

APPELLATE CIVIL

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

BEANT SINGH AND ANOTHER,—*Appellants*

versus

MALLA SINGH AND OTHERS,—*Respondents*

Regular First Appeal No. 44 of 1957

1964

Sept., 17th.

Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (VIII of 1953)—S. 3—Occupancy tenants becoming proprietors—Whether can claim partition of Shamilat and Abadi deh along with the other landlords proprietors.

Held, that under the provisions of section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, the occupancy tenants have become the owners in the same measure and with the same rights as the landlords with the result that whatever rights, title and interest including the contingent interest, if any recognised by any law, custom or usage for the time being in force and including the share in Shamilat with respect to the land concerned vested in the landlords now vest in the occupancy tenants. They have ceased to be tenants and have become full-fledged proprietors clothed with all the rights of the proprietors under whom they were occupancy tenants and they can claim partition of the Shamilat or the village Abadi along with the other landlords.

Regular First Appeal from the decree of the Court of Shri Om Nath Vohra, Sub-Judge, 1st Class, Jullundur, dated the 15th November, 1956, dismissing the plaintiffs' suit.

RUP CHAND AND SURENDER CHAUDHRI, ADVOCATES, for the Appellants.

BIRINDER SINGH AND A. L. BAHRI, ADVOCATES, for the Respondents.

JUDGMENT

MAHAJAN, J.—This appeal is directed against the decision of the Subordinate Judge, 1st Class, Jullundur, dismissing the plaintiffs' suit.

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The controversy arose in the following circumstances: There is an area measuring 39 kanals 10 marlas which is part of Abadi Mauza Domunda, tehsil Jullundur. In this village there were occupancy tenants on the land. On the coming into force of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (Act No. VIII of 1953), these occupancy tenants became proprietors of the lands on which they were the occupancy tenants. The rights, title and interest of the landlords in those lands came to an end and they were granted compensation in lieu thereof. The present suit was filed by two out of the erstwhile occupancy tenants, namely, Beant Singh and Waryam Singh, for possession by partition of the Abadi site measuring 5 kanals 17 marlas, the share of the plaintiffs out of 39 kanals 10 marlas. In this suit, the plaintiffs impleaded defendants 1 to 21. These defendants are also the erstwhile occupancy tenants. Defendants 22 to 31, Bachan Singh and others, claim to be the proprietors of the village as distinct from the erstwhile occupancy tenants. They made an application for being impleaded as defendants. Their application was allowed and they were made parties to the suit. Another application was made by one Babu Singh, who is also an erstwhile occupancy tenant, for being impleaded as a defendant; and he too was impleaded as such. Later on, Milkhi Ram, defendant 33, made an application that he was a proprietor like defendants 22 to 31 and that he may be impleaded as a defendant. He was also impleaded as a defendant. Some of the defendants admitted the plaintiffs' claim while others contested the same, some with regard to the share claimed by the plaintiffs and the others with regard to the plaintiffs' right to obtain partition of the land. According to the defendants, who are not occupancy tenants but are the proprietors of the village, the plaintiffs being not the members of the proprietary body of the village are not cosharers with them by becoming proprietors under the Punjab Act VIII

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of 1953. Various other pleas were also raised, which will be apparent from the following issues framed in the case:—

- (1) Whether the plaintiffs were in possession of the property in suit or any portion thereof at the time of the institution of the suit?
- (2) Whether the plaintiffs and defendants Nos. 1 to 21 alone are the joint owners of the property in suit as alleged and if not, its effect, and if so, what are their shares ?
- (3) If issue No. 2 is proved, whether the property in suit is not liable to be partitioned on the ground that it is Abadi Deh land and that the defendants have constructed their houses on it ?
- (4) Whether on the death of Mst. Gujri, Mst. Haro and Mst. Goggi, occupancy tenants, the occupancy rights vested in the proprietors ? If so, when and with what effect?
- (5) Relief.

