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

Date of decision : 18.01.2016

1. RSA-2841-2010 (O&M)

Jagir Singh and others
Versus ...Appellants

Jai Singh and others
...Respondents

2. RSA-2749-2010 (O&M)

Jagir Singh
Versus ...Appellant

Jai Singh and others
...Respondents

3. RSA-2762-2010 (O&M)

Jarnail Singh and others
Versus ...Appellants

Jai Singh and others
...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. S.K. Liberhan, Advocate
for the appellants (in RSA-2841-2010)

Mr. Amit Jain, Advocate
for the appellants (in RSA Nos.2749 and 2762 of 2010)

Mr. Sanjeev Gupta, Advocate
for the Gram Panchayat. (in all the appeals)

Mr. C.B. Goel, Advocate
for respondent Nos.1 to 4 (in all appeals).

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)

This order of mine shall dispose of three regular second appeals bearing RSA No.2841 of 2010, RSA No.2749 of 2010 and RSA No.2762 of 2010 at the instance of defendant Nos.1, 3, 7 and 8 (in RSA-2762-2010) and defendant No.46 (in RSA-2749-2010), challenging the judgment and decree of both the Courts below, whereby the Gram Panchayat has been held to be the owner of the property, in essence, the decree obtained by the appellant has been set aside and the property has been reverted back to the Gram Panchayat in a suit filed by the proprietor, challenging the mutation of the land measuring 4114 kanals in favour of the Gram Panchayat, on the premise, that the said mutation was against the provisions of the Act, as the Gram Panchayat cannot remain the owner more than 25% of the land belonging to the proprietor.

Mr. Kanwaljit Singh, learned Senior Counsel assisted by Mr. S.K. Liberhan, learned counsel appearing on behalf of the appellants (in RSA-2841-2010) and Mr. Amit Jain, learned counsel appearing on behalf of the appellants (in RSA Nos.2749 and 2762 of 2010), submit that the plaintiffs themselves are the proprietors, of

the village, filed the suit to the effect that the Proprietors, of the village Gari Langri Tehsil Pehowa, is the owner of the area measuring 3090 kanals out of the area, mentioned in para 1 of the plaint i.e. 4119 kanals – 7 marlas allotted in the name of defendant No.45-Gram Panchayat, during the consolidation of holdings. They submit that the plaintiffs in paragraph 21 of the suit, it was specifically mentioned that jurisdiction of the Civil Courts was challenged as piece of land does not vest in the Gram Panchayat or is a shamlat deh or not, is not barred by the Punjab Village and Common Land (Regulation) Act, 1961 (hereinafter called 'the 1961 Act') and by pleading that no procedure and mechanism has been provided to invoke the jurisdiction of Section 9 of the Code of Civil Procedure. They draw the attention of the Court to the para 21 & 22 which reads thus:-

"21. That though the jurisdiction of the civil court in respect of question whether a particular piece of land vested or does not vest in Gram Panchayat, is shamlat Deh or not a Shamlat Deh making it eligible for vesting in the Gram Panchayat has been barred by Act No.18 of 1961, as applicable to the State of Haryana, but no procedure and machinery has been provided for the situation arising in the present lis and the question involved is of civil nature, so the civil court is competent to entertain and adjudicate upon the question involved in the present suit, qua the ownership of the land detailed in para No.1 of the plaint above"

22. That the defendants No.1 to 44 have been impleaded as parties on account of existence of decrees in their

favour and existence of ownership entries in their favour in respect of the land, detailed above.”

Though no consequential relief of injunction or possession had been sought, but, however, there has been a reference to the judgment and decree alleged to have been obtained by the appellants, in collusion with the Gram Panchayat. The details have been given in the paragraph 14 which reads thus:-

"14. That Sh. Darshan Singh, predecessor-in-interest of defendants No.1 to 9, deft. No.10, deft. No.11 and predecessor-in-interest of defts No.12 to 44 assert their ownership in respect of the land mentioned at para No.1 (a) to 1(d) respectively on the basis of some non-existent decrees mentioned hereinafter. _

The said judgments and decrees are non-existant fabricated douments and such suits have never been instituted and no court has passed any such decrees.

