APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

RAGHBIR SINGH,—*Appellant.*

versus

RAJA RAM AND OTHERS,—*Respondents.*

Regular Second Appeal No. 808 of 1957.

1964

November, 17th

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Ss. 3 and 4—Lands to which they apply—Proprietor leasing out land owned by him to non-proprietors for building houses at nominal rent—Such non-proprietors—Whether become owners of the land on which they have constructed houses.

Held, that it is apparent from the provisions of section 3 of the Punjab Village Common Lands (Regulation) Act, 1961, that the Act applies to all lands which are Shamilat Deh as defined in sec-

tion 2(g). The only other land, which is dealt with by this Act, is Abadi Deh. The Act does not deal with lands which are neither Shamilat Deh nor Abadi Deh. Therefore, when one refers to section 4(1)(b), where it is stated that the land which is situate within or outside the Abadi Deh of a village, the land, which falls within the expression "within or outside the Abadi Deh" would necessarily be Shamilat Deh and no other land. This is further clarified by section 3(2) of the Act which says that this Act does not deal with lands of village proprietors individually held by them. If a proprietor leases out the land owned by him to non-proprietors for purposes of construction of house at a nominated rent and they build house's thereon, they remain as lessees of proprietor and do not become owners of the land under section 4(1)(b) of the Act.

Second Appeal from the decree of the Court of Shri J. S. Bedi, District Judge, Karnal, dated the 10th April, 1957 affirming with costs that of Shri Ram Chandra, Sub-Judge 1st Class, Karnal, dated the 13th May, 1955 granting the plaintiff a decree for Rs. 75/7/ and dismissing the rest of his claim and leaving the parties to bear their own costs.

D. C. GUPTA, AND M. R. AGNIHOTRI, ADVOCATES for the Appellant.

A. C. HOSHIARPURI, ADVOCATE for the Respondents.

JUDGMENT

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MAHAJAN, J.—The facts giving rise to this second appeal are set out in my order dated the 17th March, 1964. By that order I remitted the case to the trial Court to find out whether the land in dispute is the exclusive property of the plaintiff or is a part of the village common land as defined in section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961. The trial Court was also to determine since when the defendants have been settled on the land and what is the effect of that *vis-a-vis* the rights of the plaintiff as owner of the land. The trial Court has submitted its report dated the 9th June, 1964. The findings of fact given by the trial Court are—

(1) that the land in dispute once formed part of Shamilat Deh prior to the year 1931-32;

(2) that in the year 1931-32 the Shamilat Deh was partitioned among the proprietors of the village

and the land in dispute fell to the share of the plaintiff-appellant's father;

(3) that the plaintiff-appellant's father has been recorded as the exclusive owner of this land in the revenue records and that entry persists up to date;

(4) that in the year 1947 the plaintiff-appellant gave the land in question on lease to the defendant-respondents at the rate of Rs. 40 per annum from all of them, and

(5) that in the year 1952 the plaintiff-appellant gifted 5/6th of the land in dispute to his sons.

Having recorded these findings the trial Court came to the conclusion that by reason of section 3(b) of the Punjab Village Common Lands (Regulation) Act, 1953, as substituted by section 4(1)(b) of the Punjab Village Common Lands (Regulation) Act 18 of 1961, the land in dispute vests in the defendants. The findings of fact are not disputed before me. What is agitated before me is the legal conclusion drawn from these facts. The contention of the learned counsel for the plaintiff-appellant is that the trial Court was under a misapprehension with regard to the nature of the land while coming to the conclusion that it vested in the defendants under section 4 of Punjab Act 18 of 1961. This contention appears to me to be sound. In 1954 the Punjab Village Common Lands (Regulation) Act, 1953, was enacted. The preamble of this Act is in the following terms:—

"An Act to regulate the rights in Shamilat Deh and Abadi Deh."

In this Act the terms "Shamilat Deh" and "Abadi Deh" were not defined. Section 3 of this Act vested rights in Shamilat Deh and Abadi Deh in Panchayats and non-proprietors. The section was in these terms—

"3. Vesting of rights in *panchayats* and in non-proprietors.—Notwithstanding anything to the contrary contained in any other law for the time being in force, and notwithstanding any agreement, instrument, custom or usage or any decree

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or order of any Court or other authority, all rights, title and interest whatever in the land—

(a) which is included in the Shamilat Deh of any village shall, on the appointed date, vest in a *panchayat* having jurisdiction over the village;

(b) which is situated in the Abadi Deh of a village and which is under the house owned by a non-proprietor, shall at the commencement of this Act vest in the said non-proprietor."

This Act was replaced by the Punjab Village Common Lands (Regulation) Act, 1961. The preamble of this Act is in these terms:—

"An Act to consolidate and amend the law regulating the rights in Shamilat Deh and Abadi Deh."

Section 2(g) defines "Shamilat Deh". Sub-clause (1) of section 2(g) excludes Abadi Deh from the definition of "Shamilat Deh". After sub-clause (5) of section 2(g), there are many categories of land which have been excluded from the definition of "Shamilat Deh". Clause (h) of section 2 defines "Shamilat law". Sections 3 and 4 are the relevant sections on which the fate of the controversy hangs and these sections are reproduced below for facility of reference:—

"3. (1) This Act shall apply, and before the commencement of this Act, the Shamilat law shall be deemed always to have applied, to all lands which are Shamilat Deh as defined in clause (g) of section 2.

