

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

**RSA No.4420 of 2017 (O&M)
Date of Decision: 14.09.2017**

Lal Singh and others

... Appellants

Versus

Surjan Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rao Ajender Singh, Advocate,
for the Appellants.

ANIL KSHETARPAL, J.

CM No.11498-C of 2017

Allowed as prayed for.

Main case.

Defendants are in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below while deciding a suit for permanent injunction.

The plaintiff had filed a suit for permanent injunction restraining the defendants from interfering in the use of the passage situated in Khasra No.49, village Rajpura Khalscha, District Rewari. The plaintiff further sought decree for permanent injunction restraining the defendants from encroaching upon any portion of the passage and also prayed for a restraint order against the defendants from interfering in the reconstruction of the drains demolished by the defendants.

The defendants on the other hand, claimed that they are owner of the property and it is the plaintiff who has demolished the drains.

Learned trial Court appointed a Local Commissioner to visit the spot. The Local Commissioner reported that there is a passage and the drains constructed have been demolished. The learned trial Court after appreciating the evidence available on the file held that there is a passage which is for common use and the Gram Panchayat had constructed drains in the aforesaid passage, which have been demolished by the defendants. Thus the suit filed by the plaintiff was decreed.

The appeal filed by the defendants/appellants was also dismissed after reappreciating the evidence available on the file.

Learned counsel for the appellants has submitted as under: –

1. The jurisdiction of the civil Court is barred to entertain such suits under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short the Act of 1961).
2. The trial Court committed an error in deciding issues No. 2, 3 and 4 jointly although, each issue is to be decided.
3. In the absence of the Gram Panchayat which is the owner of the passage, the suit could not be filed.

Learned counsel for the appellants has referred to Section 13 of the Act of 1961. The same is extracted hereunder: –

“13. Bar of Jurisdiction in Civil Courts:-

No civil court shall have jurisdiction:-

- (a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or*

is not Shamlat deh vested or deemed to have been vested in a Panchayat under this Act ; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act, or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.”

It is clear from the reading of Section 13 of the Act of 1961 that whenever the question arises is that whether the property is or is not Shamlat Deh then the jurisdiction of the civil Court is barred. In the present case, the dispute is not whether the property is Shamlat or not. In the present case, the dispute is whether a street which is for common use is being encroached upon or not. The trial Court has not framed any issue on the ownership. Simple suit for permanent injunction preventing the defendants from encroaching upon the passage is maintainable before the civil Court. Wherever the dispute is with regard to the fact that whether the property is Shamlat or not, the jurisdiction of the civil Court is barred.

The second argument of the learned counsel for the appellants is that the trial Court jointly decided issues No.2, 3 and 4. These issues were formal in nature and the onus to prove these issues was on the defendants. