

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

**(1) Regular Second Appeal No.4632 of 2014
Date of Order: 19.07.2017**

Sube Singh and others

..Appellants

Versus

Sat Narain

..Respondent

(2) Regular Second Appeal No.1844 of 2014

Sat Narain

...Appellant

Versus

Sube Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Salil Bali, Advocate,
for the appellants (in **RSA No.4632 of 2014**)

Mr. Deepender Ahlawat, Advocate,
for the appellant (in **RSA No.1844 of 2014**)

ANIL KSHETARPAL, J.

Both the regular second appeals arise from common judgment passed by the first appellate Court while deciding Ist appeals filed against a judgment and decree passed by the trial Court in a suit. Hence, both the appeals are being disposed of by a single judgment.

Plaintiff-Sat Narayan filed a suit for permanent injunction claiming that he is in settled possession of one Gair Mumkin Gitwar (plain land) shown by letters ABCDEFG with red colour in the site plan produced by the plaintiff, situated within abadi of village Kheri Hosdarpur Tehsil and District Jhajjar. Plaintiff had claimed that the said Gitwar is his ancestral property. It was further pleaded that plaintiff is proprietor of

village and the disputed Gitwar is part of khasra number 560. It was pleaded that defendants want to forcibly take possession of the aforesaid Gitwar.

Defendants contested the suit and pleaded that the defendants are in possession of the property and it is ancestral property of the defendants.

The trial court after appreciating the evidence available on the record, decreed the suit filed by the plaintiff on the basis of jamabandi for the year 2001-2002, Khasra Kistwar Bandobast 1879, Ex.P3 and other documents. The suit filed by the plaintiff for permanent injunction was decreed.

Two first appeals were preferred, one by defendants no.1 to 3 and second by three appellants, who had claimed some right in the suit property. The second appeal was filed along with application for permission to file appeal.

After hearing counsel for the parties and after appreciating the evidence available on the record, it was found that Plot No.560 is “Banjar Qadim” and it has been shown in possession of “Makbuja Malikaan Hasab Paymana Malkiyat.” It was further found that in the ownership column entry was “Shamilat Deh”.

Learned first appellate court further found that since “Shamilat Deh” land does not belong to any individual and such land is for common purposes of the villagers. Therefore, all the parties to the suit and appeal have no right, title or interest in the property. Learned Court held that the parties to the suit as well as appeal are trying to assert their right over “Shamilat Deh” land of the village.

I have heard counsel for the appellants in both the appeals.

Learned counsel for the defendants-appellants has submitted that at the best a suit filed by the plaintiff could be dismissed but the first appellate court had erred in recording that the property belongs to Gram Panchayat. He has further submitted that the finding of the first appellate court is beyond pleadings, issues and evidence. He has further submitted that jurisdiction of Civil Court was barred under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961, as applicable to the State of Haryana (hereinafter referred to as 'the Act').

Counsel for the plaintiff-appellant has submitted that the findings of the first appellate court that the land belongs to Gram Panchayat is beyond pleadings, issues and evidence. He has further submitted that plaintiff has been able to prove settled possession over the property and, therefore, he is entitled to injunction.

I have considered the arguments of both the learned counsel and with their able assistance gone through the paper book.

It is not, in dispute, that as per revenue record, the land, in dispute, is recorded as “Shamilat” land. Therefore, the ownership of the land vests with the Gram Panchayat.

Section 4 of the Act reads as follows:-

4. Vesting of rights in Panchayat and non-proprietors.-

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interest whatever in the land:-

(a) Which is included in the *Shamilat deh* of any village and which has not vested in a Panchayat under the *Shamilat law* shall at the commencement of this Act vest in a Panchayat constituted for such village, and where no such Panchayat has been constituted for such village, vest in the Panchayat on such date as a Panchayat having jurisdiction over that village is constituted ;

(b) Which is situated within or outside the *abadi deh* of a village and which is under the house owned by a non-proprietor, shall, on the commencement of *Shamilat law*, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a Panchayat under the *Shamilat law* shall be deemed to have been vested in the Panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (1) and in sub section (2) shall affect or shall be deemed ever to have affected the ;-

(i) existing rights, title or interests of persons, who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as *Dholidars, Bhondedars, Butimars, Basikhopohus, Saunjidars, Muqarrirdars*;

(ii) rights of persons who were in cultivating possession of *Shamilat deh*, on the date of commencement of the Punjab Village Common Lands (Regularion) Act, 1953 or the Pepsu Village common Lands (Regulation) Act, 1954, and were in such cultivating possession for more than twelve years on such commencement without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950.”

Section 4 of the Act provides that “Shamilat Deh” land would vests in the Gram Panchayat. No doubt, such finding of the Court is beyond pleadings. However, Courts are also guardian of State property. “Shamilat” land is reserved and used for common purposes of the villagers. The residents of the village cannot be permitted to encroach upon such land. Observation of the Court that since it is a 'Shamilat” land, therefore, vests with the Panchayat would not conclusively decide the title of the Gram Panchayat. Parties would be free to file a suit in terms of Section 13-A of the Act to establish their title, which is the appropriate forum for adjudication of dispute whether the property is “Shamilat' or not? Section 13-A of the Act is extracted as under:-

13-A. Adjudication – (1) any person or in the case of a Panchayat, either the Panchayat or its Gram Sachiv, the concerned Block Development and

Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is shamilat deh or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a Panchayat under this Act, in the Court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated.

Provided that no suit shall be under this section in respect of the land or other immovable property, which is or has been the subject matter of the proceedings under Section 7 of this Act under which the question of title has been raised and decided or under adjudication.

(2) The procedure for deciding the suits under subsection (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (5 of 1908).”

Plaintiffs-appellants have not been able to prove their individual possession. Once, it has been found that the land is “Shamilat” land and is used for common purposes, then unless and until the plaintiff is able to prove his exclusive possession, plaintiff cannot claim any right. Plaintiff has produced on file one Khasra Kistwar Bandobast of 1879 that only shows that plaintiff is one of the proprietor of the village. Proprietor of the village does not *ipso-facto* get right to take possession of land, which is used for common purposes.

Learned counsel for the defendants-appellants has submitted

that at the most, the suit filed by the plaintiff could be dismissed but the learned first appellate Court was in error in recording a finding that the land belongs to Gram Panchyat. There is some substance in the argument. As I have already observed that such observation is only incidental and parties would be free to establish their title in accordance with provisions of Section 13-A of the Act i.e. the appropriate forum for decision of question whether Gram Panchayat is owner or not.

In view of the reasons stated above, I do not find any reason to interfere with the judgment passed by the learned first appellate court, appeals filed by the defendants and plaintiff are ordered to be dismissed. However, with slight modification, that parties would be entitled to get adjudication of their right, title or interest under Section 13-A of the Act.

July 19, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No