

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

RSA-5056 of 2014 (O&M)

Date of decision: 12.05.2016

Mahinder Singh and another

...Appellants

Versus

Avtar Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

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

Jitendra Chauhan, J. (Oral)

CM-11920-C-2014

Keeping in view the averments made in the application which is supported by an affidavit of appellant No.1, the same is allowed. The delay of 31 days in filing the present appeal is hereby condoned, subject to all just exceptions.

RSA-5056-2014

The suit for permanent injunction filed by the plaintiff/respondents (for short 'the appellants') was decreed by the trial Court vide judgment and decree dated 19.09.2011.

2. Aggrieved against the findings of trial Court, the defendants filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree dated 06.03.2014.

3. The 1st Appellate Court affirmed 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 defendant/appellants.

4. It is contended that in the earlier round of litigation, the gram panchayat had admitted the possession and ownership of the appellants. The land in fact was acquired by the appellants through sale deeds and gift deeds. Thereafter, the appellant is in continuous possession of the suit property. The matter stands compromised between the appellants and the gram panchayat through a compromise deed, Ex.D9. He further states that even if the appellant is in illegal possession, he could only be evicted in the due process of law. The learned counsel refers to Section 13 of Punjab Village Common Land (Regulation) Act (for short 'the Act') to submit that the jurisdiction of the Civil Court is barred.

5. Heard, the learned counsel for the appellant and perused the record carefully.

6. The appellants have laid their claim on the basis of sale deed dated 28.05.2001 and gift deeds dated 08.03.2001 and 28.03.2001 by asserting that they are in continuous possession of the suit property. In this context, a perusal of Wajib-ul-Zrz (Ex.P8) reveals that in the village, there is no shamlat land. The suit property had been left as 'charand' at the time of consolidation for the purpose of grazing cattle. Though, in the revenue record the suit property has not been shown as 'Charand' but it has been shown to be banjar qadeem which is used for common purposes, which certainly vest in Gram Panchayat. Once, the suit land has been used for common purposes, therefore, no person has right to transfer the same either by virtue of gift deed or sale deed. As per the testimony of DW1, Mahender Singh, the suit property is lying vacant which shows that the appellants are not in the possession of the suit property. As far as the contention of learned counsel for the appellant with regard to compromise between the parties, by way of Ex.D9, is concerned, the same has no force as the common land used to common purposes by the villagers cannot be used for individual purpose. The resolution Ex.D15 placed on record has no sanctity which indeed had been passed collusively. The

suit property is 'banjar quadeem charand' which has been reserved for grazing ground and the same cannot be used individually in the capacity of proprietor. The possession of the appellants over the suit property, if any, termed to be as illegal possession. The jurisdiction of the Civil Court cannot be said to be barred under Section 13 of the Act since the question involved in the present case is not with regard to vesting or non-vesting of the suit property in the Gram Panchayat. Even otherwise, this issue was not pressed by the defendants before the Courts below.

7. Both the Courts below have rightly restrained the defendants from changing the nature of the suit property in any manner whatsoever by raising construction etc. Therefore, this Court feels that there is no merit in the present appeal and the findings recorded by the Courts below neither suffer from any perversity or illegality nor any material point has been left un-addressed.

8. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeal. Hence, no interference is called for. Dismissed.

12.05.2016

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(JITENDRA CHAUHAN)
JUDGE