(2) Notwithstanding anything contained in sub-section (1) or section 4, where any land has vested in a Panchayat under the Shamilat law but such land has been excluded from Shamilat Deh as defined in clause (g) of section 2, all rights, title and interest of the Panchayat in such land shall, as from the commencement of this Act, cease and such rights, title and interest shall be revested in the person or persons in

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whom they vested immediately before the commencement of the Shamilat law and the Panchayat shall deliver possession of such land to such person or persons:

Provided that where a panchayat is unable to deliver possession of any such land on account of its having been sold or utilised for any of its purposes, the rights, title and interest of the Panchayat in such land shall not so cease but the Panchayat shall, notwithstanding anything contained in section 10, pay to the person or persons entitled to such land compensation to be determined in accordance with such principles and in such manner as may be prescribed.

4. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests whatever in the land,—

(a) which is included in the Shamilat Deh of any village and which has not vested in a Panchayat under the Shamilat law shall, at the commencement of this Act, vest in a Panchayat constituted for such village, and, where no such Panchayat has been constituted for such village, vest in the Panchayat on such date as a Panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the Abadi Deh of a village and which is under the house owned by a non-proprietor, shall on the commencement of the Shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a Panchayat under the Shamilat law shall be deemed to have been vested in the Panchayat under this Act.

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(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the—

(i) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholidars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqararidars;

(ii) rights of persons in cultivating possession of Shamilat Deh for more than twelve years without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950."

It will also be proper at this stage to notice Section 4 of the Land Revenue Act which excludes certain land from operation of the land Revenue Act. It is relevant in order to determine what is in common parlance called "Abadi Lal Lakir". This section is set out below:—

"4. (1) Except so far as may be necessary for the record, recovery and administration of village-cesses, nothing in this Act applies to land which is occupied as the site of a town or village and is not assessed to land revenue.

(2) A Revenue-officer may define for the purposes of this Act the limits of any such land."

In Om Parkash Aggarwal's Land Revenue Act at page 32, this is what the author has stated with reference to section 4 of the Land Revenue Act:—

"It is usual to measure the village site in one number, together with the small plots attached in which cattle are penned, manure is stored, and straw is stacked, and other waste attached to the village site. The entry in the column of

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> ownership and occupancy is simply Abadi Deh. In the Shajras this number is inked in red so that in common parlance Abadi Deh is known as the area within the Lal Lakir."

In Douie's Punjab Settlement Manual, Appendix VII, para 11, which deals with "Abadi", this is what is stated:—

> "The village site should be measured in one number, together with the small plots attached in which cattle are penned, manure is stored, and straw is stacked, and other waste attached to the village site. The entry in the column of ownership and occupancy will be simply Abadi Deh."

It is in the context of the aforesaid provisions that the conclusion of the trial court holding that the land in dispute vests in the defendant-respondents under section 4(1)(b) of Punjab Act 18 of 1961, has to be examined. It will be apparent from the provisions of section 3 of this Act that the Act applies to all lands which are Shamilat Deh as defined in section 2(g). The only other land, which is dealt with by this Act, is Abadi Deh. The Act does not deal with lands which are niether Shamilat Deh nor Abadi Deh. Therefore, when one refers to section 4(1)(b), where it is stated that the land which is situate within or outside the Abadi Deh of a village, the land, which falls within the expression "within or outside the Abadi Deh" would necessarily be Shamilat Deh and no other land. This is further clarified by section 3(2) of the Act which says that this Act does not deal with lands of village proprietors individually held by them. I put it to Mr. Hoshiarpuri, learned counsel for the defendant-respondents, a case of an individual proprietor, who was owning a field as an owner in the village paying land-revenue. Later on he carved it out into small plots and leased out those plots for building purposes. The lessees then built houses thereon. Would such lessees become owners of such plots under the Act ? Learned counsel was not able to contend that they would become owners under the Act and in my view rightly. All that learned counsel was able to say was that if the land was at one time Shamilat land, then the non-proprietors thereon would become owners of the houses thereon. This proposition would, however, be correct only if the non-proprietors had been

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settled on the land when it was Shamilat land. In the present case, the land in dispute ceased to be Shamilat land in the year 1931-32. Having ceased to be Shamilat land, it became an individual holding of the proprietor, after partition, to whose share it fell. The proprietor in the year, 1947, leased out the land to the defendant-respondents for purposes of construction of houses at a nominal rental of Rs. 40 per annum. In this situation it cannot with any show of reason be argued that such lessees would become owners of the land under section 4(1)(b) of the 1961 Act. I am clearly of the view that this provision has no application to the case of the defendant-respondents. The land is recorded in the revenue papers as owned by the plaintiff-appellant. He is paying the land-revenue thereon. In the column of tenants, it is mentioned that it is Ghair Mumkin Abadi. It would obviously be Ghair Mumkin Abadi because it was leased out to the defendants for the purposes of an Abadi. This would not make it as an Abadi within the meaning of Abadi Deh which, as I have already said, has a technical meaning and is commonly known by the expression "Abadi Lal Lakir". It is also not a part of the Shamilat Deh wherein non-proprietors have been settled. In this state of facts, it appears to me that the trial Court completely missed the point and came to an erroneous decision on a matter which on close examination admits of no doubt.

For the reasons given above, I allow this appeal, set aside the judgments and decrees of the Courts below and decree the plaintiff-appellant's suit. In the circumstances, however, I will make no order as to costs.

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