

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

**Regular Second Appeal No.1572 of 1988
Date of Decision: 02.09.2015**

Ashraf Khan

.....Appellant

Versus

Ishaq and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. C.B.Goel, Advocate for the appellant.

Mr. J.L.Malhotra, Advocate for the respondents.

RAJIVE BHALLA, J (ORAL)

The appellant challenges judgments and decrees dated 14.08.1986 and 04.06.1988 passed by the Senior Sub Judge, Gurgaon and the Additional District Judge, Gurgaon, respectively, dismissing his suit as well as his appeal.

Counsel for the appellant submits that the land in dispute is abadi deh. The abadi deh of a village is specifically excluded from the shamilat deh of a village, by Section 2(g)(i) of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana) (hereinafter referred to as "1961 Act"). The Courts below have, however, invoked Section 2(g)(4a) of the 1961 Act, to hold that the land vests in the Gram Panchayat, unaware of the fact that Section 2(g)(4a) was deleted by Act No.2 of 1981 and only inserted by Act No.15 of 1983, thereby negating the allotments Ex.D1 to

D5, dated 22.04.1982, made to the respondents when there was no provision in the 1961 Act, conferring title on the Gram Panchayat with respect to vacant land situated within the abadi deh of the village.

Counsel for the appellant also submits that finding recorded by the Courts below that Section 13 of the 1961 Act prohibits a suit for permanent injunction, is incorrect as all that Section 13 prohibits are suits for declaration of title that the land is or is not shamilat deh. The 1961 Act does not prohibit the filing of a suit for an injunction.

Counsel for the appellant submits that the following substantial questions of law arise for adjudication:-

1. *Admittedly the land in dispute i.e. Khasra No.210/2, has been consistently shown as Gair Mumkin Abadi owned by Abadi Deh and also possessed by Makbujia Abadi Deh, in the revenue record. Whether the Gram Panchayat could gift away such land in favour of private individuals as claimed by the defendants/respondents?*
2. *Whether the finding of the learned Lower Appellate Court that the suit filed by the plaintiff/appellant simpliciter for permanent injunction against the respondents/defendants is barred under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961, is perverse?*
3. *Whether the findings of the Courts below are perverse being result of misreading and misconstruing the evidence on record as also the pleadings?*
4. *Whether in the facts and circumstances of the case, the judgments and decrees passed by the Courts below are sustainable in law as also on facts?*

Counsel for respondents submits that as admittedly Section 2(g)(4a) of the 1961 Act was reinserted in the statute by Act No.15 of 1983, with retrospective effect from 12.02.1981, the allotments/gift deeds Ex.D1 to D5, dated 22.04.1982, would be deemed to have been made by the owner of the land i.e. the Gram Panchayat. The land being vacant land situated within abadi deh, vested in the Gram Panchayat, under Section 2(g)(4a) of the Act, thereby negating any right or plea by or at the behest of the appellant that he should be granted an injunction or that the land is a 'kabristan'.

I have heard counsel for the parties and perused the impugned judgments and decrees.

The question (namely question No.2) whether Section 13 of the 1961 Act prohibits a Civil Court from entertaining a suit for grant an injunction shall be answered first. Section 13 of the 1961 Act reads as follows:-

“13. Bar of Jurisdiction.-- No civil court shall have jurisdiction--

(a) to entertain or adjudicate upon any question whether--

(i) any land or other immovable property is or is not shamlat deh;

(ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under this Act;

(b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or

(c) to question the legality of any action taken or matter decided by any revenue Court, officer or authority empowered to do so under this Act.]”

A perusal of Section 13 of the 1961 Act reveals that it prohibits a Civil Court from entertaining or adjudicating upon questions whether any land etc. is or is not shamilat deh or vests or does not vest in a Gram Panchayat, any matter that is reserved for the exclusive jurisdiction of a revenue officer, Collector or authority by the 1961 Act and whether their orders are legal and valid. The 1961 Act, including Sections 13 and 13-A, does not whether by specific intent or by inference prohibit a Civil Court from entertaining or adjudicating upon a suit for grant of an injunction particularly where a party seeks to protect its possession, subject, however, to the question of title, that may incidentally arise, being left open for adjudication by the Collector, under Section 13-A of the 1961 Act. The findings recorded by the Courts below that the suit filed by the appellant for grant of an injunction was not maintainable are incorrect and, therefore, reversed. The second substantial question of law is answered accordingly. The answer to this question, however, would make no difference to the outcome of the appeal.

The question Nos. 1, 3 and 4 are interlinked and

are, therefore, being answered together. The questions are whether the Gram Panchayat could gift land from the abadi deh/gair mumkin abadi deh, in possession of makbura abadi deh. Both the trial Court and the first appellate Court have held that as the land vests in the Gram Panchayat under Section 2(g)(4a) of the 1961 Act, the Gram Panchayat was within its rights to gift the land.

A perusal of the facts reveal that the appellant prayed for grant of an injunction by pleading the existence of kabristan/religious structure etc. on the land in dispute, but was unable to adduce any evidence to support this plea. A perusal of the revenue record reveals that the land is abadi deh and is not recorded as the ownership of any particular person much less is there is any construction or a 'kabristan' or any other religious structure as pleaded by the appellant. It would be appropriate to point out that though Section 2(g)(1) of the 1961 Act excludes abadi deh from vesting in the shamilat deh of a village but Section 2(g)(4a) provides that vacant land within abadi deh, not owned by any person, shall vest in a Gram Panchayat. The mere fact that at one stage Section 2(g)(4a) may have been deleted disregards the fact that it was re-inserted by Act No.15 of the 1983, with retrospective effect thereby, affirming and validating allotments Ex.D1 to D5, dated 22.04.1982, made by the Gram Panchayat, in favour of the private respondents, who had by

the time of filing of the suit already raised the foundation. The findings recorded by the courts below that the land in dispute vests in the Gram Panchayat, are incidental to the consideration of the prayer for grant of an injunction. At this stage, it would be appropriate to point out that in view of Section 13 of the 1961 Act, the question of ownership could not have been finally decided by the Courts below as jurisdiction to decide such a question vests in the Collector, under Section 13-A of the 1961 Act. The findings of ownership must, therefore, be held to have been recorded for the limited purpose of deciding the prayer for an injunction. The findings denying an injunction to the appellant do not suffer from any error, misreading of evidence etc. The first, third and fourth questions are, therefore, answered in the above terms, against the appellant.

Consequently, as question Nos.2, 3 and 4 have been answered against the appellant, the impugned judgments and decrees insofar as they decline an injunction to the appellant, are affirmed leaving it to the appellant to approach the Collector under Section 13-A of the 1961 Act for adjudication of his plea that the land in dispute does not vest in the Gram Panchayat. The appeal is dismissed, with no order as to costs.

02.09.2015
Vinay

[RAJIVE BHALLA]
JUDGE