



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP NO.210 OF 2008 (O&M)

Piara Singh (since deceased) through LRs and another
...Petitioners

Versus

Director, Rural Development and Panchayat Department
and others
...Respondents

1.	The date when the judgment is reserved	28.01.2026
2.	The date when the judgment is pronounced	12.02.2026
3.	The date when the judgment is uploaded	13.02.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Umesh Kanwar, Advocate,
for the petitioners.

Mr. Vishal Sharma (Vasudeva), Advocate,
For respondent No.4-Gram Panchayat.

LAPITA BANERJI, J.

Prayer in the present petition filed under Articles 226/227 of the Constitution of India, *inter-alia*, is for issuance of a writ in the nature of certiorari for quashing of order dated September 15, 2004 (Annexure P-2) passed by the District Development and Panchayat Officer-cum-Collector, Hoshiarpur-respondent No.3 and order dated September 13, 2007 passed by the Director, Rural Development and Panchayat Department, Punjab exercising the powers of Commissioner under the Punjab Village Common



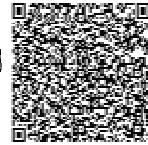
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Lands (Regulation) Act, 1961 (hereinafter referred as the “1961 Act”)-respondent No.1. The petitioners have also prayed for restraining the respondents from dispossessing the petitioner from the disputed land during the pendency of the writ petition/proceedings under Section 11 of the 1961 Act.

2. The land in question is situated in Khasra No.452 (15K -13M), village Bora which has been shown as ‘*Abadi Deh*’ in the jamabandi for the year 1993-94. According to the petitioners, they are in possession of Abadi land for more than 100 years through their forefathers.

3. The Gram Panchayat (GP) filed a petition under Section 7 of the 1961 Act before the Collector for ejection of the original petitioner (since deceased). The present petitioners are the heirs and legal representatives of the original petitioner. The Collector vide impugned order dated September 15, 2004 observed that neither the GP nor the original petitioner herein, being a respondent in the petition filed under Section 7 of the 1961 Act could produce any document qua their title to the disputed land. Consequently, he directed the original petitioner to file an application under Section 11 of the 1961 Act for determination of his title within three months before the Court of learned Additional Deputy Commissioner (Development)-cum-Collector, Hoshiarpur. Furthermore, it was observed that in case the petitioner failed to file a petition under Section 11 of the 1961 Act within the stipulated time then it would be deemed that the petitioner has no right to ownership of the disputed land.

4. The original petitioner filed an appeal before the Commissioner challenging the impugned order passed by the Collector but



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the same was dismissed by the Commissioner on September 13, 2007 by holding that even though in the jamabandi for the year 1993-94 the land was recorded as '*Abadi deh*' but because the original petitioner did not produce the revenue record to show his ownership since January 26, 1950, the Collector's order merited no interference.

5. Learned counsel for the petitioners submits that since the GP filed the eviction petition under Section 7 of the 1961 Act, it was incumbent upon the GP to show the disputed land being '*Shamlat deh*' vested in the GP. Revenue records unequivocally indicated the said land to be '*Abadi deh*' and the GP had admittedly failed to prove its ownership before the Collector. Therefore, the Collector misdirected himself on a proposition of law and erroneously held that the petitioner had to prove his ownership by filing a petition under Section 11 of the 1961 Act instead of holding that the GP who was seeking eviction of the petitioner from the purported panchayat land had to prove its ownership. The Commissioner also erred in holding that the original petitioner had to prove his ownership since January 26, 1950 through filing of Section 11 application instead of directing the GP to prove its ownership on the disputed land.

6. Mr. Sharma, appears on behalf of respondent No.4-GP and submits that the petitioners are trespassers and should be evicted from the disputed land in accordance with law.

7. This Court has heard learned counsel for the parties and perused the material on record.

8. Admittedly, the Collector held that the land in question was within the '*Abadi deh*' of the village and the petitioners were in continuous



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possession for more than 100 years. However, he also held that the petitioners had to prove that they were owners of the land by filing application under Section 11 of the 1961 Act. The said order passed by the Collector was upheld by the Commissioner vide impugned order dated September 13, 2007 without application of independent mind. This Court is of the view that both the impugned orders suffer from incorrect appreciation of law because the GP had instituted proceedings against the petitioner under Section 7 of the 1961 Act and the onus to prove the disputed land to be '*Shamlat Deh*' was on the GP and not on the petitioner. The Collector erroneously directed the petitioner to file proceedings under Section 11 of the 1961 Act when the carriage of proceedings was on the GP to prove the same as it had sought eviction of the petitioners from the disputed land vested in GP.

