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to oust the vendee and to claim title to the property in his place. This basic fact is not self-evident and, therefore, has to be established by the person who would otherwise fail. It would thus appear that the view expressed by Gosain, J., in *Subedar Shangara Singh* v. *Indraj and others*, Regular Second Appeal No. 390 of 1960 is quite correct and it is difficult to find fault with it.

B.R.T.

APPELLATE CIVIL

Before Tek Chand and Inder Dev Dua, JJ.

JAGDEV SINGH AND OTHERS,—*Appellants*

versus

SURAT SINGH AND OTHERS,—*Respondents.*

Regular First Appeal No. 122 of 1955.

1962

Jan., 23rd

Punjab Village Common Lands Regulation Act (XVIII of 1961)—Sections 2(g), 3 and 4—Shamilat-deh *over which adverse possession claimed by a co-sharer for more than 12 years—Whether vests in the Panchayat—Adverse possession by a co-sharer—When effective—Interpretation of statutes—Interpretation of "including" and "excluding" clauses—How to be made.*

Held, that the land which originally constituted *shamilat-deh* and over which a co-sharer claims to have been in adverse possession falls within the purview of the statutory definition, and it is so notwithstanding any decree or contract, etc., to the contrary. Section 3(1) of the Punjab Village Common Lands Act, 1961, suggests the retrospective operation of the definition of *shamilat-deh* as contained in clause (g) of section 2, inasmuch as the *shamilat* law before the enforcement of Punjab Act No. 18 of 1961, and this Act after its commencement are deemed always to have applied to all lands which are *shamilat-deh* as so defined. Section 4 vests in the village Panchayat all rights, title and interests in the land included in *Shamilat-deh* which has not already vested in a Panchayat under the *shamilat* law. Certain rights described in sub-section (3) of section 4 have been saved from the statutory vesting effected by sub-sections (1) and (2) of this section. Sub-section (2) of section 3 also incorporates an exception to sections 3(1) and 4 and the rights, title and interests excluded from the statutory definition of "*shamilat-deh*" as contained in section 2(g) has been re-vested in the original owners.

Held, that if possession in a given case can either be lawful or unlawful, then in the absence of evidence, it must be assumed to be lawful. To establish adverse possession as between co-owners of joint property, there must be evidence of open assertion of hostile title by one to the knowledge of the other and mere exclusive use by one is not considered to be sufficient and indeed nothing short of ouster can bring about that result. Where a co-sharer has been long in possession of portion of the *shamilat* land no other co-sharer can oust him therefrom or even get joint possession with him, as long as partition of the *shamilat* does not take place. A transferee from such a co-sharer has the same rights in the land as his transferor had. Such transferee is entitled to undisturbed possession of the land as long as the *shamilat* is not partitioned.

Held, that the words used in an inclusive definition generally denote extension and can scarcely be treated as restricted in any sense: it is considered inappropriate to put a restrictive interpretation on them. There is no question of giving any extended meaning either to the clause which includes certain other things in, or to the clause which excludes certain other things from the commonly understood meanings of the word defined. If by reason of the inclusion clause the statute intends to add certain other things to the ordinary or commonly understood meaning of the word defined, by reason of the exclusion clause it is similarly intended to exclude from such meaning the specified things. In such a contingency, the Court's function is to consider the entire statutory definition together giving due weight to every part of it.

Regular First Appeal from the decree of Shri D. P. Sodhi, Senior Sub-Judge, Ambala, dated the 12th day of March, 1955, dismissing the plaintiff's suit and leaving the parties to bear their own costs.

H. L. SARIN AND K. K. CUCCRIA, ADVOCATES, for the Appellants.

DALIP SINGH, RAM DHAN TALWAR AND RUP CHAND, ADVOCATES, for the Respondents.

