

RSA No.4918 of 2016(O&M)
Decided on:25.07.2017

Narain SinghRespondent(s)

Present: Mr. Vishal Garg, Advocate,
for the appellant.

CM NO. 12830-C of 2016

For the reasons mentioned in the application, the delay of 12 days in re-filing the appeal is condoned.

C.M application stands disposed of.

RSA No. 4918 of 2016

It is submitted by learned counsel for the appellant that respondent had claimed his ownership over khasra no 46//17/2 and had also sought permanent injunction restraining the appellant-defendant from interfering in his peaceful possession. As per the argument by learned counsel for the appellant, learned trial court had rightly rejected the claim of the respondent regarding possessory rights also because his possession was

not proved. Regarding the relief of declaration as owner the counsel points out that the same was relinquished by the plaintiffs/respondents before the trial court. Hence, it is argued by learned counsel that the lower appellate court has wrongly reversed the well reasoned judgment and decree passed by the trial court.

However, a perusal of the judgment passed by the lower appellate court shows that court has rightly relied upon Section 2(g)(5)(vi) of The Punjab Village Common Lands(Regulation) Act, 1961(for short, 'the Act') to hold that the land in the present suit, which is admittedly, reserved as 'manure pit' does not fall in the definition of shamilat deh. Therefore, since this land was not shamilat deh under Gram Panchayat, the Municipal Corporation, who is the successor-in-interest of the Gram Panchayat, at the best, can not claim to be the owner of the suit land. Hence, no infirmity can be found with this finding recorded by the lower appellate court.

One of the arguments raised by learned counsel for the appellant is that since the respondent himself had relinquished the claim regarding ownership, therefore, the lower appellate court should not have delved upon the matter of ownership to record a finding against Municipal Corporation that they are not the owners of the land. However, a careful perusal of the judgments rendered by the courts below show that the court has relied upon the statutory provisions as well as the previous litigation filed by the appellant corporation only to emphasis the fact that the Municipal Corporation is not the owner of the land in question, a fact which already stood adjudicated upon.

Next argument by learned counsel for the appellants is that since

the question involved was whether the land in question falls within the definition of shamilat deh or not, therefore, civil court has no jurisdiction in the matter. However, this argument also is not worth acceptance because admittedly when the suit was filed, even as per the plea of the appellant, the land has already been brought within the jurisdictional limits of Municipal Corporation. Therefore, although recourse might have been taken by the lower appellate court to section 2(g) of the Act, just to rebut the pleadings of the Municipal Corporation claiming their ownership. However, the suit necessarily was not as to the question, whether the land in question is shamilat deh or not. Moreover, no such plea is found to have been raised before the lower appellate court.

Even before the trial court, the plea regarding the jurisdiction, though raised, but the objections is not that the land was shamilat deh and therefore, jurisdiction of the civil court was barred. Instead the plea taken there also by the Municipal Corporation is that since earlier the proceedings under Sections 4 and 5 of the Public Premises Act, were undertaken, the civil court jurisdiction is excluded.

There is no force in the argument raised by learned counsel for the appellant.

No further argument is raised.

In view of the above, the present appeal is hereby dismissed.

25th July, 2017

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes*

Whether Reportable *Yes/No*