

SUPREME COURT OF INDIA

Sarjeet Singh (D) Th.Lrs.

Vs.

Hari Singh

C.A.No.9722 of 2014

(Dipak Misra and Vikramajit Sen JJ.)

15.10.2014

JUDGMENT

VIKRAMAJIT SEN,J.

Leave granted.

1. The Appellants essay to restore the concurrent views of the Additional Civil Judge (Senior Division) Rewari, in Civil Suit No.308 of 1997 in terms of the Judgment and Decree dated 27.8.2002, as also the Judgment and Decree dated 11.12.2008 passed by the Additional District Judge, Rewari, in Civil Appeal No.50 of 2002. Their views, however, did not find favour with the High Court in the impugned Judgment dated 7.9.2012 passed in Regular Second Appeal No.1346 of 2009.

2. The parties are shareholders of Shamilat Patti Sayar of land comprised in Khewat No.300 Khatoni No.551, Khasra No.622(O-10), Gair Mumkin Gatwar, situated in village Dahina, as per the jamabandi of the year 1970-71. The Plaintiffs/Appellants filed a suit for declaration, and possession of the suit land against the Defendants/Respondents. The Plaint does not contain a categorical stand as to whether the Defendants/Respondents are co- sharers along with the Plaintiffs/Appellants in respect of the suit land. It has been pleaded that the Defendants have no concern whatsoever with the suit land which has not been validly partitioned among the co-sharers. The Written Statement is also devoid of clarity inasmuch as it is pleaded that

the Plaintiffs are not in possession of the suit land and have no right to file the suit; but that constructions have been carried out by the Defendants in the presence of the Plaintiffs, as well as other persons mentioned in Schedule A of the Plaint, which contains the names of the co- sharers of the suit land. It is then pleaded in the Written Statement that the suit land was allotted to Hardwari and Mangal and that their legal heirs had executed an oral transfer of the land in favour of the Defendants, who became co-sharers to the extent of 3/192 in the Shamilat Patti Sayar, (obviously along with other co-sharers, including the Plaintiffs). The Defendants have also pleaded that the oral transfer took place in 1992 by exchanging the DefendantsTM land with that of the legal heirs of Hardwari and Mangal.

3. Eight Issues were framed of which only the first two, the onus of which was on the Plaintiffs, were addressed in the evidence led by the parties. Issue Nos.3 to 7 were to be proved by the Defendants which they abandoned altogether. Both Issues 1 & 2 were decided in favour of the Plaintiffs, i.e. the Appellants before us. Keeping in perspective the evidence to the effect that the Plaintiffs were co-sharers in the Shamilat Patti Sayar in regard to which the said Hardwari and Mangal had directly no right, nor were in possession thereof, it was concluded that the legal heirs of Hardwari and Mangal had no legal capacity to exchange the suit land. Even in the evidence led on behalf of the Defendants, it was the admitted case that the suit land was in the ownership of Sayar Patti, which are akin to village or gram sabha lands used for purposes allied to cultivation, on which land revenue is not imposable, but other levies are. It has also been conceded in the evidence led on behalf of the Defendants that the permission of co-sharers had not been obtained prior to the alleged exchange of land. After reviewing the entire evidence, the Trial Court as well as the First Appellate Court rightly concluded on facts that the possession of the Defendants was not lawful. However, their direction that the Plaintiffs were entitled to take back the possession, it seems to us, is legally untenable and unsustainable.

4. In the impugned Judgment the High Court has duly noted the fact that the DefendantsTM stand that they were co-sharers ought to have been established by them consequent upon an Issue being struck in that regard. Significantly, it was emphasised that the list of co-sharers attached to the Plaint included the Plaintiffs as well as the Defendants and that, therefore, a suit for partition ought to have been filed by the Plaintiffs even in the face of the averments in the Written Statement that the Defendants had a 3/192 share. Confronted with the concurrent findings of the Trial

Court as well as the First Appellate Court and keeping in perspective the evidence that was recorded, the High Court framed a substantial question of law to the effect that since the Defendants were co- sharers, could possession of the land be ordered to be delivered to the Plaintiffs without the Plaintiffs seeking partition of the entire joint land, including the suit land. Regrettably, while setting aside the judgment and decree of the Courts below, the High Court has failed to substantiate it with reasons for doing so. The High Court has, however, granted liberty to the Plaintiffs to seek partition of the suit land and other joint land in accordance with law.

