

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

**RSA-2223-2013 (O&M)
Date of decision : 28.09.2016**

Gurmukh Singh (deceased through LRs) and others

... Appellants

Versus

Harbans Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.S. Khehar, Advocate
for the appellants.

Mr. V.K. Jindal, Senior Advocate with
Mr. Amardeep Sheoran, Advocate
for respondent Nos.2 to 5.

Mr. D.K. Mittal, DAG, Haryana.

Mr. Vineet Sehgal, Advocate
for respondent No.10.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit seeking following relief:-

“For a decree of Declaration to the effect that the defendants No.1 to 32 and 37 are neither owners nor in possession of any inch of the land bearing Khewat/Khatauni No.14 MIN/32MIN, Khasra No.1 (61-16), 16(3-5), 23(356-15), 35(12-2), 54 MIN(25-19), 87MIN (34-6) 596/264 (17-11), 261 (16-15), 603/334 (0-7), 605/334 (0-7), 605/334 (0-1), 608/335 (34-12), 607/335 (2-2), 336(6-6), 613/338 Min (21-10), 615/354 (2-12), 357 (14-3), 361 (7-1), 675/357 (2-8), 512 (0-11), 586 (8-9), Khewat/Khatauni No.14 Min/33 Min, Khasra No.271 (8-6),

613/338 Min (4-0), 87 Min (1-10) and Khewat/Khatauni No.14 Min/35 Min, Khara No.588/61 Min (11-12), 87 Min (10-0) and Khewat/Khatauni No.14 Min/36 Min, Khasra No.54 Min (28-0), 588/61, (36-13) and Khewat/Khatauni No.14 Min/41, Khasra No.571 (0-5), 572 (0-2) and Khewat/Khatauni No.14 Min/42 Khasra No.474 (11-12, 478 (0-10), 479 (1-0), 481 (3-2) and Khewat/Khatauni No.14 Min/43, Khasra No.2 (01-6), 84 (0-8), 468 (0-6), 471 Min (2-7), 475 (1-12), 482 (1-3), 514 (0-2), 516 (0-2) 534 (0-13) and Khewat/Khatauni No.7 Min/22, Khasra No.590/85 (14-17), 309 (9-7) 396 (0-7) and Khewat/Khatauni No.3 Min/3, Khasra No.53 (1-15), 55 (9-15), 56 (5-14), 60 (1-11) situated at Village Rampur Jangi, H.B. No.92, Tehsil Kalka, District Panchkula (hereinafter referred as suit land), and the entries existing in their names in the record of rights are illegal, null and void, and not binding on the rights of common use of the appellants along with other "bashindgan deh" over the suit land and the land recorded in the column No.(8) as non-cultivable Ponds, Paths, Kabristan etc. be corrected in the cultivation column No.5 as "Mufaide-aam"/"Shre-aam" etc., in place of "Khudkashtwa Makbuja Malkan" etc., and similarly suit land recorded in the column No.8 as non cultivable Nadi, Nala or Choe be corrected as "Charand" instead of "Makbuja Malkan Wa Khudkasht" etc. And the suit land be assigned under Khewat "Jumla Mustarka Malkan Wa Deegar Haqdara".

And

Mandatory directions to defendants No.33 to 35 to correct the revenue entries as above.

And

For a decree of permanent injunction restraining the defendants themselves or through any property dealer, servants, agents assignees or through any attorney from alienating in any manner, whatsoever by sale, mortgage, lease rend and from changing then nature and features of the suit

land, suit based on document and oral evidence”

has been decreed by the lower Appellate Court.