JUDGMENT

DUA, J.—This is the plaintiff's regular first appeal directed against the judgment and decree of the learned Senior Subordinate Judge, Ambala, dismissing their suit for a declaration that they are the owners of the land and the garden measuring 4 *bighas* and 15 *biswas* bearing

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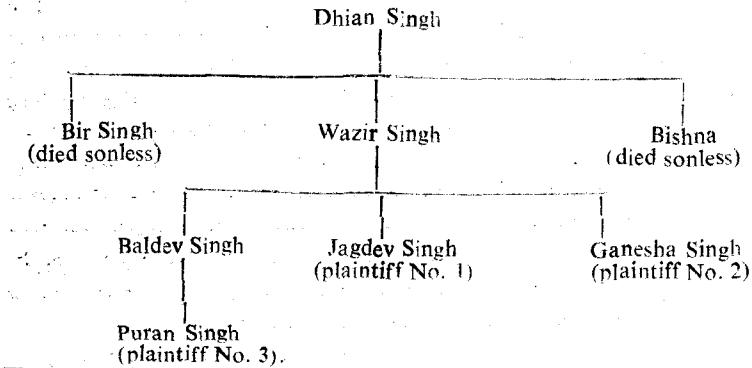
khasra No. 166 in *Jamabandi* for the year 1950-51. In order to appreciate the real core of the question in dispute, it would be desirable to reproduce the pedigree as given in the plaint:—



The plaintiffs-appellants' case is that one Shrimati Aas Kaur, wife of Gurdit Singh (adopted son of Sardarni Swaran Kaur), sold the land and the garden in dispute to Bir Singh and Bishna, sons of Dhian Singh by means of a registered sale-deed, dated 10th September, 1880. Possession of the property sold was also delivered to the vendees. Atar Singh and some others, proprietors of the *shamilat deh, mauza* Babbial (the village in which the land in dispute is situate) thereupon filed a suit for the cancellation of the sale-deed on the ground that the land under the garden was their property and Mst. Aas Kaur had no right to sell the same. This suit ended in a decree, cancelling the sale-deed in respect of the land under the garden as well as the garden itself. It was, however, further decreed that in order to obtain possession of this property, the plaintiffs should first pay Rs. 512-4-0 as the price of the trees. Bir Singh and Bishna, sons of Dhian Singh vendees, having died issueless and wifeless, Wazir Singh, another brother of the deceased, succeeded to the property in question as the heir of the vendees. Wazir Singh is stated to have died about 20 years ago and it is in these circumstances that plaintiffs 1 and 2 (Jagdev Singh and Ganesha Singh) as sons of Wazir Singh and Baldev Singh as a grandson of Wazir Singh claimed to have taken proprietary possession of the property in suit as heirs of Wazir Singh. It is admitted in the

plaint that at the time of the sale mentioned above, the land under the garden was entered in revenue papers as *shamilat deh*, although Smt. Aas Kaur was in possession thereof as owner, and indeed it is further admitted that the entry *shamilat deh* continued to remain intact even after the sale-deed. As a matter of fact it is also expressly admitted that the plaintiffs and their ancestors continued to remain entered in the revenue papers as non-occupancy tenants, though it is averred that they were in "adverse proprietary possession" without paying any rent. It has also been alleged that since the settlement of 1917-18, the entry is "without rent, as the tenant considers himself to be the owner thereof." After the decree obtained in the suit of Atar Singh and others in March, 1881, the decree-holders never cared to deposit the amount and the possession was never obtained by the proprietors of the *shamilat-deh*. As a result of the omission on the part of the proprietors of the *shamilat-deh* to obtain possession by executing the decree, the plaintiffs claim to have obtained title to the property in question by adverse possession for more than 12 years. They have also averred that they have been giving on rent different portions of the property in suit under the garden on different occasions and as a matter of fact in the plaint they have also alleged that construction has also been raised by them on the site in question. On 15th August, 1925, Ramji Das and others, as proprietors—Lambardars, approached the Assistant Collector, First Grade, with a prayer for redeeming the property in question by placing reliance on the decree of 1881 in the suit of Atar Singh and others, but without any success, for, their prayer was disallowed on 29th September, 1925. Another attempt made by Atar Singh and others to get the judgment and decree of 28th March, 1881, amended also proved unsuccessful, the application for the purpose having been dismissed by Shri E. F. Barlow, Subordinate Judge, 1st Class, Ambala, on 26th October, 1949. A revision in the High Court against that order also failed on 12th May, 1952. It is on these allegations that the

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plaintiffs instituted the present suit for a declaration that they are the owners of the land in question and are entitled to retain its possession.

The suit was resisted by the defendants on various grounds, *inter alia*, denying the assertion of adverse possession and also pleading bar of limitation. The Panchayat of Babbial claiming title to the property which, according to its written statement, was *shamilat-deh*, also questioned the competency of the suit for a mere declaration.

The pleadings of the parties gave rise to the following issues:—

(1) Are the plaintiffs owners of the property in suit by adverse possession?

