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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

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Date of decision : 25.01.2016

Ram Dia (deceased) through his LRs

... Appellants

Versus

Gram Panchayat Chidana and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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Present: Mr. Ram Kumar Saini, Advocate
for the appellants.

REKHA MITTAL. J.

The instant appeal lays challenge to the judgment and decree dated 06.09.2012 passed by the District Judge, Sonapat, affirming the judgment and decree passed by the trial Court whereby the suit filed by the appellant-plaintiff for declaration, permanent and mandatory injunction has been dismissed.

The facts relevant for disposal of present appeal are that the appellant filed a suit to challenge order dated 06.11.2006 passed in ejectment petition titled Lachman Vs. Ram Dia and others by the A. C. Ist Grade, Gohana under Section 7 of the village Common Lands Act 1961.

The challenge was laid on the basis of allegations in para 9 sub paras (a)

to (e) of the plaint. It is also averred that during pendency of suit, on 21.04.2008, the respondents forcibly demolished the construction on the suit land and caused loss to the appellant-plaintiff.

Gram Panchayat, Chidana, Teshil Gohana (defendant No.1) filed the written statement and challenged maintainability of the suit and jurisdiction of the Court. It is averred that the suit land vests in the gram panchayat and same is part of killa No.77/6, khewat No.1164, khatoni No.1280 and the appellant has been ejected from the suit property by order dated 06.11.2006. It is further pleaded that possession of khasra No.77/6 has already been taken over in presence of the appellant and an entry was made in Rojnamcha duly maintained by the Patwari Halqa.

Respondent No.2 also filed the written statement, in line with the allegations raised in the written statement filed by respondent No.1.

Respondents No.3 to 5 adopted the written statement filed by respondent No.1.

The learned trial Court permitted the parties to adduce evidence in support of their respective contentions. After having heard counsel for the parties in the light of disputed questions of law and fact culled out for the purpose of determination in the shape of issues, the learned trial Court held that the civil Court has got no jurisdiction to entertain and try the present suit and, therefore, the suit filed by the appellant is not maintainable. The findings recorded by the learned trial Court were affirmed in appeal.

Counsel for the appellant has submitted that as the Courts have consistently held that the civil court has got no jurisdiction to entertain and try the present suit, they should have refrained from deciding the suit on merits. It is further argued that as the appellant is owner of the suit property, his eviction vide order dated 06.11.2006 passed by the A. C.Ist Grade is bad and illegal.

I have heard counsel for the appellant, perused the records and find no merit in the appeal.

Counsel for the appellant has not made any submissions to challenge the findings that civil court has no jurisdiction to entertain and try the present suit, in view of the bar created under Section 13 of the Punjab Village Common Lands (Regulations) Act 1961. The mere fact that the trial Court recorded its findings on merits of the controversy, may be with a view that in case finding on the question of jurisdiction are reversed in appeal, remand of the case for adjudication afresh on merits can be avoided but the said fact is not sufficient to intervene in the judgments and decrees passed by the Courts below. At the same time, any findings recorded by the Courts on merits of the controversy may not cause any prejudice to the appellant as those findings have been recorded by the Courts having no jurisdiction.

In view of what has been discussed hereinabove, neither any substantial question of law arises for adjudication nor there is any error much less illegality in the findings recorded by the Courts below. As a

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result, the appeal sans merit and the same is accordingly dismissed with no order as to costs in the aforesaid terms.

(REKHA MITTAL)
JUDGE

January 25, 2016.
Davinder Kumar