Mr. K.S. Khehar, learned counsel appearing on behalf of the appellants-defendants submits that the entire approach of the lower Appellate Court while passing the impugned judgment and decree is against the fact and law as no reasoning has been assigned in setting aside the well-reasoned judgment and decree of the trial Court, whereby the suit claiming the aforementioned relief was dismissed. The lower Appellate Court failed to understand the real controversy between the parties, in fact, did not have the jurisdiction as per the provisions of Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the 1961 Act'). The suit was an attempt to espouse the cause of the Gram Panchayat-respondent No.36. The appellants-defendants had purchased the land, in dispute, through sale deed, prior to the consolidation, after paying the silver coins during those times, which could not be placed on record as no specific issue was framed with regard to the title. The lower Appellate Court has failed to appreciate that the *shamlat* land has to be dealt as per the provisions of the 1961 Act. If at all it was a land of the Gram Panchayat, nothing prevented the Gram Panchayat to initiate the proceedings in view of the aforementioned Act. The scope of Section 45 of the Punjab Land Revenue Act, 1887 (for short 'the 1887 Act') is very limited. It is only in that premise, if a person is neither owner nor in possession of the suit land, then the suit is not maintainable. The lower Appellate Court has failed to observe that the respondents-plaintiffs by using guarded language espoused cause of defendant No.36 i.e. Gram Panchayat, are claiming title in the property, in dispute. In fact the plaintiff did not have any *locus standi* to file

the suit, even they were not the residents of the village. The evidence led by the appellant i.e. Ex.D-1 to Ex.D-3 are the copy of the award and orders being passed by the Competent Court under the Land Acquisition Act, 1894 (for short 'the 1894 Act'), whereby in respect of the land having acquired under the Erstwhile Land Acquisition Act, the compensation has been received by the defendant. The respondents-plaintiffs had also filed a similar suit which was dismissed by the then Additional Civil Judge, thus, urges this Court for formulation of the substantial question of law as drawn in the memorandum of appeal and prays for setting aside the judgment and decree under challenge.

Mr. V.K. Jindal, learned Senior Counsel assisted by Mr. Amardeep Sheoran, learned counsel appearing on behalf of respondent Nos.2 to 5 submits that as per prayer of the appellant, the respondents-plaintiffs had not sought any declaration as the relief sought, was only for correction of the entry and thus, the suit as per the provisions of Section 45 of the 1887 Act was perfectly maintainable. In support of his contentions, he relies, upon the judgments passed by this Court in **“Arjan Singh and others V/s Ajit Singh and others” 2011 (1) LAR 430**, **“Lehna Singh V/s State of Haryana” 1996 (1) RRR 146** and **“Mange and another V/s Ramesh and others” 2011 (4) RCR (Civil) 72**.

He further submits that the stand of the appellants-defendants in the written statement was vague and evasive, therefore,, in view of the provisions of Order 8 Rule 5 CPC, the averments made in the corresponding para are deemed to be admitted. The respondents-plaintiffs have discharged the onus as per Section 101 of the Indian Evidence Act, which is inflexible and as per Section 102 of the Evidence Act, initial onus is always on the

plaintiffs which fact has been discharged, whereas on the contrary, the appellants-defendants have failed to rebut the same. It is, in this background of the matter, the lower Appellate Court has reversed the findings. The question of title was never raised in the suit and therefore, finding of the trial Court was perfect, legal and justified and rightly so, has been set aside by the lower Appellate Court as the rigours of Section 13-A of the 1961 Act would not come in way.

He further submits that the respondents-plaintiffs along with other 250-300 families belonging to SC & BC are the indigenous inhabitants of the village, in question, from generations to generations and their ancestors improved and developed the entire land. The revenue entries were manipulated in the name of defendants Nos.1 to 32 & 37 illegally. The respondents-plaintiffs are the two families of the fraternities in the line of 'Biswedars' who were not the founders of the village, whereas the founders of the estate as per Shajra Nasab was one Mr. Rajroop, but he left the village about 250 years ago and after him, Mothu Mehta from the adjoining village Mandhala acquired the 'Biswedari' by which he had been managing the boundary of the village. The suit land since time immemorial is totally in possession of the bashindgan deh and never remained under the ploughing or permitted to be partitioned, in fact, it was/is non-cultivable and therefore, not assessable to land revenue. The Gram Panchayat had spent crores of rupees over the development of the suit land and construction of several buildings upon it. The rights of the plaintiffs along with other inhabitants had been recognized by the defendants and other competent authorities from time to time. In fact during the consolidation of the holding in the year 1961, when the family of respondent Nos.14 to 32 i.e. Sh. Mast