(2) Have the defendants lost their right under the decree, dated 28th March, 1881, for claiming back possession of the property in suit on payment of Rs. 512.

(3) What is the effect of the dismissal of the application of redemption made by the defendants in respect of the land in dispute?

(4) What is the effect of Act 1 of 1954, on the rights of the plaintiffs in respect of the land in suit?

(5) Relief ?

The trial Court decided issue No. 1, in favour of the plaintiffs, holding them to have become owners of the land in dispute by adverse possession for more than 12 years prior to the institution of the suit. Under issue No. 2, the defendants were found to have lost their right under the decree, dated 28th March, 1881 and under issue No. 3, it was held that the dismissal of the application for redemption was inconsequential. Issue No. 4, was, however, decided against the plaintiffs and it was found that by virtue of section 3 of Punjab Act No. 1 of 1954, the property in question

vested in the Panchayat of the village and, therefore, the plaintiffs could not claim any right in the property. It is in these circumstances that the plaintiffs have come to this Court on appeal, as already mentioned.

The learned counsel for the appellants has assailed the conclusion of the Court below on issue No. 4, whereas on behalf of the respondents, an attempt has also been made to support the dismissal of the suit by challenging the decision of the Court below on issue No. 1. The appellants contend, to begin with, that according to *wajab-ul-arz* (1887-88) there was no *shamilat-deh* in the village in question with the result that the entries in the revenue papers, as shown in Exhibit P.W. 1/1, about the existence of *shamilat-deh*, must be considered to be erroneous. I am wholly unable to accede to this contention. The entries in the revenue papers showing the existence of *shamilat-deh* as evidenced by P.W. 1/1, begin from 1852 and continue right up to 1946-47, the latest revenue records produced in the case, and indeed, even the case, as laid in the plaint, is also completely inconsistent with the appellant's contention. In this view of the matter, it is unnecessary to say anything on the value of the entry in *wajib-ul-arz* on which the contention is based. The point being thus without merit, I unhesitatingly repel it.

It is next urged that the entry "*shamilat-deh*" in revenue papers does not in any way adversely or prejudicially affect the appellants' right in the property in question which has been established by adverse possession for more than 12 years. This contention may have to be considered from more aspects than one. One aspect concerns the effect of the sale of a part of *shamilat-deh* by a co-sharer on the right of other co-sharers and another relates to the scope and effect of the provisions of the Punjab Village Common Lands Regulation Act, 1 of 1954, and the Punjab Village Common Lands Regulation Act, 18 of 1961.

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Before proceeding to deal with these aspects, I may here state some of the elementary principles which are by now well-settled. If possession in a given case can either be lawful or unlawful, then in the absence of evidence, it must be assumed to be lawful. To establish adverse possession as between co-owners of joint property, there must be evidence of open assertion of hostile title by one to the knowledge of the other and mere exclusive use by one is not considered to be sufficient and indeed nothing short of ouster can bring about that result. Reference may here be usefully made to the following observations of a Division Bench (Tek Chand and Agha Haidar, JJ.) of the Lahore High Court in *Salhun and others* v. *Malku, etc.*, (1), where the question of adverse possession set up by a co-heir against the other co-heirs came up for consideration:—

> "Mr. Kishan Dayal has argued that the plaintiffs' right in 1920, and he relied upon certain statements made by some of these plaintiffs in the mutation proceedings which followed on the death of Ahmadi and are printed at p. 144 *et seq* of the paper book. These statements, however, are vague and indefinite and do not contain any assertion of a hostile title which in law would amount to 'ouster'. Further, even if we were to put an interpretation on these statements, which is most favourable to the plaintiffs, all that they can be said to have stated is that they were the 'sole and exclusive heirs' of Ahmadi deceased. But this statement cannot possibly amount to an overt act which would make the statute run against defendants 1 to 17. On this interpretation, the case is on all fours with the well-known decision of the Privy Council in *Corea* v. *Appuhamy* (2). In that case the facts found were that

(1) A.I.R. 1931 Lah. 439.
(2) 1912 A.C. 230.

one of the co-heirs had entered into possession, claiming to have done so 'in the character of sole heir or plunderer' and it was held by their Lordships that having regard to the well-established principle that :

'possession is never considered adverse if it can be referred to a lawful title'.

It was observed that the possession of the defendant should be held to be that of a co-heir on behalf of his brothers and sisters who were equally entitled to succeed along with him. It was further laid down, that nothing short of ouster or something equivalent to ouster could make the defendants' possession adverse.

