

(1988) 08 P&H CK 0021

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 2584 of 1987

Bawa Gurdial Singh

APPELLANT

Vs

Kulwant Singh (Deceased)
through his Legal Representative
Jathedar Bishan SinghRESPONDENT

Date of Decision: Aug. 1, 1988**Acts Referred:**

- Punjab Village Common Lands (Regulation) Act, 1961 - Section 13

Hon'ble Judges: Amrit Lal Bahri, J**Bench:** Single Bench**Advocate:** Gurbachan Singh, for the Appellant; Kulwant Singh Boporai, for the Respondent**Final Decision:** Allowed

Judgement

A.L. Bahri, J.

This revision petition has been filed by Gurdial Singh, the plaintiff, challenging order dated August 7, 1987 passed by Additional Senior Sub Judge, Amritsar vide which it was held that Gram Panchayat was a necessary party to be impleaded in the suit and that the suit was not properly valued for purposes of Court-fee. Ad valorem Court-fee was payable on the market value of the land in dispute.

2. Gurdial Singh and others, the plaintiffs, filed a suit for possession of land measuring 92 Kanals 7 Maris described in the plaint situated in village Goindwal. They claimed to be joint owners in the land in dispute as co-sharers. The land was shamilat deh and was assessed to land revenue. This land remained in individual cultivating possession of the co-sharers before January 26, 1950. Before that, their ancestors were cultivating the land as co-sharers. The defendant Jathedar Kulwant Singh (now deceased represented by his legal heirs) was asserting that land was owned by the Panchayat and was taken on rent "This assertion was incorrect. The land was not owned by the Panchayat deh nor it could be rented out to anybody.

The suit was contested on behalf of the defendant. Some preliminary objections were taken that the civil Court had not jurisdiction to try the civil suit. The plaintiffs had no locus standi to file the suit. The suit was bad for non joinder of necessary parties, that is the Panchayat of Village Goindwal was a necessary party being the owner. On merits, it was denied that the plaintiffs were owners or they were in possession of the land in dispute in any capacity. The defendant claimed to be in possession of the land on behalf of the Panchayat deh. The defendant claimed to be permanent resident of the said village. He was in possession of the land at the time of filing of the suit. These allegations were controverted in the replication filed on behalf of the plaintiffs. The trial Court framed the following issues:-

1. Whether the plaintiffs are owners of the suit land? OPP.
2. Whether the plaintiffs were in possession of the suit land at the time of the filing of the suit? OPP.
3. If issue No. 2 is proved, whether the plaintiffs are entitled to the possession claimed for? OPP.
4. Whether the suit is bad for non-joinder of necessary party? OPD.
5. Whether the suit is maintainable in the present form? OPP.
6. Whether this Court has jurisdiction to try this suit? OPP.
- (a) Whether the suit is within limitation? OPP.
- (b) Whether the plaintiffs are the owners/co-sharers of the suit land as alleged? OPP.
7. Relief.

2. After both the parties led the evidence, the trial Court instead of deciding all the issues only decided two points as mentioned above. Hence, this revision petition.

3. Learned counsel for the petitioner has argued that no relief is claimed against the Gram Panchayat. Gram Panchayat is not a necessary party. Any finding regarding the land as to whether the same is vested in the Panchayat or not will not affect the rights of the Gram Panchayat. The case of the petitioner is that the plaintiffs were the owners in possession and defendants have illegally taken possession of the same. The trial Court illegally came to the conclusion that Gram Panchayat is a necessary party and the suit is bad for non-joinder of a necessary party. There is force in this contention. This question is squarely covered by a decision of the Division Bench of this Court in Baljinder Kaur v. Gurdas Ram ILR (1988) 2 P&H . 22. In para 9 of the judgment it was held that in a dispute between the two strangers before the civil Court in regard to a village street (public street), bar of jurisdiction of civil Court cannot be pleaded on the strength of section 13 of Punjab Village Common Lands (Regulation) Act. With respect to the rights of the Panchayat and finding, if any, recorded in the suit between the strangers, in para 11 of the

judgment, it was observed that in a suit for grant of injunction between the strengers, a finding may be required to be recorded as to whether land or the street vested in the Panchayat or not. However, with respect to such finding having effect on the rights of the Gram Panchayat, it was observed as under:-

