of facts as has been made by the counsel for the respondent based on facts brought on the record.

This petition being wholly without substance and merits is dismissed with costs.

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*K.S.K.*

APPELLATE CIVIL

*Before Harbans Singh, J.*

AMAR NATH AND OTHERS,—*Appellants*

*versus*

GRAM PANCHAYAT RANWAN AND ANOTHER,—*Respondents*

**Regular Second Appeal No. 1583 of 1962.**

March 29, 1967

*Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Ss. 2(g) and 4—Shamilat land being utilised by a co-sharer to the exclusion of all others by cultivating himself through a servant or a tenant—Whether excluded from the definition of Shamilat—Muafidars—Status of—Whether similar to that of occupancy tenants—Lands occupied by them—Whether vest in the Gram Panchayat.*

*Held*, that the very idea of excluding from the definition of *'shamilat deh'* such portion of it, as is in cultivating possession of a co-sharer and which is not in excess of his share, is that if a co-sharer has actually taken possession of some part of the *shamilat deh* before 1950, then he will continue to be in possession thereof, and the Gram Panchayat will have nothing to do with it. The idea apparently is that if a co-sharer is utilising a portion of the *shamilat* land to the exclusion of all others, then he is not to be disturbed. On the same reasoning, a part of the *shamilat* land utilised by a co-sharer to the exclusion of all others by cultivating himself through a servant or a tenant will be excluded out of the definition of *Shamilat*. His case would be covered by clause (ii) of section 4(3) of The Punjab Village Common Lands (Regulation) Act, 1961.

*Held*, that the main characteristic of an occupancy tenant is that he is in continuous occupation of the land and either does not pay anything to the landlord or makes very insignificant payment. The *muafidars* have also more or less all the characteristics of an occupancy tenant. Like an occupancy tenant, they

could not be ejected and like an occupancy tenant, they were not paying any rent beyond the land revenue, etc. They would fall in the category of persons, who are accorded a status similar to that of the occupancy tenants. They can take advantage of clause (i) of section 4(3) of the Act and the lands occupied by them do not vest in the Gram Panchayat.

*Second Appeal from the decree of the Court of the Senior Sub-Judge with Enhanced Appellate Powers, Ludhiana, dated the 25th day of September, 1962, reversing that of the Sub-Judge, 1st Class, Samrala, dated the 29th March, 1962 and dismissing the plaintiffs' suit and leaving the parties to bear their own costs.*

RUP CHAND, ADVOCATE, for the Appellants.

A. S. AMBALVI, ADVOCATE, for the Respondents.

JUDGMENT

*Harbans Singh, J.*—This order will dispose of two appeals (Regular Second Appeal Nos. 1520 and 1583 of 1962), in which the facts and the law point involved are similar, though the suits, out of which these appeals have arisen, were tried separately and separate judgments were given. I will first take up the appeal of Amar Nath (No. 1583 of 1962).

Amar Nath, etc., plaintiffs and, prior to them, their ancestors, have been shown in occupation of the land in dispute for a long time. In the ownership column, the land is entered as *shamilat deh* and this entry has continued up-to-date. In the cultivation column, in 1882 the ancestors of the plaintiffs are shown in occupation through their tenant Kabal, who was mentioned as *ghair maurusi*. Plaintiff's ancestors are described as *muafidars*. Same entry continues thereafter and,—*vide* Exhibit P. 4, in the year 1902, the ancestors are shown in occupation through one Aqal, tenant-at-will. In Exhibit P. 1 (1908-9), these *muafidars* are shown in actual cultivating possession. In Exhibit P. 2, in the year 1917-18, one Ismail, tenant-at-will, is shown in possession on behalf of the *muafidars*. Exhibit P. 15, is of the year 1945-46, in which the plaintiffs are shown in possession through their tenant Jagir Singh, who is also shown, in the same position in the year 1958-59. It is not disputed that the plaintiffs or their predecessors-in-interest have never paid any rent to anybody. They are still described as *muafidars*. The suit, out of which the present appeal has arisen, was filed because in the column of ownership,—*vide* a mutation

No. 308, dated 30th of March, 1955, Gram Panchayat of village Ranwan, the village of the parties, was shown as the owner. As the Panchayat tried to lease the land, the suit was brought to challenge the right of the Panchayat to do so. The plaintiffs prayed for a declaration that the plaintiffs, etc., were the owners in possession of the property in dispute for the last more than 12 years without payment of any *lagan* and for injunction against the Gram Panchayat restraining them from realising any rent from the plaintiffs. The following issues were settled:—

(1) Whether the plaintiffs are the owners of the suit land by gift or adverse possession ?