In *Hardit Singh* v. *Gurmukh Singh* (3), their Lordships applied the same principles to a case which went up on appeal from the Punjab and ruled that: 'if possession might be either lawful or unlawful, in the absence of evidence it must be assumed to be the former.' "

Reference has also been made at the Bar to *Saad Ullah* v. *Ibrahim* (4), wherein it has been held that where a co-sharer has been long in possession of a portion of the *shamilat* land no other co-sharer can oust him therefrom or even get joint possession with him, so long as partition of the *shamilat* does not take place. A transferee from such a co-sharer has the same rights in the land as his transferor had. Such transferee is entitled to undisturbed possession of the land as long as the *shamilat* is not partitioned.

In the light of the rule of law enunciated in these decisions, we have to see if on the facts and circumstances of the case in hand, the appellants

(3) A.I.R. 1918 P.C. 1.
(4) 85 I.C. 553.

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have made out a case of edverse possession. On behalf of the appellants, our attention has not been drawn to any material on the existing record showing any ouster of the other proprietors of the village from the land in question by the appellants which would sustain the plea of adverse possession. To acquire title by prescription, it is incumbent on the appellants to prove some overt act or acts amounting to ouster of the rest of proprietary body for a period of more than 12 years and mere exclusive possession would hardly suffice to confer any title on them: See *Jawala Singh and others* v. *Jagdish Singh and others* (5).

But then Shri Sareen argues that when by means of the decree of the year 1881, the sale effected by Shrimati Aas Kaur, was set aside and the decree-holders failed to execute the said decree and obtain possession of the land on payment of Rs. 512-4-0 within the statutory period, the possession of the vendees must be considered to have become hostile and they should be held to have acquired full title to the property by lapse of time. The argument though on the surface attractive, does not stand the test of scrutiny. I may point out here that the suit filed by Atar Singh and others was for cancellation of the sale-deed, dated 10th September, 1880, and the decree cancelling the sale-deed was obviously not to be executable. Rs. 512-4-0 which were to be paid by the plaintiffs constituted the price of the trees and if this amount was not paid, it merely deprived the plaintiffs of the right to take possession of the trees. Non-execution of the decree did not in the circumstances clothe the present appellants or their predecessors-in-interest with the proprietary right of the land under the garden or the garden itself. Section 29, Limitation Act, to which a passing reference has been made on behalf of the appellants, is wholly inapplicable to the facts and circumstances of the instant case.

(5) A.I.R. 1941 Lah. 144.

Some help has been sought by the appellants from the revenue entries from 1917-18, onwards where it is stated that Wazir Singh was in possession of the property in question which formed part of *shamilat-deh* without any rent, considering the property as his personal property. These entries without more, in view of the legal position discussed above, are clearly insufficient to deprive the proprietary body of their title. It is noteworthy that in the proprietary column throughout the entry continued to be *shamilat-deh*.

The next argument, in view of the conclusion at which I have arrived on the question of adverse possession, loses much of its importance, but since considerable argument has been addressed at the Bar, I should like to deal with it fully. Shri Sareen has contended that the Court below is in error in holding that by virtue of section 3 of the Punjab Village Common Lands (Regulation) Act, 1953, Punjab Act No. 1 of 1954, all rights, title and interest whatever in the land in question have vested in the Panchayat. The first attack directed against the finding of the Court below is based on the contention that as a matter of fact the land in dispute is no longer *shamilat-deh* and that any entry in the revenue records showing the same to be a part of the *shamilat-deh* is erroneous and, therefore, ineffective. The argument is based on the assumption that the appellants' title has become absolute on account of adverse possession for more than 12 years; an assumption which, in view of the conclusion at which I have arrived earlier, is wholly unjustified. But assuming that the appellants had been in possession of the land in dispute for more than 12 years and their possession has been adverse, even then the Punjab Village Common Lands (Regulation) Act No. 18 of 1961 and perhaps even Punjab Act No. 1 of 1954 also are, in my view, effective enough to vest the property in question in the Panchayat. According to the current Act, the expression *"shamilat-deh"* has been defined in section 2(g) as follows:—

[His Lordship read section 2(g) and continued:],

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In order to fully appreciate and understand the statutory scheme and the legislative intent, it is also necessary here to read sections 3 and 4 :—

[His Lordship read sections 3 and 4 and continued :]

