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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.548 of 2014 (O&M)
Date of Decision: 12.08.2016

Sukh Pal and another

.....Appellants

Vs

Gram Panchayat of vill. Maheshpur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. B.S. Tewatia, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

[1]. Plaintiffs are in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below.

[2]. Brief facts as gathered from the record are that plaintiffs filed suit for permanent injunction on the basis that they being owners in possession of *gair mumkin gaith* situated within *abadi deh* of village Maheshpur, Tehsil and District Palwal. They claimed that property was being used as storage of fodder, firewoods, *bongas* and *bitoras*. They also claimed existence of 16 feet wide street towards western side of the property. Plaintiffs apprehended dispossession at the hands of Sarpanch of the Gram Panchayat and filed the suit to restrain him from

constructing *rasta* through the suit property.

[3]. On the other hand, Gram Panchayat denied the ownership of the plaintiff/appellants and claimed that the suit property stood vested in Panchayat as *Shamilat Deh*. The suit property was reserved for common purposes during consolidation proceedings. Use of the suit land by the plaintiffs was denied.

[4]. On completion of pleadings, following issues were framed by the trial Court:-

- “1. *Whether the plaintiffs are entitled to decree for permanent injunction as prayed for? OPP*
2. *Whether the suit of the plaintiffs is not maintainable in the present form? OPD*
3. *Whether the plaintiffs have no locus standi to file the present suit? OPP*
4. *Whether the suit is not within the limitation? OPD*
5. *Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD”*

[5]. Both the parties adduced their respective evidence on the aforesaid issues to prove their case.

[6]. After appraisal of the evidence, trial Court dismissed

the suit vide judgment and decree dated 06.10.2012 and the appellants remained unsuccessful before the lower Appellate Court, when their appeal was dismissed vide judgment and decree dated 23.09.2013. That is how the present appeal has been filed before this Court.

[7]. I have heard learned counsel for the appellant to some extent.

[8]. Admittedly, the suit property is situated within *abadi deh*. The vacant land situated within *abadi deh* or *gorah deh* in the village and not owned by any person shall vest in Gram Panchayat as *Shamilat Deh* under the provision of Punjab Village Common Lands (Regulation) Act 1961 (hereinafter to be referred as 'the Act'). The plaintiff/appellants could not produce on record any evidence to show that they were the owners of the property in question.

[9]. In view of **Bhagu and ors. vs. Ram Sarup and ors., 1986 PLJ 366** (Full Bench), it was held by this Court that when *lis* is between private individual and the Gram Panchayat in respect of vesting of land in Panchayat as *Shamilat Deh*, then jurisdiction of civil Court is barred under Section 13 of the Act.

[10]. Learned counsel for the appellants submitted that the possession of the appellants is proved on record and even if,

they are presumed to be a trespasser, they can only be evicted in due course of law. Since the plaintiff/appellants filed the suit on the basis of their being owners in possession of the *gaith* in question and the *lis* is between the plaintiffs and the Gram Panchayat in respect of *Shamilat Deh* nature of land, therefore, jurisdiction of civil Court is barred under Section 13 of the Act.

[11]. In view of Section 4(a) of the Act, the land situated within *abadi deh* or *gorah deh* of the village and is not proved to be under ownership of any private individual would fall in the ambit of *Shamilat Deh* and shall vest in the Gram Panchayat, who is the true owner and no injunction can be granted against the true owner. Even if, some proceedings were initiated by the Gram Panchayat that would not serve the purpose of the plaintiff/appellants to espouse their cause of action before the civil Court. Mere throwing of rubbish and installation of *bitora* cannot crystallise the alleged possession of the appellants into a settled possession over the *Shamilat* land.

[12]. In view of ratio laid down in **Bhan Singh vs. Tej Singh, 1998(1) Civil Court Cases, 239** such a possession cannot be termed to be a legal possession so as to warrant any interference in a suit for permanent injunction in respect of *Shamilat* land for which jurisdiction of civil Court was expressly

barred.

[13]. The questions of law as framed by the learned counsel for the appellants in para No.8 of ground of appeal do not arise at all inasmuch as that there cannot be an injunction against the true owner. Vacant land in *abadi deh* or *gorah deh* of the village not owned by any person would fall under the ambit of Section 4(a) of the Act. Therefore, in the absence of any evidence of ownership and possession of the plaintiff/appellants over the suit property, all the three questions cannot be answered in favour of the appellants. The jurisdiction of civil Court is patently barred in view of the fact that *lis* between the parties is in respect of vesting of *Shamilat* land in Panchayat.

[14]. In view of observations as made above, this Court is unable to record that the findings recorded by the Courts below are result of misreading of evidence or are perverse in nature. Consequently, there is no merit in this appeal and the same is accordingly dismissed.

August 12, 2016

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No