9. The Commissioner also misdirected himself by failing to correct the error of law on the face of record by the Collector. Section 101 of the Indian Evidence Act, 1872 reads as follows:

“Section 101 Burden of proof:

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

The said section is *pari materia* with Section 104 of the Bhartiya Sakshya Adhinyam, 2023.

10. This Court is of the view that the aforesaid proposition of law has not been appreciated by both the authorities. A beneficial reference may be made to the following judgments of Apex Court:



11. **“Rangammal v. Kuppuswami and another”** reported in (2011) 12 Supreme Court Cases 220, the Supreme Court has held as under:

“xxx

37. *It is further well settled that a suit has to be tried on the basis of the pleadings of the contesting parties which is filed in the suit before the trial court in the form of plaint and written statement and the nucleus of the case of the plaintiff and the contesting case of the defendant in the form of issues emerges out of that. This basic principle, seems to have been missed not only by the trial court in this case but consistently by the first appellate court which has been compounded by the High Court.*

38. *Thus, we are of the view, that the whole case out of which this appeal arises had been practically made a mess by missing the basic principle that the suit should be decided on the basis of the pleading of the contesting parties after which Section 101 of the Evidence Act would come into play in order to determine on whom the burden falls for proving the issues which have been determined.*

[Emphasis Supplied]

xxx”

12. In **“Union of India and others v. Vasavi Cooperative Housing Society Limited and others”** reported in (2014) 2 Supreme Court Cases 269, it was opined that the trite law was that in a suit for declaration of title, the burden always lies with the plaintiffs to make out and establish its clear case. The relevant extract thereof is reproduced hereinafter:

“xxx

15. *It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.*

xxx”

13. In the recent judgment of **“Smriti Debbarma (dead) through legal representatives v. Prabha Ranjan Debbarma and others”** reported in (2023) 19 Supreme Court Cases 782, it has been held that a person in



possession of the land exercising ordinary rights of ownership peacefully has a legal right against the entire world except the rightful owner and a decree of possession could not be passed in favour of the plaintiff on the ground that the defendants could not fully establish their right, title and interest in the suit property. The burden of proof to establish a title lies on the plaintiff being the party who asserts the existence of a state of things on the basis of which relief is claimed. The weakness of the defendant's case could not be a justification to decree the suit. The relevant paragraphs of the aforesaid judgment are reproduced hereinafter:

“xxx

36. *In the above factual background, for the plaintiff to succeed, she has to establish that she has a legal title to the Schedule 'A' property, and consequently, is entitled to a decree of possession. The defendants cannot be dispossessed unless the plaintiff has established a better title and rights over the Schedule 'A' property. A person in possession of land in the assumed character as the owner, and exercising peaceably the ordinary rights of ownership, has a legal right against the entire world except the rightful owner. A decree of possession cannot be passed in favour of the plaintiff on the ground that Defendants 1 to 12 have not been able to fully establish their right, title and interest in the Schedule 'A' property. The defendants, being in possession, would be entitled to protect and save their possession, unless the person who seeks to dispossess them has a better legal right in the form of ownership or entitlement to possession.*

37. *The burden of proof to establish a title in the present case lies upon the plaintiff as this burden lies on the party who asserts the existence of a particular state of things on the basis of which she claims relief. This is mandated in terms of Section 101 of the Evidence Act, which states that burden of proving the fact rests with party who substantially asserts in the affirmative and not on the party which is denying it. This rule may not be universal and has exceptions, but in the factual background of the present case, the general principle is applicable. In terms of Section 102 of the Evidence Act, if both parties fail to adduce evidence, the suit must fail. Onus of proof, no doubt shifts and the shifting is a continuous process in the evaluation of evidence, but this happens when in a suit*



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for title and possession, the plaintiff has been able to create a high degree of probability to shift the onus on the defendant. In the absence of such evidence, the burden of proof lies on the plaintiff and can be discharged only when he is able to prove title. The weakness of the defence cannot be a justification to decree the suit.

[Emphasis supplied]

xxx”

14. In view of the discussion herein above, the impugned orders dated September 15, 2004 (Annexure P-2) and September 13, 2007 (Annexure P-3) are set-aside. The GP-respondent No.4 will, however, be at liberty to institute proceedings for removal of illegal encroachments from the panchayat land after establishing their title in accordance with law.

15. With the aforesaid directions, CWP No.210 of 2008 is **disposed of.**

16. Connected application(s), if any, shall also stand disposed of accordingly.

(DEEPAK SIBAL)
JUDGE

(LAPITA BANERJI)
JUDGE

FEBRUARY 12, 2026
Shalini

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No