APPELLATE CIVIL

Before Prem Chand Pandit, J.

SEHAJ RAM AND OTHERS,—*Appellants*

versus

SORTI AND OTHERS,—*Respondents*

Regular Second Appeal No. 624 of 1966

December 1, 1969

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Sections 2(g) (3) and 2(g) (5)—Banjar *Qadim-land shown in the Revenue Records as owned by Shamilat of Thola and possessed by the proprietors thereof—Such land—Whether falls under sections 2(g) (3) or 2(g)5—Land falling under section 2(g) (5)—Whether has to be shown to be used for common purposes of the village to become Shamilat Deh.*

Held, that in order to bring the land within the ambit of section 2(g) (5) of Punjab Village Common Lands (Regulation) Act, 1961, three things have to be established (1) that the land is described as Banjar Qadim (2) that it is used for common purposes of the village according to revenue records and (3) that Shamilat Deh at least to the extent of 25 percentum of the total area of the village does not exist in the village. The land may be in the ownership of Shamilat Deh or Shamilat Thola, but if it is described as Banjar Qadim, it will be governed by section 2(g) (5) if it can be shown that it was used for the common purposes of the village according to revenue records. An individual proprietor's holding also can consist of some land which is described as Banjar Qadim, but that would not be included in Shamilat Deh, because the same would not have been used for the common purposes of the village according to the revenue records. It follows that if in the proprietor's column, the land has been entered as Shamilat Deh or Shamilat Thola, but it is described as Banjar Qadim in the revenue records, then clause (5) of section 2(g) of the Act will come into play for such lands, if it is further shown that it is being used for the common purposes of the village. This clause being specific will exclude the general clause (3) of the section. (Paras 14 and 15)

Regular Second Appeal from the decree of the Court of Shri D. R. Saini, Senior Sub-Judge, with enhanced appellate Powers, Rohtak, dated the 16th of February, 1966, affirming with costs that of Shri S. D. Tayagi, Sub-Judge, 1st Class, Jhajjar, dated the 19th January, 1965, dismissing the plaintiffs' suit.

S. P. JAIN, ADVOCATE, for the appellants.

U. D. GOUR, ADVOCATE, for the respondents.

JUDGMENT

Pandit, J.—This second appeal arises out of a suit brought by Sehaj Ram and three others, residents of village Rohad, District Rohtak, against Man Singh and others of that very village, for a declaration to the effect that agricultural land measuring 537 Kanals 1 Marla, situate in that village, was the property of the Gram Panchayat and that the defendants had no right to get it partitioned. Their allegations were that the said land was Shamilat of Thola Ramian. It was lying Banjar up to 26th January, 1950, and was being used for the common benefit of the entire village. After 1955, a part of it was brought under cultivation by some of the proprietors including the plaintiffs. According to the provisions of the Punjab Village Common Lands (Regulation) Act, 1961, hereinafter called the 1961 Act, the land fell within the definition of 'Shamilat Deh' and vested in the Gram Panchayat. The proprietors of Thola Ramian had no connection with the land. The defendants, however, made an application to the Revenue Officer for partition of the land. The plaintiffs objected that as the land vested in the Gram Panchayat, it could not be partitioned. The Revenue Officer, on 7th December, 1963, ordered that the land be partitioned. That necessitated the filing of the present suit in January, 1964. It might be mentioned that Gram Sabha, Rohat, and Gram Panchayat, Rohat, were impleaded as defendants Nos. 44 and 45.

(2) The suit was resisted by some of the defendants and they pleaded *inter alia* that the land in question was not need for the benefit of the entire village; that part of it was being cultivated by some of the proprietors of the Thola and the remaining was in the joint possession of the entire proprietary body of the Thola; that the land did not vest in the Gram Panchayat, because it did not come within the definition of 'Shamilat Deh'; and that the plaintiffs had no *locus standi* to bring the suit, because they did not in any way represent the Gram Panchayat. It was also averred that the suit was not maintainable in the present form.

(3) The trial Judge came to the conclusion that since the plaintiffs themselves were not claiming any title to the land in question and their case was that it vested in the Gram Panchayat, they had no *locus standi* to bring a declaratory suit under section 42 of the Specific Relief Act and it did not lie in the present form. It was held that the land in dispute was not 'Shamilat Deh' within the

meaning of that expression in 1961, Act and it, therefore, did not vest in the Gram Panchayat. The defendants were in possession of the land as owners of Thola Ramian and, therefore, could claim partition of the said land. As a result of these findings, the suit was dismissed.