(2) If issue No. 1 is not proved, whether defendent No. 1 can be restrained from collecting rent in respect of land and leasing it out ?

(3) Whether the court has no jurisdiction to entertain the suit?

The suit was decreed by the trial Court. On appeal, the learned lower appellate Court held, first, that the civil Court had no jurisdiction because the revenue authorities had recorded the Gram Panchayat as the owners of the land in accordance with the Punjab Village Common Lands (Regulation) Act, 1953, and this action would be deemed to have been taken under the Punjab Village Common Lands (Regulation) Act, 1961,—*vide* section 16, and that, according to section 13 of the Act of 1961, no civil Court can have jurisdiction over any matter arising out of the operation of the Act. Secondly, it was held that the land, which is recorded as *shamilat deh* in the revenue records, vests in the Gram Panchayat and does not fall within the exceptions recorded in sub-section (3) of section 4 of the Act. In view of the above, the appeal was accepted and the suit dismissed. Amar Nath and others have filed this appeal.

I may first dispose of the question of jurisdiction. Obviously, the action of the revenue authorities under the Act of 1961, referred to above, is not being challenged. The question involved is one of title, i.e., whether a particular piece of land is *shamilat deh* and vests in the Gram Panchayat or not, This question of title can only be decided by a civil Court. Reference in this respect may be made to *Gram Panchayat* v. *Kesho Narain* (1). The relevant head-note runs as follows:—

"Held * * that where the parties did not agree that the land in dispute was *shamilat* land, the civil Court

(1) 1964 P.L.R. 518.

would be, *prima facie*, entitled to adjudicate upon the controversy, as it relates to question of title. The scheme of the Act does not seem to support the suggestion that the Assistant Collector was intended to be substitute for a civil Court and his summary proceedings to put Panchayat into possession a substitute for a regular trial of a question of title."

I, therefore, hold that the learned lower appellate Court was in error in holding that the civil Court had no jurisdiction.

Section 2(g) of the Act of 1961 gives the definition of *'shamilat deh'* and it includes land described in the revenue records as *Shamilat deh*. By virtue of sub-sections (1) and (2) of section 4 of the Act, all rights, title and interests in the land, which falls within the definition of *'shamilat deh'* and which does not vest in the Panchayat under the previous law, vests in the Panchayat on the enforcement of the Act of 1961. Sub-section (3) of section 4 runs as follows:—

"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, Butimara, 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.

The question for determination is—does the plaintiffs' case, on the facts, as detailed above, which emanate from the documents placed on the record, fall within either of the exceptions (i) and (ii) of sub-sections (3) of section 4.

I will first take up the question whether their case falls under clause (ii) of sub-secton (3) of section 4. As already stated, there is no dispute that the plaintiffs and their predecessors-in-interest have

been in continuous possession of the land. They have been exercising this right of possession through their tenants and further they paid nothing to the owners of the land. About these matters, there is no dispute. According to the learned lower appellate Court, the words "cultivating possession" means that the persons concerned must be actually tilling the land himself. In other words, "cultivating possession" was taken as equivalent to "self-cultivation". The words "cultivating possession" also occur in sub-clause (g) of section 2, in which the definition of *shamilat deh* is given. After detailing the various types of land which will be included in the definition of *shamilat deh*, it is stated as follows:—

"But does not include land which—

(i) * * * ———

(ii) * * * ———

(iii) * * * ———

(iv) * * * ———

(v) * * * ———

(vi) * * * ———

(vii) * * * ———

(viii) was *shamilat deh*, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such *shamilat deh* on or before the 26th January, 1950."

The very idea of excluding from the definition of *"shamilat deh"* such portion of it, as is in cultivating possession of a co-sharer and which is not in excess of his share, is that if a co-sharer has actually taken possession of some part of the *shamilat deh* before 1950, then he will continue to be in posession thereof, and the Gram Panchayat will have nothing to do with it. The idea apparently is that if a co-sharer is utilising a portion of the *shamilat* to the exclusion of all others, then he is not to be disturbed. Would't a co-sharer be taken to be utilising the land to the exclusion of all other co-sharers if instead of cultivating the land himself he gets it cultivated through a

