

In the High Court of Punjab and Haryana at Chandigarh

R.S.A. No. 2428 of 2014 (O&M)

Date of Decision: July 04, 2016

Gram Panchayat Dungarwas

... Appellant

Versus

Ram Kumar and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

Present: Mr. Ram Darshan Yadav, Advocate,
for the appellant.

Paramjeet Singh Dhaliwal, J. (Oral)

This regular second appeal has been preferred by the appellant against the judgment and decree dated 08.01.2014 passed by learned District Judge, Rewari, whereby judgment and decree dated 06.06.2012 passed by learned Additional Civil Judge (Senior Division), Rewari has been set aside and suit filed by the respondents/plaintiffs for declaration and permanent injunction has been decreed.

I have heard learned counsel for the appellant.

Learned counsel for the appellant has submitted that the following substantial questions of law formulated in para no. 12 of grounds of appeal, arise for consideration in this second appeal:-

- “i) Whether judgment and decree dated 08.01.2014 passed by learned District Judge, Rewari is illegal and result of gross mis-reading of evidence and therefore, liable to be set aside?*
- ii) Whether the plaintiffs are the proprietors of the village and entitled to file the present suit in present form?*
- iii) Whether the civil court has jurisdiction in view of Section 13 (A) of the Punjab Village Common Lands Regulation Act, 1961?”*

Learned counsel for the appellant contends that reversal has been wrongly recorded by the learned lower appellate Court. Learned counsel further contends that mutation no. 705 dated 30.05.1992 has been sanctioned in the name of panchayat deh.

I have considered the contentions raised by learned counsel for the appellants and perused the record.

It is settled principle of law that mutation does not confer any title. Admittedly, the land has been shown as “*Jumla Malkan Wa Digar Haqdaran Hasab Rasad.*” The possession has been established. The gram panchayat has no right in such matters and is only concerned with management of the said land. As far as the question of jurisdiction of civil court is concerned, it can be answered in affirmative for jurisdiction of civil court to entertain dispute regarding “*Jumla Mushtarka Malkan*” is not expressly barred by Section 44 of the Consolidation Act. This has been clearly laid down by the Hon'ble Supreme Court in the case of ***Ranjit Singh and others vs. State of Punjab and others, AIR 1965 (SC) 632***, and also in the case of ***Ajit Singh vs. State of Punjab, AIR 1967 SC 856*** which have been followed by the Full Bench of this Court in ***Parkash Singh and others vs. Joint Development Commissioner, Punjab and others, 2014 (2) R.C.R. (Civil) 721*** which has held as under:-

“61. A reference would necessarily have to be made, to Section 2(g)(6), introduced by the State of Haryana, declaring that land reserved for common purposes, during consolidation, i.e., *Jumla Mushtarka Malkan*” shall be included in “*Shamilat Deh*”. The State of Punjab has not enacted any such provision. We, therefore, have no hesitation in holding that land described as “*Jumla Mushtarka Malkan*” is not “*Shamilat Deh*”, vests in the Gram Panchayat for management and

control alone and any dispute with respect to any right, title or interest in this land, cannot be decided under any adjudicatory provisions of the 1961 Act, much less by the Collector, exercising power under Section 11 of the 1961 Act.

62. *We draw support for our conclusions from provisions of the Punjab Gram Panchayat (Common Purposes Land Eviction and Rent Recovery) Act, 1976 (hereinafter referred to as 'the 1976 Act'). The State of Punjab was conscious of the fact that "Jumla Mushtarka Malkan" is not "Shamilat Deh", and proceedings whether for eviction or for declaration of title cannot be initiated under the 1961 Act. The State of Punjab enacted the 1976 Act, providing for eviction from land created during consolidation. Section 2 and 3 of the 1976 Act, when read together provide for eviction from land reserved for common purposes of a village under Section 18 and 23-A of the Gram Panchyat Act. Section 3 of the 1976 Act provides that the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, shall apply to such land. The State of Punjab, while enacting the 1976 Act apparently, lost sight of the fact that the Collector exercising power under Section 11 of the 1961 Act exercises power to determine dispute relating to any right, title or interest in "Shamilat Deh" and not "Jumla Mushtarka Malkan" and, therefore, failed to provide a forum for deciding such a dispute.*

63. *The question that now remains is to identify the forum, a person who raises a plea that the land is not "Jumla Mushtarka Malkan" or that it was created by applying an illegal pro rata cut or that the land was not reserved for common purposes during consolidation, would be required to approach. After due consideration of the entire matter, we find no provision in the 1961 Act, the 1976 Act or the Consolidation Act that provides a forum to a person who raises such a plea and, therefore, in the absence of any fora for deciding such a dispute a person may have to approach a Civil Court but*

Section 44 of the Consolidation Act prohibits a Civil Court from entertaining any matter which the State Government or any officers are empowered by the Consolidation Act to determine or dispose of. Section 44, however, cannot be read to prohibit Civil Courts from deciding a question of title relating to “Jumla Mushtarka Malkan” as what is prohibited by Section 44 is matters that fall to the jurisdiction of State Government or to any officer duly empowered by the Consolidation Act to decide. The Consolidation Act does not confer power whether on the State Government or the officers empowered thereunder to decide a question of title. The jurisdiction of a Civil Court to entertain a dispute regarding “Jumla Mushtarka Malkan” is, therefore, not barred by Section 44 of the Consolidation Act. The only forum available to a person, who raises a dispute regarding title in “Jumla Mushtarka Malkan” is the principal Court of civil jurisdiction having jurisdiction in the matter, as provided by Section 9 of the Code of Civil Procedure, i.e., a Civil Court.”

Learned counsel for the appellant has failed to show that the findings of fact recorded by the lower appellate Court are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

In view of above, I do not find any illegality or perversity in the impugned judgment and decree passed by the lower appellate Court. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

Dismissed in limine.

July 04, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge