

CASE DETAILS

LAJJA RAM & ORS.

v.

RATI CHAND & ORS. ETC

(Civil Appeal Nos. 2835-2836/2011)

NOVEMBER 09, 2023

[HRISHIKESH ROY AND SANJAY KAROL, JJ.]

HEADNOTES

Issue for Consideration: Nature and extent of a *bhondedar's* right over a *shamlatdeh* property (land reserved & used for common purpose in villages) and whether the *bhondedar* can exercise ownership rights over the granted land.

Customary Practice – *Bhondedar – Bhondedar's right over a shamlatdeh land – Nature and extent – Punjab Village Common Lands (Regulation) Act, 1961 – Punjab Mujara Act, 1887 – Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 – In an earlier proceeding for declaration and occupancy rights before Asst. Collector against the Gram Panchayat, Defendant No.1 was held entitled to hereditary rights in view of the longstanding service of his ancestors as mujara (tenants) relating to the suit land-shamlatdeh land – Defendant No.1 sold the *shamlatdeh* land to appellants-Defendant nos.2-5 – Suit filed by Respondents (inhabitants of the village & biswedars-proprietors) for declaration, possession & injunction – Dismissed by Trial Court – First Appellate Court reversed the said order and decreed the Respondents' suit, declaring the Defendant No.1 as only a *bhondedar* but not the owner of the *shamlatdeh* land and annulling the sale deeds executed in favour of the appellants – Order upheld by High Court:*

Held: The term '*bhondedar*' has no statutory or legislative definition – But over a period of time, the term is equated with limited grant of land for service to be rendered by the grantee – It is a customary practice in the Punjab region (present-day areas comprising largely in the states of Punjab & Haryana) – A *bhondedar* has only limited right and should he fail to carry

out his assigned duties, even this limited right becomes unavailable – The very nature of the tenure(s) does not bestow upon the holder, any right to alienate the granted land – All alienations made by the limited holder of property, would be manifestly void because a *bhondedar* does not possess title or ownership right of the property granted to him, as a *bhonda* – Dfdt. No.1 held conditional and limited possessory rights as a *bhondedar*, subject to services being rendered towards the village community – Such limited right remained unaffected and unaltered as long as the *bhondedar* fulfilled their service obligations toward the village – However, the Dfdt. No.1 not only ceased to render the required services but also relocated to a different place soon after unauthorisedly selling the suit land to appellants – Consequently, the *bhondedar* can have no legitimate claim whatsoever, over the suit land – When the services were ceased to be rendered towards the management, maintenance and upkeep of the *shamlatdeh* land, the limited grant so made to the *bhondedar*, by the proprietors-biswedars, in lieu of such services, extinguished – High Court also found that the decision in the previous proceeding cannot extinguish the rights of the plaintiffs and the Gram Panchayat in the suit because the biswedars were unaware of the Asst. Collector's order – As soon as they learnt of such decree in Dfdt. No.1's favour against the Gram Panchayat, they filed Suit – High Court rightly held that the suit was filed within time – *Bhondedar* could not have transferred his limited possessory rights or alienated the said property to the Appellants who in turn, as transferees, could not have derived any legal right over the suit land either – High Court's decision in favour of the plaintiffs and the Gram Panchayat consistent with the opinion of this Court. [Paras 10, 14, 17, 20, 23, 24]

Land Laws – Punjab Village Common Lands (Regulation) Act, 1961 – Inter-play of claims over *shamlatdeh* category land vis-à-vis the *bhondedar*, the Gram Panchayat and the proprietors of such land:

Held: The ownership to such lands rested in proportion to other lands of the village – For instance, an individual owning some land in the village also possessed additional proprietary rights and interest over *shamlatdeh* lands – However, with the enactment of the 1961 Act, the nature of vesting of such lands with the village community was somewhat altered – While such

lands owned by the proprietors came to be vested in the Gram Panchayat, the s.4 of the 1961 Act noted certain important exceptions – The 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 like a bhondedar, dholidar, etc. and those would not be affected by such vesting of lands in the Gram Panchayat. [Paras 15, 16]

Words and Phrases – ‘*Bhondedar*’ – Characteristic features:

Held: A ‘bhondedar’ renders secular services towards the village community as well as the biswedars (proprietors) – He is granted a parcel of land rent-free, within a village by the biswedars in lieu of payment for services rendered, and a bhondedar can be ejected from such piece of land on failure to render assigned services or fulfil conditions of such grant. [Para 11]

Words and Phrases – ‘*bhonda*’; ‘*dholi*’ – Discussed. [Para 10]

LIST OF CITATIONS AND OTHER REFERENCES

Gram Panchayat of Village Jamalpur vs. Malwinder Singh, [1985] 2 Suppl. SCR 28: (1985) 3 SCC 661; State of Haryana vs. Jai Singh & Ors.: 2022 SCC OnLine SC 418 – referred to.

Sewa Ram vs. Udegr: 1921 SCC OnLine Lah 237 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2835-2836 of 2011.

From the Judgment and Order dated 12.08.2009 of the High Court of Punjab & Haryana at Chandigarh in CA No.17 of 2003, RSA Nos.2552 of 2008 and 4041 of 2007.

Appearances:

Shubham Seth, Anuj Panwar, Nikilesh Ramachandran, Sujit Kumar Mishra, Advs. for the Appellants.

Anjani Kumar Mishra, Adv. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT**ORDER**

1. Heard Mr. Shubham Seth, the learned counsel appearing for the appellants. Also, heard Mr. Sujit Kumar Mishra, learned counsel appearing for the respondents.

2. The present appeals have been preferred challenging the judgement and order dated 12.08.2009 in RSAs No. 4041/2007 & 2552/2008, passed by the High Court of Punjab & Haryana. Under the impugned order, the High Court upheld the decision dated 15.10.2007 of the Additional District Judge, Faridabad ('First Appellate Court'), reversing the Civil Judge (Jr. Division), Palwal ('Trial Court') order dated 28.02.2003, and thereby, decreed the Respondents' suit and declared Narain Dass (Defendant No. 1/Dfdt. 1) as only a *bhondedar* but not the owner of the *shamlatdeh* land (land reserved & used for common purpose in villages). It was held that the Dfdt. No. 1 had been granted limited possessory rights, to the *shamlatdeh* land, in lieu of service rendered to the village temple and when he, as the *bhondedar*, ceased to render such service, the land would automatically revert back to the common village pool.

3. In the year 1982, Narain Dass (Dfdt. No. 1) initiated an earlier proceeding for declaration and occupancy rights, before Asst. Collector (Grade-I), Faridabad against the Gram Panchayat, Palwal. The Asst. Collector while disposing the said proceeding observed in the order dated 06.03.1986 that Narain Dass was entitled to hereditary rights, under Sections 5 & 8 of the *Punjab Mujara Act, 1887* (also referred to as the *Punjab Tenancy Act, 1887*) and the *Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953*. This arises from the longstanding service of Narain Dass' ancestors as *mujaras* (tenants) relating to the *shamlatdeh* land, for over 60 years. Additionally, it was held that the land did not vest in the Gram Panchayat.

4. Subsequently, Narain Dass sold the *shamlatdeh* land to Lajja Ram & his sons (Defendant Nos. 2-5) through multiple sale deeds on 24.07.1987, 31.08.1987 and 07.06.1988, respectively.

5. Aggrieved by the above alienation of the common village land, the inhabitants of the village & *biswedars* (proprietors) of the land ('Respondents') filed the Suit No. 878/1996 for declaration, possession & injunction before the Civil Judge (Jr.), Palwal. However, the Trial Court dismissed the suit on 28.02.2003 as non-maintainable on the grounds that it was time-barred and also that the plaintiffs had no locus standi to file the suit. It was also held that the sale deeds transferring ownership rights from Narain Dass (Dfdt. 1) to Lajja Ram & sons (Dfdts. 2-5) were valid. The Court noted that Narain Dass, while serving as the *bhondedar* of the *shamlatdeh* land, continued to provide service to the landlord, and such service would be considered equivalent to payment of rent, thereby making Narain Dass also a tenant of the suit land.

6. Displeased with the Trial Court's decision favouring Dfdt. No. 1, the Respondents approached the Additional District Judge, Faridabad by filing the Civil Appeal No. 17 on 01.04.2003. Simultaneously, Respondents (Defendant Nos. 5-12) also filed a separate Civil Appeal No. 25. The First Appellate Court with the common judgment dated 15.10.2007 decreed the suit for declaration, injunction, and possession of land measuring 33 *kanals* 5 *marlas*. Simultaneously, the Court negated Narain Dass' (Dfdt. 1) claim, since he had limited right and was not competent to alienate the suit property. The Court also found that Dfdt. 1 had taken recourse to self-contradictory pleas asserting ownership rights as well as occupancy rights. Thus, the annulment of sale deeds to Dfdts No. 2-5 with a directive to restore the suit land possession to the common village pool was ordered.

7. The transferee Lajja Ram & sons (Dfdts. No. 2-5) then filed the RSA No. 4041 of 2007 and RSA No. 2552 of 2008 before the High Court. In the impugned order dated 12.08.2009, the High Court noted that the prior decree granted by the Asst. Collector against the Gram Panchayat could not have been used against the *biswedars* of the village given their absence as parties in the previous proceedings. Additionally, it was found that the ownership of the *shamlatdeh* land did not vest with the Gram Panchayat.

8. The High Court particularly noted that Narain Dass had no title or authority to sell the suit land to Dfdts. No. 2-5. The sale, executed by an incompetent party without a valid title, was deemed by the High Court as insufficient to confer valid title to Dfdts. No. 2-5. Moreover, the sale

by a vendor without any title could be disregarded even in a collateral proceeding, i.e., the present suit by the proprietors. The High Court deemed the later suit to be within the period of limitation since reckoning time would not commence from the date of sale deed's registration but from the date of knowledge of the sales, by the *biswedars*. Consequently, the High Court upheld the First Appellate Court's decision decreeing the suit against Dfdts. No. 2-5, and dismissed the second appeal under the impugned judgment.

9. In order to adjudicate the present *lis*, we need to briefly refer to the concept of a *bhondedar*, and the nature & extent of rights that a *bhondedar* exercises with respect to *shamlatdeh* lands.

10. The term '*bhondedar*' has no statutory or legislative definition. But over a period of time, the term is equated with limited grant of land for service to be rendered by the grantee. It is a customary practice in the Punjab region (present-day areas comprising largely in the states of Punjab & Haryana)¹ for proprietors of land as well as the larger village community, to set apart a parcel of land to be held rent-free towards a temple, mosque or shrines, or granted on favourable terms to a saint, *pandit* or any other person belonging to a religious order. As long as such grant (also known as a '*dholi*' in erstwhile Punjab) was being used for the assigned purpose, the person assigned such *dholi* (referred to as a '*dholidar*' in erstwhile Punjab), could not be asked to vacate the same. The terms *dholidar* and *bhondedar* are often interchangeably used albeit with minor variance. While a *dholi* is granted in lieu of a service directly connected with religion, a *bhonda* would ordinarily be granted towards rendering secular services like that of a village messenger or watchman, towards the proprietors of the said land.² The *bhondedar* could be ejected upon failure to fulfil the conditions of such grant or even at the will of the proprietors. Essentially, it was a method of compensation for certain services, by granting rent-free land.

1 Gurgaon District Gazetteer, Gurgaon DG – Administrative Section A to C, 1910, pg. 177.

2 Mamala & Ors. vs. ISA & Anr., 1983 Punjab Law Journal 231; Gurgaon District Gazetteer, Gurgaon DG – Administrative Section A to C, 1910, pg. 177.

11. A *bhondedar* typically possesses the following characteristic features:

- (i) He renders secular services towards the village community as well as the *biswedars* (proprietors),
- (ii) He is granted a parcel of land rent-free, within a village by the *biswedars* in lieu of payment for services rendered, and
- (iii) A *bhondedar* can be ejected from such piece of land in case of failure to render assigned services or fulfil conditions of such grant.

12. The aforementioned characteristic features suggest that the rights available to Dfdt. No. 1 as the *bhondedar*, were conditional and not boundless. He could exercise limited rights as long as he rendered service towards the village in his capacity as the *bhondedar*.

13. Proceeding with the above understanding, let us now examine the nature & extent of a *bhondedar*'s right over a *shamlatdeh* property and also whether the *bhondedar* can exercise ownership rights over the granted land. The conditional and limited rights a *dholi* or a *bhonda* can exercise over the granted land, can be culled out from the decision in Lahore High Court in *Sewa Ram vs. Udegir*³ where the following was expressed

“..... in the revenue records the proprietary body are recorded as the owners of the property, and the grantee is recorded as a tenant in the column of cultivation. So long as the purpose, for which the grant is made, is carried out, it cannot be resumed, but should the holder fail to carry out the duties of his office, the proprietors can eject him and put in someone else under a like tenure..... It is beyond dispute that tenure of this kind cannot be alienated by sale or mortgage, and there can be little doubt that any alienation of that character, if made by the Dohlidar, would be absolutely void..... As the transaction was altogether void, we consider that even the alienor could have successfully pleaded in answer to the plaintiff's suit that the latter could not enforce it in a Court of law..... For the foregoing reasons we are of opinion that the Dohlidar had no

3 1921 SCC OnLine Lah 237.

right to make the alienation relied upon by the plaintiff, and that the defendant is not precluded from impeaching its validity.....”

14. The above would suggest that a *bhondedar* had only limited right and should he fail to carry out his assigned duties, even this limited right becomes unavailable to the grantee of the property. The very nature of the tenure(s) does not bestow upon the holder, any right to alienate the granted land, by sale or mortgage. Consequently, all alienation made by the limited holder of property, would be manifestly void. This is because *bhondedar* or *dholidar* do not possess title or ownership right of the property that is granted to him, as a *bhonda* or *dholi*.

15. The inter-play of claims over *shamlatdeh* category land vis-à-vis the *bhondedar*, the Gram Panchayat and the proprietors of such land, may now be seen. The ownership to such lands rested in proportion to other lands of the village. For instance, an individual owning some land in the village also possessed additional proprietary rights and interest over *shamlatdeh* lands.⁴ However, with the enactment of the *Punjab Village Common Lands (Regulation) Act, 1961*, the nature of vesting of such lands with the village community was somewhat altered. The following discussion in *State of Haryana vs. Jai Singh & Ors.*⁵ would assist us in understanding the implication for community lands in the village:

“¶24. Shamlat land in terms of Section 4 of the 1961 Act vested in the Gram Panchayat of the village. The vesting of shamlat land in a village panchayat brought about a paradigm shift in the ownership of rights in ‘shamlat deh’. The proprietary rights of the proprietary body of the village in shamlat land were extinguished by a statutory declaration. The proprietary and possessory rights of proprietors and non-proprietors in shamlat deh were to henceforth vest in a Gram Panchayat and used for common purposes of the entire village community, under the aegis of the Gram Panchayat. The shamlat deh lands as defined under Section 2 (g) of the 1961 Act now vest completely, that is, with ownership and title, in the Panchayat of the village concerned. The vesting of the shamlat deh lands or the village common lands in the Panchayat has been

⁴ Gram Panchayat of Village Jamalpur vs. Malwinder Singh, (1985) 3 SCC 661.

