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

**RSA-1857-1997 (O&M)
Date of decision : 13.07.2016**

Balbir Singh

... Appellant(s)

Versus

Kishan Singh (deceased) through LRs

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.S. Shekhawat, Advocate
for the appellant(s).

Mr. Gorakhnath, Advocate
for respondent No.8.

Mr. Aashish Kapoor, Advocate
for respondent No.20.

Mr. Roopak Bansal, Advocate
for respondent Nos.21 and 22.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit has been dismissed for want of jurisdiction under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter called 'the 1961 Act') as applicable to Haryana by relying upon the Jamabandis for the year 1981-82 (Ex.P-8) and 1986-87 (Ex.P-12), the land described in the plaint was

Panchayati.

Mr. N.S. Shekhawat, learned counsel appearing on behalf of the appellant-plaintiff submits that as per the the averments made in paragraph 4 of the plaint which reads thus:-

“That the land compromised in Khewat no.77 Khata No.104, No.53 measuring 89 kanals 16 marlas is abadi deh of village Nasirpur Bangar and is owned and possessed by the village Proprietary body and the proprietors have constructed their houses on the different parts and parcels of the land described above according to their needs and also non-proprietors have constructed their houses on certain portions occupied by them Similarly some of the proprietors have also constructed some houses in the land described in para 3 forming part of the extension of abadi.

List of proprietors, copy of jamabandi Aks Shajra are enclosed herewith.”.

the stake, in the plaint, is primarily with regard to the property bearing Khewat No.77 Khata No.104, No.53 measuring 89 kanals 16 marlas, which is *abadi deh* and as per the provisions of Section 2(g)(i) of the 1961 Act, the *abadi deh* is out of the purview of the definition of *shamlat deh* and therefore, the Court could not have non-suited the appellant-plaintiff by invoking the provisions of Section 13 *ibid*. Though, one of the paragraphs, the other land has been included, but the Court could have moulded the relief as per the provisions of the Code of Civil Procedure, thus, urges this Court to formulate following substantial

questions of law:-

1. Whether the judgment and decree of the lower Appellate Court non-suiting the appellant-plaintiff holding that the Civil Court did not have jurisdiction, is sustainable in the eyes of law or not?
2. Whether the claim in respect of a land forming *abadi deh* measuring 89 kanals 16 marals would be within the purview of *shamlat deh* as per the provisions of Section 2(g)(i) of the 1961 Act or not?

Mr. Gorakh Nath and Mr. Aashish Kapoor, learned counsel appearing on behalf of the respondent Nos.8 and 20, respectively, submits that the suit was not happily worded and the appellants-plaintiffs had not abandoned claim with regard to the entire piece of land, which was also falling under the definition of *Panchayati Deh*, rightly so, the suit has rightly been dismissed.

They further submit that the suit was filed in a representative capacity on account of that fact that proprietors claimed separate possession by way of partition without establishing the ownership. The proprietors cannot stake a claim in the land belonging to the *shamlat deh*, thus, prays for affirming the findings rendered by the lower Appellate Court as no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that in paragraph 8 of the judgment rendered by the lower Appellate Court, it has been noticed that Khasra No.53 measuring 89 kanals 16 marals, is in possession of the inhabitants of the

village under *abadi deh*. The provisions of Section 2(g)(i) of the 1961 Act prescribes that the *shamlat deh* excludes *abadi deh*. The lower Appellate Court ought to have examined this question threadbare while exercising the powers under Section 96 of the Code of Civil Procedure, but not in the manner and mode in throwing the suit in toto for want of jurisdiction of the Civil Court.

There is another aspect of the matter that by separate order, the Civil Court had passed the order regarding the jurisdiction, but the same has not been assailed in the first appeal, much less, by invoking the provisions of Order 43 Rule 1-A CPC. The documents were required to be interpreted and examined, I am of the view that the judgment and decree rendered by the lower Appellate Court suffers from illegality and perversity. The lower Appellate Court, in this background, should not have dismissed the suit by relying upon the provisions of Section 13 of the Act. It is the fit case where the matter is required to be remanded to the lower Appellate Court to decide the appeal afresh on the basis of the preponderance of the oral and documentary evidence, much less, claim in the suit. Accordingly, the judgment and decree of the lower Appellate Court is hereby set aside. The substantial questions of law for the purpose of deciding present appeal as noticed above are answered in favour of the appellant-plaintiff and against the respondent(s)-defendant(s). The matter is remitted back to the lower Appellate Court to decide the appeal afresh in accordance with law preferably within a period of 8 months from the receipt of the certified copy of the order.

Learned counsel for the parties and as well as the parties are

directed to appear before the District Judge, Sonipat on 01.08.2016.

The lower Appellate Court shall endeavour to effect the service upon all other respondent(s)-defendant(s).

The record be also sent back for adjudication of the appeal.

With the aforesaid observations, the appeal stands disposed of.

13.07.2016
yogesh

(AMIT RAWAL)
JUDGE