Now section 3(1) clearly suggests the retrospective operation of the definition of *shamilat-deh* as contained in clause (g) of section 2, inasmuch as the *shamilat* law before the enforcement of Punjab Act No. 18 of 1961 and this Act after its commencement are deemed always to have applied to all lands which are *shamilat-deh* as so defined. Section 4 vests in the village Panchayat all rights, title and interests in the land included in *shamilat-deh* which has not already vested in a Panchayat under the *shamilat* law. Certain rights described in sub-section (3) of section 4 have been saved from the statutory vesting effected by sub-sections (1) and (2) of this section. Sub-section (2) of section 3 also incorporates an exception to sections 3(1) and 4 and the rights, title and interests excluded from the statutory definition of "*shamilat-deh*" as contained in section 2(g) has been re-vested in the original owners. To complete the picture, it may be useful also to reproduce section 3 of Punjab Act No. 1 of 1954 (Punjab Village Common Lands Regulation) Act, 1953:—

[His Lordship read section 3 and continued :]

Considerable argument has been addressed at the Bar on the scope and effect of the word "included" used in the definition of the word "*shamilat-deh*" in section 2(g) of the current Act. The position has, however, by now been well-settled and is hardly open to any serious controversy. Words used in an inclusive definition generally denote extension and can scarcely be treated as restricted in any sense; it is thus considered inappropriate to put a restrictive interpretation on them. The word "included" is, therefore, intended to comprehend in the definition

in question not only what *shamilat-deh* signifies in its popularly or generally understood meaning but also what is included in addition by the interpretation or the definition clause. An argument has, however, been advanced that the statutory definition we are concerned with also contains an exclusive clause and it is urged that this clause should also be given an extended meaning. I am unable to accede to this submission, which appears to me to be based on a misconception. There is no question of giving any extended meaning either to the clause which includes certain other things in, or to the clause which excludes certain other things from the commonly understood meanings of the word defined. If by reason of the inclusion clause the statute intends to add certain other things to the ordinary or commonly understood meaning of the word defined, by reason of the exclusion clause it is similarly intended to exclude from such meaning the specified things. In such a contingency, the Court's function is to consider the entire statutory definition together giving due weight to every part of it. So construed, in my view, land which originally constituted *shamilat-deh* and over which a co-sharer claims to have been in adverse possession must fall within the purview of the statutory definition; and it is so notwithstanding any decree or contract, etc., to the contrary.

Shri Sareen, however, argues that the land in question is covered by clause (iv) of section 2(g) which expressly excludes from *"shamilat-deh"* land acquired before 26th January, 1950, by purchase or exchange of property from a co-sharer in the *shamilat-deh*. The counsel asserts that the land in question was acquired by sale from a co-sharer in *shamilat-deh*, before 26th January, 1950. That the land in question was initially so acquired is undoubtedly correct but the counsel forgets that the sale-deed by which the acquisition is said to have been made was later set aside and indeed the foundation of the appellant's title is now confined only to the plea of adverse possession for more than twelve years and it is

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not based on the acquisition by sale. And then the argument also ignores that under clause (iv), it is further incumbent on the appellant to establish that the purchase relied upon is either recorded in the *jamabandi* or is supported by a valid deed. Neither of these two conditions are satisfied by the appellants, on the contrary the sale-deed was admittedly set aside by a competent Court.

On the view that I have taken of the matter, it is wholly unnecessary to refer to the decision of Harbans Singh, J. in *Kacharu, etc.* v. *Natha,* R.S.A. 384 of 1959 on which reliance has been placed for the contention that the entry regarding "*shamilat-deh*" in the revenue records must in order to be effective be shown to be correct and in accordance with actual facts.

Before parting with the case, it may be mentioned that the interpretation placed on the provisions of the Punjab Village Common Lands (Regulation) Act appears to me clearly to effectuate the legislative purpose and object of promoting the institution of Panchayats—a purpose intended to be served by this enactment.

For the foregoing reasons this appeal fails and is hereby dismissed. The parties are, however, left to bear their own costs in this appeal.

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Tek Chand, J.—I agree.

B.R.T.

REVISIONAL CRIMINAL

Before D. Falshaw, C.J.

BHAGWAN DASS,—*Petitioner.*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 123-D of 1961.

1962

Jan., 24th

Prevention of Food Adulteration Act (XXXVII of 1954)—Section 7—Employee of the manufacturer—Whether