

HIGH COURT OF PUNJAB AND HARYANA**Bench: Justice Alka Sarin****Date of Decision: 6th May 2024**

RSA-298-1991 (O&M)

Reserved on: 2nd May 2024

PARAS RAM & ORS. ...APPELLANTS**VERSUS****GANPAT RAM ...RESPONDENT****Legislation:**

Relevant provisions of the Punjab Land Revenue Act, 1887

Provisions of the Punjab Village Common Lands (Regulation) Act, 1961

Subject: Regular second appeal challenging the concurrent findings of the Trial Court and the First Appellate Court regarding a suit for prohibitory injunction to close a door and remove a chabutra constructed by the respondent on the disputed site.

Headnotes:

Civil Procedure – Prohibitory Injunction – Ownership Dispute – Appeal challenging Trial and First Appellate Court judgments dismissing suit for prohibitory injunction – Appellants claimed ownership of disputed site part of Plot No. 212 – Respondent had allegedly opened door and constructed chabutra illegally – Courts found site was shamlat deh (village common land) based on prior judgments and evidence – High Court upheld lower courts' findings – No substantial question of law found – Appeal dismissed. [Paras 1-13]

Land Law – Shamlat Deh – Jurisdiction of Consolidation Authorities – Courts held consolidation authorities cannot partition or declare shamlat deh land as not vesting in Gram Panchayat – Only the Collector has such jurisdiction under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 – Appellants' claim based on mutation entries found invalid – Ownership and title disputes to be decided by civil courts, not revenue entries. [Paras 10-12]

Judicial Review – Scope of Second Appeal – High Court reiterated limited scope of second appeals under Section 100 CPC – Interference warranted only on substantial questions of law – No such question arose in this case – Concurrent findings of fact by lower courts not disturbed. [Para 13]

Decision: Held: Regular second appeal dismissed – Concurrent findings of Trial and First Appellate Court upheld – No substantial question of law – Pending applications, if any, also disposed of. [Paras 13-14]

Referred Cases:

- Gram Panchayat of Village Hoshiarpur vs. State of Punjab & Ors. [CWP No.4493 of 2007]
- Jitendra Singh vs. The State of Madhya Pradesh & Ors. [2021 (4) RCR (Civil) 883]
- Balwant Singh vs. Daulat Singh (D) By Lrs. (1997) 7 SCC 137
- Suraj Bhan vs. Financial Commissioner (2007) 6 SCC 186
- Suman Verma vs. Union of India (2004) 12 SCC 58
- Faqrudin vs. Tajuddin (2008) 8 SCC 12
- Rajinder Singh vs. State of J&K (2008) 9 SCC 368
- Municipal Corporation, Aurangabad vs. State of Maharashtra (2015) 16 SCC 689
- T. Ravi vs. B. Chinna Narasimha (2017) 7 SCC 342
- Bhimabai Mahadeo Kambekar vs. Arthur Import & Export Co. (2019) 3 SCC 191

- Prahlad Pradhan vs. Sonu Kumhar (2019) 10 SCC 259
- Ajit Kaur vs. Darshan Singh (2019) 13 SCC 70

Representing Advocates:

For Appellants: Mr. Rajinder Goel

For Respondent: Mr. V.K. Jindal, Senior Advocate with Mr. Pankaj Gautam

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff- appellants challenging the concurrent findings of fact returned by the Trial Court and the First Appellate Court vide judgments and decrees dated 30.11.1987 and 22.09.1990, respectively.
2. Briefly stated, the facts of the case are that the predecessor-ininterest of the plaintiff-appellants i.e. Devi Sahai filed the present suit. During the pendency of the suit, on the death of Devi Sahai, his legal representatives were impleaded as plaintiffs. The dispute relates to a site identified by letters 'ABCD' in the plan (Ex.P1) attached with the plaint. The case set up by the plaintiff-appellants was that the site was part of plot No.212 which was owned by the plaintiff-appellants and that the defendant respondent, whose house adjoined the site in dispute towards North, had illegally opened a door at site 'D' in the southern wall of his house and through the door the defendant-respondent had gained access to the site in dispute and constructed a chabutra and hence the suit for prohibitory injunction directing the defendant-respondent to close the door and also to remove the chabutra and an injunction for restraining the defendant respondent from interfering in the possession of the plaintiff-appellants on the site in dispute. Written statement was filed by the defendant-respondent. It was averred in the written statement that in front of house of the plaintiff appellants there was an open chowk which was part of shamlat deh and that the site in dispute was a subject matter of Civil Suit No.75 dated 10.04.1952 titled as Ganpat Vs. Bishamber decided on 28.01.1953 wherein it was held that the site in dispute was a part of the chowk, a common land vesting in the Panchayat.
3. On the basis of the pleadings, the following issues were framed by the Trial Court :
 1. Whether the plaintiff is owner in possession of the land shown by letters ABCD in the site plan as alleged, if so its effect ? OPP