(4) Aggrieved by that decision, the plaintiffs went in appeal before the learned Senior Subordinate Judge, Rohtak, who confirmed the findings of the trial court and dismissed the appeal. The plaintiffs have come to this Court in second appeal.

(5) Two questions were argued before me. The first was regarding the *locus standi* of the plaintiffs to bring the suit in the present form and the second was whether the land in dispute was 'Shamilat Deh' and vested in the Gram Panchayat, because if it did, then undoubtedly the defendants could not get it partitioned.

(6) As regards the first point, it is admitted that the plaintiffs were the proprietors in Thola Ramian, in which the land in question was situate and they had, therefore, a definite interest in the land. Their case was that the said land had come within the definition of 'Shamilat Deh' and, therefore, it vested in the Gram Panchayat, with the result that the defendants, who were also proprietors in that Thola could not get it partitioned. It is true that the Gram Panchayat should have brought the suit, because the land had vested in it. But the allegation of the plaintiffs in the present suit was that the Panchayat was colluding with the defendants and was not protecting the interests of the proprietary body. The Revenue Officer had, in spite of the objection of the plaintiffs, decided that the said land could be partitioned at the instance of the defendants. Since a question of title had arisen and it was for the Civil Court to decide whether the land in dispute was partible or not, the plaintiffs had filed the suit for that purpose. It was not necessary for them to allege and prove that the land belonged to them exclusively. They could safeguard the interests of the entire proprietary body by bringing the suit of this nature in a representative capacity, if the Gram Panchayat was not doing its duty. Under these circumstances, the Courts below had erred in law in holding that the plaintiffs had no *locus standi* to file the suit and further that it did not lie in the present form. I would, therefore, reverse their finding on this point and hold that the plaintiffs had *locus standi* to bring the suit in the present form.

(7) Now coming to the second question, as to whether the land in dispute was 'Shamilat Deh' and had vested in the Panchayat or not, the Courts below had negatived the contention of the plaintiffs that the land was 'Shamilat' of Thola Ramian and was being used for the common benefit of the proprietors of the Thola and came within the definition of section 2(g) (3) of the 1961 Act and had vested in the Gram Panchayat. The Courts below were of the view that clause (3) of section 2 (g) did not apply to the present case, because the land in dispute was *Banjar Qadim*. According to them, clause (5) of the same section would be applicable and as the plaintiffs were not able to establish that the land was used for common purposes of the village according to the revenue records and further that 'Shamilat Deh' at least to the extent of 25 percentum of the total area of the village did not exist in the village, it did not fall within the definition of 'Shamilat Deh' as given in that clause and, consequently, it did not vest in the Gram Panchayat.

(8) Counsel for the appellants in the first instance contended that the land in dispute had vested in the Panchayat having jurisdiction over the village on the coming into force of the Punjab Village Common Lands (Regulation) Act, 1953 (Punjab Act I of 1954), hereinafter called the 1954 Act, on 9th January, 1954. Subsequently, the 1954 Act was repealed by the 1961 Act and by virtue of section 4(2) of the latter Act, the said land would be deemed to have been vested in the Panchayat under the 1961 Act.

(9) There would be a number of difficulties in accepting this contention of the appellants. In the first place, this case was never set up by the appellants in the plaint and it was not tried in the Courts below. It does not find place even in the grounds of appeal in this Court. Secondly, under section 3 of 1954 Act, it was the 'Shamilat Deh' of the village, which would vest in the Panchayat. The land in dispute, admittedly, is 'Shamilat Thola Ramian' and not 'Shamilat Deh'. Thirdly, 'Shamilat Deh' under the 1954 Act had to vest in the Panchayat on the 'appointed date'. The 'appointed date' had been defined in section 2(3) of that Act as "in the case of a village, which is subject to the jurisdiction of a Panchayat at the commencement of this Act, shall be the date of such commencement; and in other cases, the date on which a Panchayat with jurisdiction over that village is constituted." It is not proved on the record, in the present case, whether village

Rohad, in which the land in dispute is situate, was subject to jurisdiction of a Panchayat at the commencement of 1954 Act and further if that village was not subject to the jurisdiction of a Panchayat, the date on which a Panchayat with jurisdiction over the village was constituted. Fourthly, even assuming for the sake of argument that the land in dispute had vested in the Panchayat under the 1954 Act, by virtue of the provisions of section 3(2) of the 1961 Act, all rights, title and interest of the Panchayat in such land would from the commencement of 1961 Act, cease, if that land had been excluded from 'Shamilat Deh', as defined in clause (g) of section 2 of the 1961 Act and those rights, title and interest would be revested in the person or persons in whom they vested immediately before the commencement of the 1954 Act.