5. Abadi deh refers to cultivable lands which are inhabited by the villagers. These areas, also called phirni, are usually demarcated on the revenue maps/sharja in red ink or lal dora, within which a departure from the prescription of strictly agricultural user is permitted. As it has been traditionally conceived of, it is only the cultivators of the adjoining agricultural lands, along with their family members, who are expected to reside therein. Lands within lal dora or phirni can be used for purposes related to agriculture, such as cattle-sheds and storage halls for straw, manure and waste generated in the village. Other user is legally impermissible. In some instances, lal dora lands are more or less converted into an ~urbanised village™ where cultivation of the contiguous land has ceased so as to enable wider user. As the resident population of the village increases, the demand or need for conversion of agricultural land for residential purposes is achieved by extending/increasing the lal dora, hence the term ~extended lal dora™. In no event can land in the lal dora be converted to commercial user or, arguably, even for residential complexes housing persons totally unconnected with the cultivation of the contiguous lands. This is essential for preserving cultivable rural lands for agricultural purposes. It is a legal misnomer that merely because municipal law and building restrictions and regulations contained therein are not applicable to lal dora, any and every kind of user or development is permissible. It is this fallacious understanding of the law that has led to the mushrooming of illegal land development within the lal dora. ~Shamilat™ connotes commonality of possession, in contradistinction to ownership individually or severally. Shamilat deh are common or village lands. Banjar in common parlance means fallow or barren or unproductive hence shamilat banjar “ common uncultivable lands and banjar qadim “ common/village lands left fallow for a long period. Patti/Pati has various contextual connotations including a strip of land detached from the original village though dependent on it; it is a subdivision of land. For facility of reference Section 2(g) of the Punjab Village Common Lands (Regulations) Act, 1961 as applicable to Haryana is

extracted below:-

2(g) Shamilat deh includes -

(1) Land described in the revenue records as Shamilat deh or Charand excluding abadi deh;

(2) shamilat tikkas;

(3) lands described in the revenue records as shamilat, tarafs, pattis, pannas and tholas and used according to revenue records for the benefit or the village community or a part thereof or for common purposes of the village;

(4) lands used or reserved for the benefit of the village community including streets, lanes, playgrounds, schools, drinking wells, or ponds within the sabha area as defined in clause (mmm) of Section 3 of the Punjab Gram Panchayat Act, 1952, excluding lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under Section 23-A of the aforesaid Act; and (4a) vacant land situate in abadi deh or gorah deh not owned by any person;

(5) lands in any village described as banjar qadim and used for common purposes of the village according to revenue records; Provided that shamilat deh at least to the extent of twenty-five per centum of the total area of the village does not exist in the village; but does not include land which -

(i) becomes or has become shamilat deh due to river action or has been reserved as shamilat in villages subject to river action except shamilat deh entered as pasture, pond or playground in the revenue records;

(ii) has been allotted on quasi- permanent basis to displaced person; (iia) was shamilat deh, but has been allotted to any person by the Rehabilitation Department of the State Government, after the commencement of this Act, but

on or before the 9th day of July, 1985;

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

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh and is so recorded in the jamabandi or is supported by a valid deed;

(v) is described in the revenue records as shamilat, taraf, pattis, pannas and thola and not used according to revenue records for the benefit to the village community or a part thereof or for common purposes of the village;

(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, house or for cottage industry immediately before the commencement of this Act;

(vii) Omitted by Act No. 18 of 1995;

(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; or

(ix) is used as a place of worship or for purposes subservient thereto; lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under Section 23-A of the aforesaid Act.

Explanation.- Lands entered in the column of ownership of record of rights as ~Jumla Malkan Wa Digar Haqdarani Arazi Hassab Rasad™, ~Jumla Malkan™ or ~Mushtarka Malkan™ shall be shamilat deh within the meaning of this section.

