

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

RSA-1125 of 2016 (O&M)

Date of decision: 14.03.2016

Risal Singh (since deceased) thr. LRs and another

...Appellants

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.S. Malik, Advocate
for the appellants.

Jitendra Chauhan, J. (Oral)

CM-3076-C-2016

Keeping in view the averments made in the application, the same is allowed. The delay of 42 days in re-filing the present appeal is hereby condoned.

RSA-1125-2016

The plaintiffs/appellants filed a suit for declaration and mandatory injunction with consequential relief of permanent injunction. The trial Court vide judgment and decree dated 21.10.2009, decreed the suit.

2. Aggrieved against the findings of trial Court, the defendants/respondents filed an appeal which was allowed by the learned 1st Appellate Court, vide judgment and decree, dated 03.09.2015.

3. The 1st Appellate Court reversed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal at the behest of the plaintiffs/appellants.

4. It is submitted that the learned 1st Appellate Court has erred in setting aside the well reasoned judgment of learned trial Court. The Appellate Court has not considered the factual aspect of the matter that the land in question was left for the purpose of cremation ground and Hadwara at the time of consolidation of the holdings. The learned Appellate Court has further failed to appreciate the fact that in an appeal filed against the civil suit titled as 'Rishal Singh etc. Vs. State of Haryana' and others, the respondents No.1 to 3 made a statement before the Addl. District Judge, Sonapat that the State Govt., does not propose to construct a road through the land comprised in khasra No.552 and 553 in the revenue estate of village Jatola. The suit land is being used for the welfare of the village community.

5. Heard.

6. It is not in dispute that the suit land being shamlat deh vests in the Gram Panchayat. The plaintiffs/appellants are aggrieved against the change of the user of the suit land from cremation ground to construction of road. No doubt the suit land was being used for the purpose of cremation ground/hadwara. A bare perusal of the record shows that the approval for construction of road was obtained on the resolutions passed by the Gram Panchayat on 20.12.1985 and 30.12.1985. It is settled law that a Gram Panchayat can use the land of shamlat deh vesting in the Gram Panchayat for the purpose of roads, pathways, streets, lanes of bye-lanes. As is proved on record, the Gram Panchayat passed a resolution to get the change of the user of the land in dispute for construction of road through the agency of the Haryana State Agricultural Marketing Board and it emerges that this was done in the public interest. The plaintiffs could not prove any malafide on the part of the panchayat or any of its members. Thus, this Courts finds no illegality or perversity in the impugned judgment and decree dated 03.09.2015, passed by the 1st Appellate Court which based on proper appreciation of facts on record. Thus, there is no scope for interference in the

judgment passed by the learned Appellate Court. The judgment and decree dated 03.09.2015, passed by the Addl. District Judge, Sonapat is affirmed.

Dismissed in limine.

14.03.2016

sumit.k

(JITENDRA CHAUHAN)
JUDGE