The particulars of the said decrees are as follows:-

<i>Land in respect of which decree was suffered</i>	<i>No. of suit</i>	<i>Date of decree</i>	<i>Decree holder</i>
Land detailed in para No.			
1(a)	1990/79	08.06.1970	Predecessor-in-interest of defts. No.1 to 9
1(b)	179/1979	06.06.1979	Deft. No.10
1(c)	178/1979	06.06.1979	Deft.No.11.
1(d)	50/1967	15.11.1967	Predecessor-in-interest of defts. No.12 to 44.

The plaintiffs, during the pendency of the suit, have withdrawn the claim, viz-a-viz, the ownership, in essence only examined two witnesses to show that there was no sale deed

executed in pursuance to the judgment and decree referred to hereinabove. Accordingly, the application was filed to shift the onus on the defendant which was declined. However, this Court in Civil Revision Petition, put a rider in case the certified copy of the judgment and decree and the pleadings are placed on record, the onus would be on the plaintiffs, to lead evidence proving the alleged fraud and mis-representation, as envisaged under Order 6 Rule 4 of the Code of Civil Procedure. In support of the grounds of appeal, have raised the following submissions:-

1. The Civil Courts did not have the jurisdiction as per Section 13-A of the 1961 Act, consequently inserted by Haryana Act No.9 of 1999, to try and decide the controversy.
2. Once the respondent-plaintiffs did not lead any evidence, viz-a-viz, the sale deed dated 15.11.1967 Ex.P30 and P-31, as noticed above, the onus shifted upon the plaintiffs, but Courts failed to notice the same.
3. As per Section 13-D of the 1961 Act, as applicable to Haryana, the Court trying the petition under Section 13, which would have a jurisdiction to deal with the controversy, where a decree has been obtained by fraud.
4. In support of the aforementioned contentions, they relied upon the case law to contend that even if, the decree has been obtained by fraud, remedy, if any, would be under the provisions of the Act, *ibid* but not under Section 9 of the Code of Civil Procedure.

The ingredients of Order 6 Rule 4 have not been proved.

Thus, the following substantial question of law arises for determination of this Court:-

1. Whether the Civil Court, particularly in view of the averments made in paragraph 21 of the suit, *ibid*, reproduce, would have a jurisdiction to try and entertain the suit in the absence of mechanism and procedure?
2. Whether the ingredients of fraud of the misrepresentation as envisaged under Order 6 Rule 4 of the Code of Civil Procedure have been discharged?

In the absence of that, rebuttal would be meaningless.

Mr. C.B. Goel, learned counsel appearing on behalf of the plaintiffs submits that fraud vitiates everything, even if, the plaintiffs had withdrawn the suit, viz-a-viz, the ownership, yet the decree aforementioned dated 15.11.1967 had been obtained by fraud, as the Gram Panchayat had colluded with the plaintiffs therein, by filing the conceded written statement on 22.08.1967, in a suit filed on 02.03.1967, whereupon decree was passed on 15.11.1967. In support of his contentions relied upon the judgments of Hon'ble Supreme Court in **"Smt. Badami (Deceased) by her L.R. V/s Bhali" 2013(1)RCR (Civil) 821, "Santosh V/s Jagat Ram and another" 2010(2) RCR (Civil) 206** as well as a decision dated 22.08.2007 rendered by this Court in **RSA No.796 of 2000**, titled as **"Smt. Vir Kaur V/s Rikhi Ram and others"** and prays that no substantial questions of law arises for determination.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of

the Gram Panchayat admitted the arguments submitted by Mr. C.B. Goel, Advocate but further submits that even the written statement filed in the previously instituted, was not on behalf of the Gram Panchayat. No doubt that the decree remained valid till the filing of the suit at the instance of the plaintiffs. Once it has come to the notice of Court below, that the Court being the custodian of the property of the Gram Panchayat, rightly set aside the decree and ordered for reversion of the property in favour of the Gram Panchayat.