6. We shall now return to the facts of the case in hand. The jamabandi relating to the subject land recites that the owner of the subject land is Shamilat Patti. Hardwari and

Mangal were holding the land as Gair Marusi having half share each in Gair Mumkin Gitwar Bila Lagan Bawajay Sayak Ketu, which the Trial Court has rightly explained as land of which possession has been given by the proprietor, in the present case the Shamilat Patti, to the two named persons for the specific purpose of repairing agricultural implements. Since the allotment is intrinsically in the nature of a licence of common village land for a particular user, it is legally inconceivable that these two persons could have effected an oral exchange with the Defendants. The ownership collectively vested at all times with the Gaon or Shamilat patti. Ergo, none of the litigating parties could assume ownership or exclusive and proprietary possession thereto. Gair Mumkin literally means that which is not possible; and in the present context indicates waste or uncultivable land. Bila Lagan connotes either rent-free grant or one where the rent has not been fixed. Sayar/Sayer literally refers to moveables; it also concerns miscellaneous levies apart from land revenue. As defined in *Ganga Devi vs. State of U.P.*, AIR 1972 SC 931, it includes whatever has to be paid or delivered by a licensee on account of right of gathering produce, forest rights, fisheries and the use of water for irrigation from artificial sources. Sayar or Sayer are variable imposts on movable property and are thus distinct from land revenue. Khasra refers to the ~field book™ or village register recording the possession or tenure of agricultural land and the cognate term khasra girdawari is the crop or harvest inspection record pertaining to the land. Khewat lists the co-sharers and proprietors of village/agricultural lands along with their respective liabilities to pay the land revenue. Khud-kasht denotes a proprietor of land who is cultivating it himself.

7. The Trial Court had decreed the suit, holding that the Plaintiffs were entitled to the possession of the disputed land. It, therefore, directed the Defendants to handover the land in its original shape, to the Plaintiffs and other Co-owners within two months from the date of the decision. This finding has not been disturbed by the First Appellate Court. These two Courts failed to keep in mind that the land was Shamilat deh and hence no person, including the Plaintiffs, could have laid claims to separate or individual possession thereof. In second Appeal, however, in terms of the impugned Judgment, the High Court has correctly dismissed the Plaintiffs™ suit holding that the Plaintiffs shall be at liberty to seek partition of the suit land and other joint land in accordance with law.

8. Having considered the matter in all its complexities, we are persuaded to uphold the directions of the High Court. However, this is primarily and principally for reasons

different to those that have prevailed upon the learned Single Judge. The land in question is admittedly Shamilat Patti Sayar, i.e. common village lands the user of which is not confined strictly to cultivation. The holding of Hardwari and Mangal is thus in contradistinction to that of khewat i.e. proprietorship of the land. This is amply evident from the fact that so far as the grant of Hardwari and Mangal is concerned, it specifically envisages the repairing of agricultural implements of the villagers by them. Hardwari and Mangal were legally incompetent to transfer the possession by mutual compact with any third person, including co-sharers. Shamilat deh require to be carefully and assiduously protected, and this is the avowed purpose of the Punjab Village Common Lands (Regulation) Act, 1961 as applicable to both the States of Punjab and Haryana. The three Courts below have failed altogether in giving effect to Section 7 of the said Act which provides, inter alia, that the Assistant Collector of First Grade alone can eject any person who is in wrongful and unauthorized possession of the shamilat deh of any village and instead put the Panchayat in possession thereof. The Proviso to sub-section 7(1) empowers the Assistant Collector (who is a Revenue Official and not a Civil Court) to even decide a question of title to the land if it happens to be raised. Section 11 of the Act thereafter enables any person, or even a Panchayat, to approach the Collector to decide any claim in respect of the land. It is evident from the reading of these provisions that instead of approaching the Civil Court, if the Plaintiffs had any grievance against the Defendants as regards the possession of the suit land, they ought to have ventilated their grievances before the Collector and not before the Civil Court. The provisions of Sections 7 and 11 thereof have been blatantly violated by the Plaintiffs and ignored by the Courts below. If any doubt remains as to the correct forum for the resolution of the dispute pleaded in the Plaint, Section 13 of the Act makes it clear that the Civil Courts have no jurisdiction to entertain or adjudicate upon any question pertaining to shamilat deh.

9. It is always a brooding possibility that collusive suits are filed by co-sharers or other persons in the endeavour that shamilat deh may be metamorphosed or transformed into privately owned lands, always to the detriment of the gram sabha and of the villagers collectively. The three Courts below have not been adequately alive to this very important aspect. The land in question was, in fact, licenced to the co-sharers and was not their privately owned properties, individually or severally or collectively.

10. In the impugned judgment the High Court has dismissed the suit. It is manifestly evident that the suit as framed and filed was not maintainable in view of the Punjab

Village Common Lands (Regulations) Act, 1961 and, therefore, deserved to be dismissed. We hold, accordingly, and, therefore, dismiss this Appeal, leaving the parties to bear their respective costs.