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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-5167-2015 [O&M]

Date of Decision : January 14th ,2016

Subhash Chand

.... Appellant

Versus

Gram Panchayat and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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?

Present Mr. Ashwani Bakshi, Advocate,
for the appellant.

SHEKHER DHAWAN, J.

Present Regular Second Appeal filed by one of the plaintiffs is directed against the concurrent findings of both the Courts below, whereby, suit filed by Subhash Chand for declaration and permanent injunction was dismissed by the Court of First Instance vide judgment and decree dated 30.7.2013. The appeal filed by him was also dismissed by learned District Judge, Sonipat vide judgment and decree dated 28.05.2015.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case, that plaintiffs filed suit for declaration and permanent injunction on the ground that the plaintiffs are residents of village Bega, Tehsil Ganaur, District Sonapat and as such, they have right to file the suit. The suit land measuring 87 Kanals 9 Marlas situated within

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the revenue estate of village Bega, Tehsil Ganaur, District Sonapat was owned and possessed by defendant No.1 – Gram Panchayat. Out of 87 Kanals 9 Marlas, land measuring 84 Kanals 9 Marlas is *banjar kadim* and the same is being used for the benefit of the village community. Gram Panchayat in collusion with some other residents of the village, who are Muslim by religion had got recorded wrongly and illegally in the column of possession – *Ahil-e-Islam*, whereas, the said land is for the benefit of the entire village. That way, the use of the same cannot be restricted on the caste, creed and religion basis. Gram Panahayat has been sanctioned grants by the State Government for the development of graveyard, but the Sarpanch of the village in collusion with defendants No.2 and 3, belonging to Muslim community, wanted to utilize the said grant for encroaching and taking illegal possession of the suit land for which they have no right.

4. Defendant No.1 – Gram Panchayat, Bega contested the suit taking the plea that the suit land was being used for storing agricultural produce during the harvesting season and for the purpose of dumping dung of animals and to prepare dung cakes. The Government sanctioned grant of Rs.2,72,000/- for construction of boundary wall of graveyard in the land measuring 16 Kanals 10 Marlas and one side of the wall has been constructed. Accordingly, dismissal of the suit was prayed for.

5. Defendants No.2 and 3 contested the suit on the grounds that the suit land was reserved for *Ahil-e-Islam* at the time of consolidation of the land in the year 1965. Their entire community are using the land for the same purpose and dead bodies are being buried in the suit land. As such, the nature of the suit land cannot be changed from *Kabristan* to any other

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land. It was prayed that as such the suit was not maintainable, the same be dismissed.

6. On the pleadings of the parties, issues were framed and after appreciating the entire evidence brought on record by the parties, the Court of First instance dismissed the suit of the plaintiffs. The appeal filed before the Court of first Appeal was also dismissed. As such, the present Regular Second Appeal.

7. Learned counsel for the appellant submitted that in earlier jamabandies, it was recorded that the suit land was being used as *Kabristan* whereas, in fact the suit land is not the *Kabristan*. Rather, the same is being used for the benefit of all the residents of the village and both the Courts below have completely ignored this fact while recording findings of fact and the same are thus, liable to be set-aside.

8. Having considered the submissions made by learned counsel for the appellant, this Court is of the considered view that both the Courts below have appreciated the oral as well as documentary evidence which includes relevant jamabandies of the suit land. Even the appellant while appearing in the witness box as PW-3 admitted that the land measuring 87 Kanals 9 Marlas of Chauhan Panna and 16 Kanals 10 Marlas of Gaur Panna is the land of *Kabristan*. More so, as per jamabandies for the year 1966-67 onwards, the suit land is shown to be meant for Gair Mumkin Kabristan. Law on the point is settled that if any land has been reserved for *kabristan*, the nature of the same cannot be changed. To that effect, the concurrent findings have been recorded by both the Courts below on the basis of facts and evidence available on the file and there are no ground to interfere and set aside the said findings. There is no substantial

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question of law involved in the present appeal and hence, the same is not maintainable under Section 100 of the Code of Civil Procedure. Such a view was taken by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwai (Dead) by LRs., JT 2001(2) SC 407.**

9. In view of the above, the present Regular Second Appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

January 14th, 2016
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