⁵ 2022 SCC OnLine SC 418.

for agrarian reforms and such vesting is protected by Article 31A of the Constitution."

16. While such lands owned by the proprietors came to be vested in the Gram Panchayat, the Section 4 of the *Punjab Village Common Lands (Regulation) Act, 1961*, noted certain important exceptions. The 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 like a *bhondedar*, *dholidar*, etc. and those would not be affected by such vesting of lands in the Gram Panchayat.

17. In the present matter, the Dfdt. No.1 (Narain Dass) held conditional and limited possessory rights as a *bhondedar*, subject to services being rendered towards the village community, as recorded in the *jamabandi*. Such limited right remains unaffected and unaltered as long as the *bhondedar* fulfills their service obligations toward the village. The facts in this case however indicates that the Dfdt. No. 1 not only ceased to render the required services but also relocated to a different place soon after unauthorisedly selling the suit land to Dfdts. 2-5. Consequently, the *bhondedar* Narain Dass can have no legitimate claim whatsoever, over the suit land.

18. Addressing the issue of limitation on account of the decision of Asst. Collector favouring Narain Dass in the previous proceeding, the High Court observed that the *biswedars* or other inhabitants of the village were not parties in the proceedings before Asst. Collector. It was therefore held that the decree obtained from the Asst. Collector against the Gram Panchayat, could not be invoked to argue that the *biswedars* had relinquished their rights, title, and/or interest in the land.

19. Observing that the sale deeds were executed by an individual lacking valid title, the High Court opined that those could also be disregarded in collateral proceedings as well. It was also found that the decision in the previous proceeding cannot extinguish the rights of the plaintiffs and the Gram Panchayat in the suit simply because the *biswedars* were unaware of the Asst. Collector's order. As soon as the *biswedars* learnt of such decree in Narain Dass' favour against the Gram Panchayat, they filed Suit No.878/1996 before the Trial Court and as such the suit was found to be in order. In our assessment, the High Court has rightly held that the suit was filed within time as the *biswedars*' right to challenge the sales by the *bhondedar* would commence only from the date on which they became aware of such sales.

20. The upshot of the aforementioned discussion is that when the services were ceased to be rendered towards the management, maintenance and upkeep of the *shamlatdeh* land, the limited grant so made to the *bhondedar*, by the proprietors i.e., the *biswedars*, in lieu of such services, stood extinguished.

21. No specific material is produced before us to show the precise terms of arrangement between the *biswedars* and the *bhondedar*. However, it is evident that Narain Dass could have retained possession of the land only till such time that he continued to discharge the services tied to the limited grant. Moreover, by relocating to Nangli Gurdhana, i.e., a different village over 50 years ago (around 1970-71), he obviously ceased rendering services to the village temple. By the very nature of the conditional grant, the grantee was naturally incompetent to alienate the *shamlatdeh* land to any third parties, including the Dfnts. Nos. 2-5.

22. The limited right available to Narain Dass to continue to avail the rent-free land would be extinguished immediately upon cessation of service. To attract the exception, Narain Dass could not prove that the suit land was gifted by the *biswedars*. The only exceptional circumstance that could have possibly validated ownership and subsequent sales to the Appellants is also not applicable here.

23. The oft-quoted statement full of wisdom – “*Before the reward, there must be labour: You plant before you harvest. You sow in tears before you reap joy.*” – attributed to author Ralph Ransom perfectly encapsulates the current situation, emphasising upon the inherent connection between effort and reward. As soon as the *bhondedar* had ceased rendering services, the concerned land should have returned to the common village pool. The *bhondedar* could not have transferred his limited possessory rights or alienated the said property to the Appellants. In turn, the Appellants, as transferees, could not have derived any legal right over the suit land either.

24. Therefore, the High Court’s decision in favour of the plaintiffs and the Gram Panchayat is consistent with the above opinion of this Court. Accordingly, the appeals are dismissed without any imposition of costs.