

Hari Parkash and Others

Vs

Lakshmi Narain and Others.

Civil Appeal No. 4679 of 1994

(J.S. Verma, N. P. Singh JJ)

29.08.1995

JUDGMENT

N. P. SINGH, J. -

1. This appeal has been filed against the order of the High Court by which the appeal filed on behalf of the plaintiffs- respondents (hereinafter referred to as the 'respondents') was allowed. The High Court set aside the judgment of the court of appeal and restored that of the trial court.

2. The respondents filed the suit in question for partition of the land specified in the plaint on 10-4-1974. A petition under Order 1 Rule 8 of the Code of Civil Procedure was also filed. The preliminary decree for partition was passed on 1-6-1974. During the preparation of the final decree certain objections were filed, one of them being that the land having vested in the Gram Panchayat under the provisions of the Punjab Village Common Lands (Regulations) Act, 1961 (hereinafter referred to as the 'Act') no preliminary decree could have been passed for partition of the same. The trial court passed an order on 14-4-1978 saying that as the suit lands which were sought to be partitioned had vested in the Gram Panchayat of the village, they could not be partitioned; in that view of the matter no further steps for preparation of the final decree was required to be taken. The respondents filed an appeal which was dismissed holding that in view of Section 13-B of the Act the suit was not maintainable before the civil court. On second appeal (SAO No. 48 of 1979) being filed on behalf of the respondents before the High Court, the order passed by the trial court as well as the court of appeal were set aside on 10- 11-1983 and direction was given by the High Court to the trial court to proceed with the case from the stage, "prior to passing of judgment and decree dated 14-4-1978" meaning thereby that further steps for preparation of the final decree be taken. The appellants filed their objections on 4-11-1986 after about three years of the direction give by the High Court. There is no dispute that they never appeared or filed any objection at any stage earlier. Their objection was rejected on 5-2-1987 and the final decree was signed by the trial court on 5-2-1987 itself. An appeal was filed on behalf of the appellants against the order rejecting their objection. The Additional District Judge allowed the said appeal and directed fresh trial in accordance with law. Thereafter, the respondents filed second appeal (SAO No. 7 of 1989) aforesaid before the High Court making a grievance that the Additional District Judge could not have gone into the question as to whether the provisions of Order 1 Rule 8 of the Code had been complied with or not, as a preliminary decree had already been passed. It was also pointed out that the said preliminary decree had been challenged on the same ground and the matter came up to the High court and the High Court directed the trial court to proceed with the preparation of the final decree. The second appeal filed on behalf of the respondents as already stated above was allowed by the High Court and the order passed by the appellate court was set aside and that of the trial court was restored which is under challenge in the present appeal.

3. Section 2(g) of the Act defines 'shamilat deh'. In view of clause (4a) of Section 2(g) it shall include "Vacant land situate in abadi deh or gora deh not owned by any person". This clause (4a) was introduced in Section 2(g) of the Act on 23-6-1973 and was deleted on 12-2-1981. It appears that it has been reintroduced on 25-11-1983 w.e.f. 12-2-1981. According to the appellants in view of Section 2(g), (4a) and Section 4(1) the land in dispute shall be deemed to be 'shamilat deh' and as such it shall be deemed to have vested in the Gram Panchayat.

4. If the Gram Panchayat concerned was before us, we would have examined this aspect of the matter in detail. But we are not inclined to examine the question aforesaid at the instance of the appellants who were neither parties to the suit nor appeared before the preliminary decree was passed. They filed the objection as late as on 4-11-1986 about 12 years after the passing of the preliminary decree. As already mentioned above some persons had filed objection during the preparation of the final decree and in that raised by the appellants was rejected by the High Court and direction was given to the trial court to proceed with the preparation of the final decree. That judgment of the High Court became final as early as in the year 1983. The appellants filed objections for the first time on 4-11-1986. In such a situation, we are left with no option but to dismiss this appeal.

5. The appeal is accordingly dismissed. However, in the circumstances of the case there shall be no order as to costs. We make it clear that this judgment shall not prejudice the Gram Panchayat in any manner if they want to pursue any remedy available to them in law.