

(1983) 10 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 129 of 1976

Dhani Ram and Another

APPELLANT

Vs

Gram Sabha And Gram
Panchayat of Village Jatmalpur
and Others

RESPONDENT

Date of Decision: Oct. 27, 1983

Acts Referred:

- Punjab Security of Land Tenures Act, 1953 - Section 9(1)

Citation: (1984) 2 ILR (P&H) 22

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: N.K. Sodhi, for the Appellant; S.C. Kapoor, for the Respondent

Final Decision: Dismissed

Judgement

J.V. Gupta, J.

This is Defendants' second appeal against whom suit for possession of the agricultural land has been decreed by both the Courts below. The Plaintiffs filed a suit as owners, alleging that Dhani Ram Defendant No. 1 was a tenant at will under them on different parcels of land on the basis of a Dohli tenure which was created by the predecessors-in-interest of the Plaintiffs, presumably because of religious duties and functions as Brahmins by the predecessors-in-interest of Defendant No. 1. Like his predecessors-in-interest, Defendant No. 1. was allowed to cultivate the suit land in view of the religious functions to be performed by him. Now he has ceased to perform his religious functions and duties and has also migrated from the village after giving the suit land to Defendants Nos. 2 to 4 on lease for 114 years. Since these leases are now in the nature of alienation and hence are void and not binding on the Plaintiffs they are entitled to recover the possession of the suit land being owners thereof. It was also pleaded that the Dohli tenure in question has come to an end with the migration of Defendant No. 1 from the village.

2. The suit was contested inter alia on the plea that Dohli tenure is irrevocable and the suit land was given as a outright gift. No condition of performance of any religious functions was attached to the grant of the suit land and therefore Defendant No. 1 was not the tenant at will under the Plaintiffs. The lease deed executed by him was valid and the Plaintiffs have no right to claim the possession alleging themselves to be the owners thereof. The trial Court found that the Plaintiffs had failed to establish specifically the purposes or duties which the Dohlidars were required to perform. It was further found that Defendant No. 1 migrated from the village in which the land in dispute is situated and ceased to perform his duties as Dohlidar and therefore his Dohli right is not extended especially because he has left the suit land in the form of lease which actually amounts to usufruct mortgage. It was, therefore, held that the lease deed executed by Defendant No. 1 in favour of Defendants Nos. 2 to 4 are not binding on the Plaintiffs. As a result of these findings, the Plaintiffs' suit was decreed. In appeal the learned Senior Sub Judge (With enhanced appellate powers) affirmed the said findings of the trial Court and thus maintained the decree passed in favour of the Plaintiffs. Dissatisfied with the same, the defendants have come up in second appeal in this Court.

3. The learned Counsel for the Appellants contended that the lower appellate Court mainly relied upon the judgment reported as Sewa Ram v. Udegir AIR 1922 Lah 126, which judgment according to the learned Counsel has been dissented by the Division Bench of this Court reported in Baba Badri Dass v. Dharma and Ors. ILR 1982 (1) P&H 491. In view of the said judgment the learned Counsel argued that the status of the Dohlidar was that of a Malikan Kabza and therefore, he was competent to alienate the suit land. On the other hand the learned Counsel for the Plaintiffs-Respondents submitted that according to the custom of Rohtak District it is common form of gift of land in Dohli for religious purposes and the land revenue is paid by the landlord. He also cited a Division Bench judgment of this Court reported in Dharma v. Smt. Harbai 1976 P.L.J. 617 and AIR 1937 805 (Lahore) . It was also contended that the custom changes from District to District, Tehsil to Tehsil, and Pargana to Pargana and therefore, the judgment relied upon by the Appellants has no applicability to the custom of Rohtak District. In support of this contention he referred to [Mara and Others Vs. Nikko and Others](#), .

4. I have heard the learned Counsel for the parties and have also gone through the case law cited at the bar. In Baba Badri Dass's case (supra), the case had arisen out of a writ petition. The Dohlidar filed an ejectment petition against his lessee/ tenants u/s 9(1) on form L of the Punjab Security of Land Tenures Act, 1953, before the Assistant Collector 1st Grade, Rohtak. The tenants resisted the claim of the Petitioner inter-alia on the ground that the Petitioner was not the land owner as defined in the Act, and, therefore, the petition for ejectment was not competent. Thus the matter was considered in view of the provisions of the Punjab Security of Land Tenures Act and, therefore, in the end of para 13 thereof it was observed:

We therefore hold that though a Dohlidar is not an owner of the land as the term is well understood, yet is otherwise a land-owner for the purposes of the Act. The other question whether he is a trustee or that his alienations are void abinitio do not arise in this case, though we have our doubts about the correctness of the view in that regard taken by the Lahore High Court in Sewa Ram's case (supra).

In view of these observations, the said case is clearly distinguishable and has no applicability on the facts of the present case, which arises out of a regular suit filed by the landowners against the Dohlidar, as he failed to perform his duties and transferred the land by way of lease. Such a matter was considered by the Division Bench in Dharma's case (supra). It was observed therein in para 7 "that the Dohli is not a permanent tenure and the moment the Dohlidar fails to render the requisite services for which the Dohli was created, the Dohli rights are extinguished and property reverts to the original proprietors." The said observations are fully applicable to the facts of the present case. It has been concurrently held by both the Courts below that the leases executed by Defendant No. 1 in favour of, Defendant Nos. 2 to 4 amount to mortgages and/or alienation and, therefore, are not binding on the proprietors who are entitled to recover possession of the suit land from the Defendants. Apart from that the Defendants did not produce Sharat Wajib Ul-Arz in the case to prove that it was outright gift to the Dohlidars and he was thus competent to make the alienation. In the absence of such evidence, it could not be successfully argued on behalf of the Appellants that Defendant No. 1 being Dohlidar had become the owner of the suit land and, was thus competent to make the alienation. The learned Counsel for the Respondents also referred to the customary law of the Rohtak District by E. Joseph I.C.S. Settlement Officer. In reply to question No. 94 relating to the gifts it was stated therein:

All tribes say that a gift must not be conditional or implied. It may be oral or in writing but an oral gift must be entered in the revenue papers. Transfer of possession is in all cases compulsory.

Note: The commonest form of gift is that of a Bigha or so of land in Dohli for religious purposes. Possession in these cases is given though sometimes the landlord retains possession and gives the produce to the dohlidar. It is the essence of a dohli that the landlord pays the revenue. Land may of course be gifted outright to a religious man the donee becoming full owner and paying revenue.

Thus under the circumstances, if the Defendant No. 1 claimed himself to be the full owner and paying revenue it was obligatory for him to produce the Sharat Wajib Ul-Arz or any other cogent evidence to support this claim and as observed earlier he has failed to prove it on the record.

5. The appeal thus fails and is dismissed with no order as to costs.