2. Whether the plaintiff is estopped from filing the present suit by his act and conduct ? OPD
3. Relief.
4. The Trial Court, on the basis of the pleadings and the evidence on the record, dismissed the suit of the plaintiff-appellants vide judgment and decree dated 30.11.1987. Aggrieved by the same, an appeal was preferred by the plaintiff-appellants before the First Appellate Court which appeal was also dismissed vide judgment and decree dated 22.09.1990. Hence, the present regular second appeal.
5. Learned counsel for the plaintiff-appellants would contend that Plot No.212 measuring 14 marlas was recorded to be in the ownership of the plaintiff-appellants and Ex.P6 was a copy of the mutation sanctioned by the Consolidation Authority whereby Plot No.212 was allotted to the plaintiff appellants. It is further the contention of the learned counsel that once the mutation had been sanctioned in the name of the father of the present plaintiff-appellants vide Ex.P6, he was a recorded owner and that since the mutation was never challenged he continues to be owner of the said property.
6. Per contra the learned senior counsel appearing on behalf of the defendant-respondent would contend that vide judgment and decree dated 28.01.1953 (Ex.D2) and the judgment and decree dated 17.04.1953 (Ex.D3), the father of the plaintiff-appellants had admitted that the property was shamlat deh and that once the property was shamlat deh, the same could not have been allotted at the time of consolidation. In support of his contention the learned senior counsel has relied upon the judgment of the Division Bench of this Court passed in Gram Panchayat of Village Hoshiarpur Vs. State of Punjab & Ors. [CWP No.4493 of 2007 decided on 31.10.2012]. It is further the contention of the learned senior counsel for the defendantrespondent that a mutation would not confer any title on the person. In support of his contention he has relied upon the judgment of the Supreme Court in the case of Jitendra Singh Vs. The State of Madhya Pradesh & Ors. [2021 (4) RCR (Civil) 883]. The learned senior counsel for the defendant-respondent would further contend that though the suit was filed for Plot No.212 which was pre-consolidation number 257, however, Ex.P8 which is nakal khatauni/pamayash reveals that pre-consolidation number 257 was allotted Plot No.221. It is further the contention of the learned senior counsel for the defendant-respondent that PW3-Patwari had stepped into the witness box

and had stated that pre-consolidation number 257 was given a number 221 post-consolidation.

7. In rebuttal, the learned counsel for the plaintiff-appellants would contend that there is an error on Ex.P8 linking 257 with 212.
8. No other arguments have been raised by the learned counsel for the parties.
9. Heard.
10. In the present case, admittedly the land pre-consolidation was shamlat deh. The Division Bench of this Court in the case of Gram Panchayat of Village Hoshiarpur (supra) held as under :
“The jurisdiction of consolidation authorities to partition the "Shamilat Khewat" or to hold that "Shamilat Land" does not vest in a Gram Panchayat, came up for consideration before the Hon'ble Supreme Court in the following cases:- G.P.Nurpur versus State of Punjab and others 1997(1) PLJ, 269 and Gram Panchayat Sidh versus State of Punjab, 1997(1) PLJ, 313. After considering the provisions of the 1961 Act, it was held that consolidation authorities have no jurisdiction to hold whether land described as "Shamilat Deh" vests or does not vest in a Gram Panchayat or to order partition of this land amongst proprietors. The only authority vested with such power is the Collector, exercising powers under section 11 of the 1961 Act. It is near impossible for us to accept that the appellate authority was not aware of these judgments or of sections 11 and 13-B of the 1961 Act. Section 13-B of the 1961 Act clearly postulates that notwithstanding anything to the contrary contained or held in any order passed by any authority or court, the provisions of the 1961 Act, shall prevail. It is, therefore, beyond debate that as order passed by the Additional Director, Consolidation on 10.6.1997 was without jurisdiction, by the Director, Rural Development and Panchayats, Punjab, was required to ignore it under section 13-B of the 1961 Act. Even otherwise, an order passed by an authority that had no jurisdiction, is not binding upon the forum conferred with jurisdiction, to decide a question of title, in this case the Collector and the Director, Rural Development and Panchayat.”
11. Learned counsel for the plaintiff-appellants has not been able to deny the fact that in the earlier proceedings the father of the present plaintiffappellants had admitted that the suit land was shamlat deh. That being so, as per the judgment of the Division Bench of this Court, the Consolidation Authority had no right to partition the land amongst the proprietors and to allot the land to the plaintiff-appellants. Further still, the argument of the learned counsel for the plaintiff-appellants that since there was a mutation in his favour, hence,

he had become legal owner of the plot also deserves to be rejected in view of the law laid down by the Supreme Court in the case of Jitendra Singh (supra). Hon'ble Supreme Court in the case of Jitendra Singh (supra) held as under :

“5. We have heard Shri Nishesh Sharma, learned Advocate appearing for the petitioner.

It is not in dispute that the dispute is with respect to mutation entry in the revenue records. The petitioner herein submitted an application to mutate his name on the basis of the alleged will dated 20.05.1998 executed by Smt. Ananti Bai. Even, according to the petitioner also, Smt. Ananti Bai died on 27.08.2011. From the record, it emerges that the application before the Nayab Tehsildar was made on 9.8.2011, i.e., before the death of Smt. Ananti Bai. It cannot be disputed that the right on the basis of the will can be claimed only after the death of the executant of the will. Even the will itself has been disputed. Be that as it may, as per the settled proposition of law, mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made.

6. Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.

6.1 In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only “fiscal purpose”, i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58;

Faqrudin v. Tajuddin (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70.”

12. There is also no cogent explanation coming regarding the pre-consolidation and post-consolidation numbers as depicted in Ex.P8 produced by the plaintiff-appellants themselves. The argument of the learned counsel for the plaintiff-appellants that post-consolidation number 257 was allotted number 212 cannot be accepted in view of the document (Ex.P8) as well as the statement of the Patwari who stepped into the witness box as PW3.

13. In view of the above, no fault can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.