servant, whom he pays a monthly salary or a share in the actual produce ? I see no reason how a distinction can be made in the possession of a co-sharer in one case or the other. On the same reasoning, his possession will still be exclusive if he gets the land cultivated through a tenant of his choice. The counsel for the parties, who were given time to look through the law, have conceded that there is no decided case one way or the other on the point. As at present advised, I see no reason why part of the *shamilat* utilised by a co-sharer to the exclusion of all others by cultivating himself, through a servant or a tenant, should be excluded out of the definition of *shamilat*, but a different interpretation should be put when another person had been in possession of another part of *shamilat* for more than 12 years without payment of any rent or charges. In the present case, the *muafidars* have been in possession of the land through their tenants to the exclusion of all other co-sharers. In a case like the present one, the *muafidars* are, more or less, in the same position as persons in adverse possession, but even if it be held that they are in permissive possession as *muafidars under* the owners or the *jagirdars*, they must be treated to be in cultivating possession because they are either actually cultivating the land or having it cultivated through their servants or tenants. I feel that the case of the plaintiffs would be covered by clause (ii) of sub-section (3) of section 4 of the Act.

The case of the plaintiffs would also fall under clause (i) of sub-section (3) of section 4. It has to be noted that this clause protects the existing rights of those, who, though not entered as occupancy tenants in the revenue records are accorded similar status. That is the substantive part and the various categories of persons mentioned are morely by way of illustration, because the words used are "such as Dholidars, etc."

The main characteristic of an occupancy tenant is that he is in continuous occupation and either does not pay anything to the landlord or makes very insignificant payment. In this connection reference may be made to clauses (a) and (d) of sub-section (1) of section 5 of the Punjab Tenancy Act which are as follows:—

"5(1) A tenant—

(a) who at the commencement of this Act has, for more than two generations in the male line of descent through a

grandfather or grand-uncle and for a period of not less than twenty years, been occupying land paying no rent, therefor, beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon, or

(b) * * * x *

(c) * * * x *

(d) who being jagirdar of the estate or any part of the estate in which the land occupied by him is situate, has continuously occupied the land for not less than twenty years, or, having been such jagirdar, occupied the land while he was jagirdar and has continuously occupied it for not less than twenty years;

has a right of occupancy in the land so occupied."

Sub-section (2) of section 5 is—

"If a tenant proves that he has continuously occupied land for thirty years and paid no rent, therefor, beyond the amount of land revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (a) of sub-section (1)".

Here, the *muafidars* are, more or less in the same position as a *jagirdar*. Both the *jagirdars* and *muafidars* are recipients of the land revenue of particular plots of land. The *muafidars* have been in occupation of the land for more than twenty years. Apart from that, they have been mentioned in the column of cultivation and they have not paid rents beyond the amounts of land revenue. In a way, they have not even paid land revenue because they were *muafidars*. It is not disputed that while they were in receipt of the *muafi*, nobody could turn them out. In other words, they had more or less all the characteristics of an occupancy tenant. Like an occupancy tenant, they could not be ejected and like an occupancy tenant, they were not paying any rent beyond the land revenue etc. I am of the view, therefore, that they would fall in the category of persons, who are accorded a status similar to that of the occupancy tenants.

Not being recorded in the revenue records as occupancy tenants on the date of the enforcement of the Occupancy Tenants (Vesting of Proprietary Rights) Act, they will not be able to take advantage of the rights conferred by that Act but they can certainly take the position that by virtue of sub-section (3) of section 4, of the Punjab Village Common Lands (Regulation) Act, 1961, this land does not vest in the Gram Panchayat. I would, therefore, accept this appeal, set aside the judgment of the Court below and decree the suit of the plaintiffs declaring that the land in dispute does not vest in the Panchayat and that the Panchayat should not interfere in their possession and enjoyment as heretofore.

So far as the other appeal is concerned it is conceded that the points involved are the same and the plaintiffs in that case are also similarly situated. Consequently, that appeal is also accepted and a similar decree granted. As the point was not very clear, the parties are left to bear their own costs throughout in both the appeals.

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*K.S.K.*

FULL BENCH

*Before Shamsher Bahadur, P. C. Pandit and P. D. Sharma, JJ.*

MOTI RAM AND OTHERS,—*Appellants*

*versus*

BAKHWANT SINGH AND OTHERS,—*Respondents*

**Letters Patent Appeal No. 340 of 1964.**

September 29, 1967

*Punjab Pre-emption Act (I of 1913)—Ss. 13 and 15—Brother—Whether includes step or half brother—Son—Whether includes step-son—Pre-emptor related to some of the vendors—Whether can—pre-empt the sale of the share of the vendor to whom he is not so related as to give him right of pre-emption.*

*Held,* that the term "brother" includes step or half brother in the context of section 15 of the Punjab Pre-emption Act, 1913. Brother includes 'half-brother' in all systems of jurisprudence and a contrary intention has expressly to be provided for. The mere exclusion of a step-brother will not in any way further the accepted