

CASE NO.:  
Appeal (civil) 2529 of 2006

PETITIONER:  
Babu Lal & Ors

RESPONDENT:  
Gram Panchayat, Deroli Jat & Ors

DATE OF JUDGMENT: 31/10/2007

BENCH:  
Tarun Chatterjee & P. Sathasivam

JUDGMENT:  
JUDGMENT  
WITH

CONTEMPT PETITION (C) NO. 90 OF 2007

IN

CIVIL APPEAL NO. 2529 OF 2006  
P. Sathasivam, J.

1) This appeal is preferred against the judgment and order dated 02.09.2004 passed by the Punjab and Haryana High Court in R.S.A. No. 3120 of 2003 whereby the High Court dismissed the regular second appeal of the appellants herein.

2) The brief facts giving rise to the present appeal are as under:

Land measuring 277 canals 6 marlas comprised in Khewat No.302 Khatoni No. 449 to 552 situated in village Daroli Jat was in cultivating possession of Bohat Ram, Ram Rattan, Chhaju, Cheema and Nathu in the year 1957 B.K. i.e. in the year 1900 A.D. The said land belonged to the proprietary body of Village Daroli Jat prior to the commencement of the Pepsu Village Common Lands Act, 1954. The proprietors orally mortgaged the said land to Moola for a consideration of Rs.500/-. Possession was also delivered to mortgagee. Mutation was also entered regarding the said mortgage in favour of Moola. Moola died and his legal representatives came into possession of the suit land as mortgagees. Appellants herein purchased the said land from L.Rs. of Moola and thus the appellants became mortgagees of this land. Bohat Ram etc. were mortgagers and co-sharer being proprietors of the common land which was left out for common purposes by the proprietors of the village. In 1954, the Pepsu Village Common Lands Act, 1953 (hereinafter referred to as 'the Act') came into force. As per Section 4 of the Act, all the land which was Shamlat Deh vested in Gram Panchayat. But the Gram Panchayat did not and could not disturb

the possession of the L.Rs. of Moola from the said land as 30 years had already elapsed for redemption of the mortgaged land. In 1961, Punjab Village Common Lands Act, 1961 (hereinafter referred to as \0231961 Act\024) came into force and Pepsu Village Common Lands Act, 1953 was repealed. Section 443 of 1961 Act makes it clear that in case mortgagee is in possession of Shamlat Deh land since 26.01.1950, the right of mortgagee was protected and could not be disturbed. On 27.09.1991, the L.Rs. of Moola filed Civil Suit No. 616 of 1991 on the file of Additional Senior sub-Judge, Mahendragarh seeking decree for permanent injunction restraining Gram Panchayat from interfering in the possession of mortgagees and seeking declaration that mortgagees have become owners in possession of the suit land as more than 30 years have expired and Gram Panchayat has not redeemed the suit land thus right of redemption has been lost. The trial Court dismissed the suit. Against the said order, Gram Panchayat filed Misc. Civil Appeal No. 42 of 1992 on the file of Additional District Judge, Narnaul. The Additional Dist. Judge, Narnaul dismissed the same. Challenging the said judgment, R.S.A. No. 1638 of 1992 was filed by the newly constituted Gram Panchayat which was dismissed in limine by the High Court. Newly constituted Gram Panchayat filed Civil Suit No. 267 of 1992 in the Court of Civil Judge (Junior Division), Mahendergarh seeking declaration that the judgment and decree dated 3.2.1992 in Civil Suit No. 616 of 1991, dated 28.7.1992 in Misc. Civil Appeal No. 42 of 1992 and dated 15.10.1992 in R.S.A. No. 1638 of 1992 are null and void having been obtained by playing fraud and misrepresentation in collusion with the L.Rs. of Moola in Civil Suit No. 616 of 1991. The Civil Judge after quashing the orders in Civil Suit No. 616/1991, Misc. C.A. No. 42 of 1992 and R.S.A. No. 1638 of 1992 decided the suit in favour of Gram Panchayat. Against the said judgment, the L.Rs. of Moola etc. filed C.A. No. 315 of 2000 in the Court of District Judge, Narnaul. The District Judge relying on Rule No.16 of the Punjab Village Common Lands (Regulation) Rules, 1964 directed the Addl. Senior sub-Judge to try the case i.e. Civil Suit No. 267/2000/1992 from the stage, the case was posted before it on 28.11.1991 and decide the same in accordance with law. Aggrieved by the said judgment, the appellants herein filed R.S.A. No. 3120 of 2003 in the High Court and the same was dismissed by the High Court holding that the Additional Dist. Judge, Narnaul vide

its order dated 13.6.2003 has rightly relegated the parties to the trial Court and rightly directed the trial Court to start Civil Suit from the stage of 28.11.1991 and thus dismissed the appeal. Aggrieved by that judgment, the appellants filed special leave petition before this Court. On 25.10.2004, this Court issued notice and granted status quo regarding possession and on 5.5.2006, leave was granted. Hence the present appeal.

3) Heard Mr. P.N. Misra, learned senior counsel appearing for the appellants and Mr. Mahabir Singh, learned senior counsel appearing for the respondents.

4) Though learned senior counsel appearing for the appellants assailed the orders of the Courts below including the judgment of the High Court, in view of the reasoning of the Civil Judge (JD), Mahendergarh in Civil Suit No. 267/2000/1992 and the Additional Dist. Judge, Narnaul in C.A. No. 315 of 2002, we are unable to accept the said contention. It is relevant to point out that though the Civil Judge, Mahendergarh had set aside the judgment and decree dated 3.2.1990 as well as the subsequent confirmation order dated 28.7.1992 of the Dist. Judge and order dated 15.10.1992 of the High Court, learned Additional Dist. Judge, Narnaul in his judgment dated 13.6.2003 observed as follows:

\023Resultantly the parties are relegated to the stage which existed on 28.11.1991 and the Civil Suit No. 267 of 2000/1992 filed on 28.10.1992 is hereby restored and the Addl. Senior sub-Judge shall try the case from the stage, the case was posted before it on 28.11.1991 and he will decide the case in accordance with law. The parties are directed to appear before the trial Court on 18.7.2003.\024 The said order/direction has been confirmed by the High Court. The effect of the direction of the Additional Dist. Judge is that Civil Suit No. 267/2000/1992 filed on 28.10.1992 is now restored and the additional sub-Judge is to try the case from the stage existed on 28.11.1991. In view of the same, we clarify and permit both parties to amend their pleadings, if need arise and free to raise additional plea/defence in respect of the allegation i.e. \023fraud or misrepresentation etc.\024 After completion of those formalities, Additional Senior sub-Judge is to dispose of the matter as directed by the Additional Dist. Judge, Narnaul in his judgment dated 13.6.2003. Considering the fact that the dispute is pending from 1991, we request the Court concerned to dispose of the same as directed by the Additional Dist. Judge within a period of six months from the date of receipt of the

copy of the judgment.

The Civil Appeal is disposed of on the above terms. However, there shall be no order as to costs.

In view of the disposal of the appeal, no further order is required in the contempt petition and the same is closed.

JUDIS