I have heard the learned counsel for the parties and appraised the paper book as well as the case law and pleadings of the parties.

I am of the view that the appeal deserves to be allowed on the following reasons:

On perusal of Para 21 of the plaint itself, this Court is of the opinion that the Civil Court did not have the jurisdiction to try the controversy as it was mentioned that there is no procedure and mechanism to invoke the jurisdiction of the Court under Act of 1961. Sections 13-A and 13-D of the 1961 Act (as amended), applicable to Haryana reads thus:

"13-A. Adjudication -

(1) Any person or in the case of a Panchayat, either the Panchayat or its Gram Sahiv, the concerned Blcok Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title

or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is shamilat deh or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a Panchayat under this Act, in the Court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated:

Provided that no suit shall be filed under this section in respect of the land or other immovable property, which is or has been the subject matter of the proceedings under Section 7 of this Act under which the question of title has been raised and decided or under adjudication.

(2) The procedure for deciding the suits under subsection (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (5 of 1908).

"13-D. Provisions of this Act is to be over-riding.

The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any law, agreement, instrument, custom, usage, decree or order of any court or other authority.

From the perusal of the aforementioned statutory provisions, it is evident that the provisions of the Act shall have effect notwithstanding anything to the contrary contained in any law, agreement, instrument, custom, usage, decree or order of any court or other authority, in essence, the Authority prescribed under

Section 13-A of the 1961 Act would have a jurisdiction to try the controversy as sought to be raised before the Civil Court. Even by pleadings, the plaintiffs cannot cloth the jurisdiction of the Civil Court and invite the adjudication. The statute provides the exclusive jurisdiction, the Civil Court cannot assume the jurisdiction and try and entertain the suit. There is another aspect of the matter that in paragraph 14, the trial Court recorded that the plaintiffs have withdrawn their claim viz-a-viz the ownership of the land. The relevant portion of the finding rendered by the trial Court reads thus:

“However, during the oral submissions the plaintiffs left their claim based upon these allegations and Advocate for the plaintiffs left his claim on these pleadings and did not want to claim the ownership of the land on the basis these pleadings. Primarily on account of these pleadings it was sought to be argued by the defendants that Civil Court has no jurisdiction. On account of relinquishing of the claim on the basis of the aforesaid allegations, the issues No.1 and 2 and the arguments regarding the point of jurisdiction became redundant and need not required to be adjudicated upon.”

Despite having rendered findings that the question of jurisdiction became redundant, the Court ought not to have been proceeded further in deciding the suit on merits, much less, ponder upon merits and demerits of the controversy, viz-a-viz, the decrees aforementioned having obtained by fraud. The defendants in pursuance to the directions given by this Court, produced the

certified copy of the judgment and decree, thus, the onus shifted upon the plaintiffs to prove contrary, but no evidence had been led, which fact is evident on the perusal of the finding rendered by the trial Court. In my view, the trial Court ought to have put its break and refrained from giving further findings. The findings aforementioned in my view are nothing else, but obiter. Accordingly, the findings rendered under on issues No.3, 4, 5, 1-A, 12 and 14 are hereby declared as obiter which shall come in the way of the appellants-defendants, in case, the jurisdiction of Section 13-A of the 1961 Act, at any stage, if permissible in law, is invoked.

Keeping in view the aforementioned facts, the judgment and decree of the Courts below are hereby set aside and the substantial questions of law are answered in favour of the appellants-defendants and against the respondents-plaintiffs. However, this will not preclude the Gram Panchayat from taking action in accordance with law i.e. as per the provisions of Section 13-A of the 1961 Act.

Accordingly, the appeals are allowed.

18.01.2016
yogesh

(AMIT RAWAL)
JUDGE