(10) It was then submitted that the land in question did answer the description of 'Shamilat Deh' as given in section 2 (g) (3) of the 1961 Act and had, therefore, vested in the Gram Panchayat and the Courts below had erroneously held to the contrary.

(11) Let us now examine whether there is substance in this submission. It was held by D. K. Mahajan, J., in *Nathu and others* v. *Puran and others* (1) that section 3 of the 1961 Act made the definition of 'Shamilat Deh' in clause (g) of section 2 thereof applicable even to those cases which had arisen under the 1954 Act. Further, that sub-section (1) of section 3 of the 1961 Act was both prospective and retrospective and, therefore, section 2(g) had to be read into the 1954 Act to find out which lands were 'Shamilat' lands for the purposes of 1954 Act. This judgement was approved in a later Bench decision of this Court, consisting of D. K. Mahajan and R. S. Narula JJ. in *Lakhi Ram* v. *The Gram Panchayat Gudah*, (2). It was also held in the case of *Nathu and others* (1) that the time when the nature of the Shamilat land had to be determined for the purposes of either the 1954 Act or the 1961 Act, was 9th January, 1954, the date of the commencement of the 1954 Act, as defined in section 2 (h) of the latter Act and not 4th May, 1961, the date of the commencement of the 1961 Act. Counsel for the parties did not challenge the correctness of these two decisions and, therefore, I shall proceed to apply the law laid down in these authorities to the facts of the instant case.

(1) I.L.R. (1962) 2 Pb. 631.
(2) 1968 P.L.R. 106.

(12) What was the nature of the land in dispute on 9th January, 1954, and did it come within the definition of 'Shamilat Deh' as given in clause (g) of section 2 of the 1961 Act ? There is the *Jamabandi* of 1941-42, Exhibit P. 4, which is the only relevant revenue record for determining this question. In it, the land has been shown as Shamilat of Thola Ramian in the ownership column. It is entered as *Maqbuza Malikan*, i.e. in the possession of the proprietors of that Thola. Further the land has been described as *Banjar Qadim*. To such a type of land, will clause (3) of section 2(g) of the 1961 Act, as contended by the counsel for the appellants, apply or will it be covered by clause (5) of the same section, as argued by the counsel for the respondents, Clauses (3) and (5) read—

"2. (g) 'shamilat deh' includes—

(1) to (2) * * * *

(3) lands described in the revenue records as shamilat, tarafs, patties, pannas and tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

(4) * * * *

(5) lands in any village described as *banjar qadim* and used for common purposes of the village according to revenue records:

Provided that shamilat deh at least to the extent of twenty-five percentum of the total area of the village does not exist in the village; but does not include land which—

(i) to (iv) * * *

(v) is described in the revenue records as shamilat taraf, pattis, pannas and thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;"

(13) The argument of the counsel for the appellants was that the land had been entered in the revenue records as Shamilat of Thola Ramian and had been used according to the revenue records for the benefit of a part of the village community, because it was in possession of the proprietors of that Thola. It was, therefore, covered

by Clause (3). For this submission, he placed his reliance on the decision of D. K. Mahajan, J., in *Co-operative Society of Improvement of Shamilat Patti Harnam Singh, Lambardar of village Khanni and another* v. *Gram Panchayat of village Khannai* (3), where it was held that if in the revenue records, some land was entered as *'Shamilat Patti,* and in possession of the owners thereof, that entry clearly showed that the Shamilat in question was being used for the benefit of a part of the village community, because there was nothing in the revenue records to show that the benefit was confined to any one of the owners of the Shamilat individually. The benefit went jointly to all the owners of the *Patti* and, therefore, that land fell within the definition of the word 'Shamilat' in the 1961 Act and vested in the Panchayat.

(14) Counsel for the respondents, on the other hand, submitted that the land in question had been described as Banjar Qadim and that being so, clause (5), which specifically dealt with such lands, came into operation and the definition mentioned therein had to be satisfied before such land would be called *'Shamilat Deh'*.