The trial Court gave the following findings on the aforesaid issues:—

- (1) The plaintiffs were in possession of a portion of the property in suit at the time of the institution of the suit.
- (2) The property in suit was not proved to be the joint property of the plaintiffs and defendants 1 to 21 and 32; and thus was not liable to be partitioned.
- (3) Smt. Gujri, Smt. Haro and Smt. Goggi, occupancy tenants, died issueless and their respective rights in respect of the sites in their occupation vested in the proprietors.

No finding was recorded on issue No. 3 as according to the learned Judge it did not arise in view of the finding on issue No. 2. It is against this decision that the present appeal has been preferred by the plaintiffs.

The sole contention advanced by the learned counsel for the appellants is that they, the plaintiffs, are as much cosharers in the land in dispute as defendants 22 to 31 and

33. So far as the plaintiffs and defendants 1 to 21 and 32 are concerned they had no interest in the Shamilat land. They had no interest even in the land on which their houses stood. Their position was that of non-proprietors and their only interest was in the building material of the constructions put up by them in the village Abadi. If any of them died childless or removed his material, the site on which the building stood would automatically vest in the proprietary body, but this position has been altered by the Punjab Act VIII of 1953. Section 3 of the Act is in these terms:—

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“3. Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force on and from the appointed day—

- (a) all rights, title and interest (including the contingent interest, if any, recognised by law, custom or usage for the time being in force and including the share in the Shamilat with respect to the land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances, if any, created by the landlord:

Provided * * * * *

The plain reading of this section denotes that with regard to the land of which the plaintiffs and defendants 1 to 21 and defendant 32 were tenants and some of the proprietors were the landlords, the aforesaid plaintiffs and defendants have now become the owners in the same measure and with the same rights as the landlords. The net result is that whatever rights, title and interest including the contingent interest, if any, recognised by any law, custom or usage for the time being in force and including the share in Shamilat with respect to the land concerned vested in the landlords by operation of section 3 of Punjab Act VIII of 1953 now vests in the occupancy tenants. They have ceased to be tenants and have become full-fledged proprietors clothed with all the rights of the proprietors under whom they were occupancy tenants. In this view

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of the matter, the occupancy tenants became co-sharers with the proprietors to the extent to which the proprietors had interest in the Shamilat or the village Abadi by reason of the land of which they were the landlords *vis-a-vis* the occupancy tenants.

Shamilat Deh has been defined in paragraph 223 of Rattigan's Digest of Customary Law as follows:—

“The village common land comprises the Shamilat deh including the uncultivated (banjar) and pasture lands, the abadi or inhabited village site and the gora-deh or vacant space reserved for extension of the village dwellings, and adjoining the village site.”

This definition includes *Abadi Deh*. To the same effect are the observations of Benton, J., in *Ishwar Singh v. Atma Singh* (1).

The trial Court, however, held the plaintiffs and defendants 1 to 21 and 32 not to be cosharers on the basis of the provisions in the Punjab Village Common Lands (Regulations) Act, 1953 (No. 1 of 1954). This Act as amended by Punjab Act of 1961, by reason of the definition of Shamilat Deh in section 2(g) excludes *Abadi Deh*. This definition will only hold good for the purposes of this Act. It does not define Shamilat Deh as generally understood. Moreover the 1953 Act came into force on the 15th June, 1952, and the occupancy tenants became cosharers in the Shamilat in the same manner in which the proprietors were cosharers on 15th June, 1952. Therefore, when the 1954 Act came into force the definition of Shamilat Deh operated equally to the detriment or benefit of all the proprietors including the erstwhile occupancy tenants. This definition could not be pressed into service to negative the claim of the plaintiffs which claim they could rightly make under the provisions of the 1953 Act. It seems to us that the trial Court was totally oblivious to the provisions of section 3 of the 1953 Act. If that provision had been kept in view the plaintiffs' suit could not have been dismissed. In this view of the matter,

this appeal succeeds, the judgment and decree of the trial Court are set aside and the case is remitted to it for further proceedings in accordance with law.

There will be no order as to costs.

Parties are directed to appear in the trial Court on the 19th October, 1964.

INDER DEV DUA, J.—I agree.

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