadi deh;

(2) shamlat tikkas;

(3) lands described in the revenue records as shamlat, tarafs, pattis, pannas and tholas and used according to revenue records for the benefit of the village community or a

part thereof or for common purposes of the village;

(4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells, or ponds within abadi deh or gorah deh; and

(5) lands in any village described as banjar qadim and used for common purposes of the village according to revenue records :

Provided that shamlat deh at least to the extent of twentyfive per centum of the total area of the village does not exist in the village;...

3. The Act was amended by the Punjab Village Common Lands (Regulation) (Amendment) Act, 1976. Section 7 of the above Amending Act substituted the original Sections 11, 12 and 13 of the Act by new sections. After the amendment Sections 11, 12 and 13 read as follows :

11. Decision of claims of right, title or interest in shamlat deh. - (1) Any person claiming right, title or interest in any land vested or deemed to have been vested in a Panchayat under this Act, or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed.

(2) Any person or a Panchayat aggrieved by an order of the Collector made under sub-section (1) may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form and manner as may be prescribed and the Commissioner may after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit.

12. Finality of orders. - Save as otherwise expressly provided in this Act, every order made by the Collector or the Commissioner shall be final and shall not be called in question in any court by way of appeal or revision or in any original suit, application or execution proceedings.

13. Bar of jurisdiction of civil courts. - No civil court shall have jurisdiction -

(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not shamlat deh vested or deemed to have been vested in a Panchayat under this Act; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat under this Act; or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.

4. Section 11 of the Act provides that any person claiming right, title or interest in any land vested or deemed to have been vested in a Panchayat under the Act, or claiming that any land has not so vested a Panchayat, may submit to the Collector, within such time as may be prescribed, a statement

of his claim in writing and signed and verified in the prescribed manner and that the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed. Any person aggrieved by the decision of the Collector is entitled to prefer an appeal to the Commissioner. Under Section 12 of the Act every order made by the Collector or by the Commissioner, as the case may be, is final save as otherwise expressly provided in the Act and such order cannot be called in question in any court by way of appeal or revision or in any original suit, application or execution proceedings. Section 13 of the Act provides that no civil court shall have jurisdiction to entertain or adjudicate upon any question whether any property or any right to or any interest in any property is or is not shamlat deh vested or deemed to have been vested in a Panchayat under the Act or to question the legality of any action taken by the Commissioner or the Collector or the Panchayat under the Act or in respect of any matter which the Commissioner or the Collector is empowered by or under the Act to determine. The contention of the Panchayat before the trial court was that the land in question was shamlat deh and it had been vested in it.

5. It is no doubt true that the plaintiffs who claimed to be the owners along with some others of the suit land had avoided to seek a declaration that the suit land was not shamlat deh. They had, however, questioned the correctness of the entries in the revenue records which showed that the Panchayat was entitled to the suit land. The plaintiffs cannot by drawing their plaint cleverly by not claiming a declaration that the land in question was not shamlat deh confer jurisdiction on the civil court when by virtue of Section 13 of the Act the jurisdiction of civil courts to try such suits had been taken away. In the instant case the had been filed against the Panchayat and the Panchayat had expressly claimed that the land in question belonged to it as shamlat deh. It will not be possible in the circumstances for the civil court to make a declaration in favour of the plaintiffs without deciding the question whether the property in question was shamlat deh or not and whether it belonged to the Panchayat or not. Reliance was however placed by the counsel for the petitioners on a decision of the Punjab and Haryana High Court in Bhagu v. Ram Sarup [1985 Punj LJ 366] in which the suit had been held to be maintainable in a civil court even though the defendant had contended that the land involved in that suit was shamlat deh. The High Court found that the plaintiff in that case had only stated in the plaint that the land in question was 'gali sheh-re-aam' or a thoroughfare belonging to the Gram Panchayat which was being used by the plaintiff as an approach to his house for about 30 years and had prayed for an injunction restraining the defendant from interfering with his right. The Gram Panchayat in question had not been impleaded as a defendant. The plaintiff in that case had not claimed that the suit land belonged to him or that it did not belong to the Gram Panchayat. The crucial issue which had been framed in that case was whether the land in question over which the plaintiff had asserted his right was a street or not and whether the defendant had blocked the said street. The High Court held in the circumstances of that suit that the jurisdiction of the civil courts had not been taken away by virtue of Section 13 read with Section 13-A and 13-B of the Act which had been inserted by the Haryana legislature into the Act. We are of the view that the above decision is clearly distinguishable from the present case since in this case the Panchayat which had been impleaded as a defendant had raised the plea that the suit land was a part of shamlat deh and that the plaintiff had no right or title in it. This question has to be decided by the Collector only under Section 11 of the Act are not by the civil court. We do not, therefore, find any ground to interfere with the judgment of the High Court of Punjab and Haryana against which this petition is filed. The petition is dismissed.

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