(15) After hearing the counsel for the parties, I am of the view that there is merit in the submission made by the counsel for the respondents. Shamilat of a Thola could consist of various types of lands. It could be *Banjar Qadim, Banjar Jadid, Ghair Mumkin Barani, Nehri, Rosli,* etc. Thus all types of lands could be included in Shamilat Thola. Clause (6), on the other hand, only deals with lands which are described as Banjar Qadim. They might be in the ownership of Shamilat Deh or Shamilat Thola, but if they are described as Banjar Qadim, they will be governed by Clause (5) and will be called *'Shamilat Deh'*, if it could be shown that they were used for the common purposes of the village according to the revenue records. An individual proprietor's holding also can consist of some land which is described as Banjar Qadim, but that would not be included in Shamilat Deh, because the same would not have been used for the common purposes of the village according to the revenue records. It follows that if in the proprietor's column, the land has been entered as Shamilat Deh or Shamilat Thola, but it is described as Banjar Qadim in the revenue records, then clause (5) will come into play and for such lands that clause will be specific and clause (3) general. The specific would, undoubtedly, exclude the general. That being so, the Courts below

(3) 1962 P.L.R. 730.

correctly held that the plaintiffs could succeed only if they could show that the land in dispute was covered by clause (5). For doing that, three things had to be established—(1) that the land was described as Banjar Qadim; (2) that it was used for common purposes of the village according to the revenue records; and (3) provided that Shamilat Deh at least to the extent of 25 per centum of the total area of the village did not exist in the village. Only condition No. (1) had been satisfied in the instant case. It had not been shown that the land was used for common purposes of the village according to the revenue records. The decision in 1962 P.L.R. 730 cannot be of any assistance to the appellants, because there it was held that if the land had been entered in the possession of the proprietors of the Thola, then it would be said that it was being *used for the benefit of a part of the village community.* The words underlined (in italics in this report), however, do not occur in clause (5). Thereunder, it had to be established that the Banjar Qadim land was being *used for common purposes of the village* according to the revenue records. Further condition No. (3) had also not been fulfilled by the appellants. It might be mentioned that during the course of arguments, it was also suggested that the proviso occurring at the end of clause (5) covers all the clauses (1) to (5) mentioned above it. It is, however, needless to determine this question, in the present case.

(16) I would, therefore, hold that the Courts below were right in applying clause (5) to the land in question and deciding that the necessary conditions mentioned in that clause had not been satisfied by the plaintiffs and, consequently, the land was not Shamilat Deh, which could have vested in the Panchayat.

(17) It might be stated that the counsel for the respondents submitted that the land in dispute was covered by clause (v) of section 2(g), referred to above, and would, therefore, not be included in Shamilat Deh. His argument was that though the land had been described in the revenue records as Shamilat Thola, but it was not used according to the revenue records for the benefit of the village community or a part thereof or for common purposes of the village. The contention of the appellants, based on the decision of Mahajan, J., in 1962 P.L.R. 730 that the land according to the revenue records was used for the benefit of a part of the village community, because it was shown to be in possession of the proprietors of Thola Ramian, was, according to him, without any substance. Learned counsel challenged the correctness of the decision

of Mahajan, J., because, according to him, if the proprietors of the Thola *alone* were in possession of the Shamilat of that Thola, then it could not be said that it was being used for the benefit of a part of the village community. It should be shown that people in the village, other than the proprietors of that particular Thola, were getting some benefit from the said land before it could be held that the same was being used for the benefit of a part of the village community, because if the proprietors of the Thola itself were in possession of that land and using it for themselves, they were merely exercising their own rights to which they were legally entitled in the land. It must be proved that the other villagers, who had no rights in the said land, were also using it or the land was being utilized for their welfare as well, before it could be said that it was used for the benefit of a part of the village community. It is, however, needless to decide this matter, because, as already held above, the plaintiffs have not been able to establish that the land was 'Shamilat Deh' within any of the clauses (1) to (5) of section 2(g) of the 1961 Act.

(18) In view of what I have said above, this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout.

K.S.K.

REVISIONAL CRIMINAL

Before A. D. Koshal, J.

BIKKAR SINGH,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 1094 of 1968

December 9, 1969

The Punjab Excise Act (I of 1914)—Section 75(2)—Police report in an excise case put in a Magistrate's Court within one year of the commission of the offence—Magistrate not taking cognizance till after the lapse of one year—Prosecution—Whether said to be "instituted" within one year of the offence.