Ram etc. moved an application for partition of the common land amongst themselves, then the Consolidation Officer rejected their application on the ground that the inhabitants had been grazing their cattle. The appeal filed against the same was also dismissed. On the basis of erroneous revenue entries, several suits against the Gram Panchayat and the inhabitants were filed with sole object of grabbing the suit land, but claim was lost. On the basis of the order of the DFO, Pinjore, the respondents-plaintiffs started levelling some portion of the suit land bearing khasra No.35 measuring 12 Bighas 2 Biswas, Khasra No.54 measuring 25 Bighas 19 Biswas and cleaning of bushes from from Khasra No.271-357 and 87 which are Nadi, Nala or Choe, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a merit and force in the submissions of Mr. K.S. Khehar, for, the trial Court after examining the evidence (Ex.D-1 to Ex.D-3) i.e. certified copies of the judgments dated 30.07.2005 passed in LAC Case Nos.458 of 2003, 459 of 2003 and 461 of 2003 passed by the then Additional District Judge, Panchkula, whereby the compensation has been awarded in respect of the land acquired by the State for construction of roads, whereby the appellant-defendant had received the compensation, thus, has rightly held that the suit was not maintainable. The plaintiffs had also filed the similar suit, but the same was dismissed vide order dated 23.11.2005 (Ex.D-4). The respondents-plaintiffs filed the present suit just for harassment of defendnats, who are owners in possession of the suit land. The respondents-plaintiffs have claimed that 750 Bighas of land left for Charand, School, Kabristan, Gurudawara etc., but that is not the

factual position. In fact, the plaintiffs did not dispute that School, Kabristan, Gurudawara etc. are there at the spot and they sought the declaration of the ownership in favour of the Gram Panchayat-defendant No.36 who also supported their case. It is a very clever device on behalf of the Gram Panchayat to introduce the persons in seeking their redressal of grievance. The Section 13-A of the 1961 Act provides that the Civil Court in the following instances would not have a right to adjudicate the claim. For the sake of brevity, the provisions of Section 13-A of the 1961 Act read thus:-

“Section 13-A. Adjudication

(1) Any person or in the case of a Panchayat, either or its Gram Sahiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorized by the State Government in this behalf, claiming right, title or interest in any land or other immovable property properly 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 lie 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 sub-Section (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (5 of 1908).”

In fact, the revenue entries in favour of defendants reflected since 1905. The plaintiffs have failed to give any date or month or year about the manipulation of the alleged revenue record. The lower Appellate Court has not assigned any reasons with regard to the compensation awarded by the then Additional District Judge, while deciding the references under Section 18 of the 1894 Act. The lower Appellate Court is under obligation to decide the question of fact and law, but having failed to do so, in my view, the judgment and decree of the lower Appellate Court is not only illegal, but perverse. The respondents-plaintiffs have failed to discharge the onus as enshrined under Section 101 of the Evidence Act with regard to alleged improvement in the suit land. In my view, the plaintiffs have not been able to prove the *locus standi* to file the suit as few of them for the last so many years are, even not the residents of the village . It is matter of record that the some other villagers including the plaintiffs had earlier filed the suit against the appellants-defendants and the same was dismissed, thus, the second suit is not maintainable. In fact the jurisdiction of Civil Court was barred, but the lower Appellate Court has exceeded the jurisdiction in entertaining the appeal, rather misdirected. In my view, the finding arrived at by the lower Appellate Court in paragraph 39 of the impugned order is based upon no evidence. It is just on a supposition. The reliance on alleged report (Ex.DX) is, without referring to the contents of the same, which is otherwise. In view of the provisions of the 1961 Act, I am of the view that the trial Court did not have jurisdiction to entertain and try the suit. It was open for the respondents-plaintiffs to avail the alternative remedy in accordance with law.

No doubt, this Court on earlier occasions had been framing

substantial questions of law while deciding the appeal, but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi (dead) through LRs and others Vs. Chandrika and others” AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97 (1) CPC, whether the provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure. The Constitution Bench of Hon'ble Supreme Court held that the decision in **“Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others” 2001 (4) SCC 262**, i.e. applicability of Section 97 (1) of CPC was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law and accordingly, the same is hereby set aside and that of trial Court is restored. The suit is dismissed.

With the aforesaid observations, the appeal is allowed.

28.09.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

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Whether Reportable Yes/ No