However, qua the Gram Panchayat. which is not a party to the suit, the declaration that a land is or is not a street is irrelevant because such declaration is not binding on the Gram Panchayat as held in Bhagu's case (supra), The declaration that it is a public street would inure between the defendant, who endeavoured to encroach upon or had encroached upon it, and the inhabitants including the plaintiff, who by virtue of land being a street (public street) are entitled to pass through it. Even in the face of Civil Court's declaring a given land as being a private property of the defendant and not a public street, it would always be open to the Gram Panchayat to approach the Collector with the allegation that notwithstanding with the Civil Court has pronounced, the land, in fact, is a publice street and is shamilat deh and has been encroached upon by the respondent, and have the obstruction removed, if the Collector on the basis of the material adduced before him was to find that the land in question was a public street. When a question of title is raised before the Collector, the Collector in terms of section 13-A of the Act is to try the case like a Civil Court and give his finding on the question of title, which would then be binding on the Gram Panchayat.

4. In view of the aforesaid decision, the approach of the trial Court to hold that the Gram Panchayat is a necessary party in the suit is not correct" Any finding recorded in the suit with respect to the nature of the land in dispute as to whether the same is vested in the Panchayat or not will not be binding on the Panchayat if the Panchayat chooses to get unauthorised occupant evicted therefrom by approaching the Collector u/s 7 of the Punjab Village Common Lands (Regulation) Act The Collector will decide the question between the Panchayat and the unauthorised occupant as to whether the land is vested in the Panchayat or not. Such a decision can be challenged in appeal and not in a suit filed thereafter. As far as the present suit is concerned, the suit is not bad for nonjoinder of the Gram Panchayat.

5. Learned counsel for the petitioner, after referring to revenue records, also argued that after amendment of the Punjab Village Common Lands (Regulation) Act, the land in dispute has vested in the proprietors. He also referred to provisions of the Act in support of his contention. It is not necessary to determine in the present petition the question as to whether the land in dispute vests in the Gram Panchayat being shamilat deh or the proprietors. This question was left open even by the trial Court while passing the impugned order. Since the case is to be sent back to the trial Court for decision on the issues on merits, it is left to the trial Court to decide these questions.

6. Learned counsel for the petitioner has argued that in the absence of any issue regarding valuation of the suit for purposes of Court-fee, the petitioner could not

produce relevant evidence. There is force in this contention. Although no objection regarding valuation of suit for purposes of Court-fee was raised by the defendants in the written statement, the Court could of its own take up such a question. However, it may be stated that this question is to be decided on evidence and not on merely reading the plaint. As to whether the land is assessed to land revenue, normally revenue records could be relied upon. The contention of the learned counsel for the petitioner is that (sic) been allowed to him, he would have produced some other evidence that he had been paying land revenue. It may be stated that the revenue record produced did not show that at the time of institution of the suit, the land was assessed to land revenue. A presumption of truth is normally attached to the revenue records (Jamabandi or Khasra Girdawari). However, such a presumption is rebuttable. If opportunity had been allowed, the petitioner might have rebutted this presumption. Furthermore, after coming to the conclusion that the land was not assessed to land revenue, the Court-fee payable on the suit would be ad valorem on the market value of the land, as has been held by the trial Court. As to what is the market value of the land is yet another question which is to be determined after affording opportunity to the parties to lead evidence. The trial Court has not given any finding in this respect. In this view of the matter, the rendering of the trial Court on the question of Court-fee payable on the suit is, therefore, set aside. The trial Court will decide this question afresh after affording opportunity of leading evidence to the parties.

7. When all the issues arising out of the pleadings of the parties on law as well as on facts had been framed and the parties produced evidence thereon, it is expected of the Court to decide all the issues as provided under Order XIV, rule 2 of Code of Civil Procedure. The trial Court should have, in the present case, decided all the issues framed in the suit.

8. For the reasons recorded above, this revision petition is accepted. The impugned order set aside. The case is sent back to the trial Court for fresh decision on merits. The parties through their counsel are directed to appear in the trial Court on August 16, 1988. The trial Court record be sent back promptly. No costs.