

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 5620 of 2015(O&M)

Date of Decision: 1.2.2016

Ram Dhari

---Appellant

versus

Gram Panchayat village Israna and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Harkesh Manuja, Advocate
for the appellant

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present regular second appeal has been directed against the judgment and decree dated 23.4.2015 passed by the Additional District Judge, Panipat dismissing the appeal filed by the appellant and affirming the findings recorded by the trial court.

Ram Dhari, appellant and Soran, proforma respondent filed a suit for declaration with consequential relief of permanent injunction on the premise that they are Sansi by caste and are residing in village Israna since the time of their forefathers. Respondent No. 2, sarpanch of gram panchayat of village Israna (respondent No. 1) and her husband, respondent No. 3 are acting illegally and beyond the scope of her powers. During consolidation

of holdings, certain plots were reserved for different communities and an area measuring 2 kanals 4 marlas out of rectangle No. 91 Killa No. 20/1 situated in the revenue area of village Israna was kept reserved as Akwan Sansi. Since the time of consolidation of holdings in the year 1961/62, the plaintiffs as well as other members of Sansi community of the village have been using the suit land for holding meetings and gatherings by the Sansi community. With the passage of time, the area has become a prime location in the village and dominant communities are bent upon taking forcible possession of the suit property. The respondents have no right to raise construction over the plot as it is reserved from the area of Jumla Malkan and has never been used by any other community except the Sansi community.

The respondents filed the written statement raising preliminary objections inter alia maintainability of the suit; cause of action; misjoinder and non-joinder of parties and the plaintiffs having not approached the court with clean hands. On merits, it is averred that the suit land is used for the purpose of community hall constructed by inhabitants of village Israna. All material averments of the plaint have been denied with a prayer for dismissal of the suit.

On due consideration of the issues framed for determination, evidence on record and submissions made by counsel for the parties, the learned trial court non-suited claim of the plaintiffs and as a result, the suit was dismissed. The appeal preferred by the plaintiffs did not find favour with the appellate court and the court in appeal, in view of its observations recorded in para 15 of the judgment, held against the plaintiffs both on the

question of jurisdiction of the civil court being barred as well as on merits.

Still feeling dissatisfied, the present appeal has been preferred by one of the plaintiffs namely Ram Dhari.

The plaintiffs have taken a categorical plea that the land in question was reserved for exclusive use by Sansi community during consolidation of land holdings of village Israna which took place in the year 1961-62, out of land created by pro rata cut imposed upon the land holdings of the proprietors of the village meaning thereby that the land is jumla mustarka malkan. The jumla mustarka malkan land is included in shamlat deh as defined in Section 2(g) (6) of the Punjab Village Common Lands (Regulation) Act, 1961 (in short "the Act") (as applicable to the State of Haryana) by way of amendment in the year 1992.

Section 13 of the Act deals with bar of jurisdiction and a relevant extract therefrom reads thus:-

13.Bar of Jurisdiction.-No civil court shall have jurisdiction----

(a) to entertain or adjudicate upon any question whether-

(i) any land or other immovable property is or not shamlat deh;

(ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a panchayat under this Act;

(b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or

(c) to question the legality of any action taken or matter decided by any revenue court, officer or authority empowered to do so under this Act."

The plaintiffs prayed for declaration that the suit land vests in

the Sansi community having been reserved for the said community during consolidation and further prayed for consequential relief of permanent injunction. The gram panchayat of village Israna through its sarpanch has been sued and arrayed as respondent No. 1. Section 13(a)(ii) of the Act debars the jurisdiction of the civil court to entertain or adjudicate upon any question whether any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under the Act. In view of dispute raised for adjudication, the appellate court has rightly held that the civil court has got no jurisdiction to entertain and try the present case. This apart, as has been noticed by the court in appeal, the plaintiffs have failed to adduce satisfactory much less cogent and convincing evidence on record to establish their claim for seeking relief of permanent injunction. In this view of the matter, neither any substantial question of law arises for adjudication nor there is any error much less illegality in the judgment impugned.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

2.2.2016

PARAMJIT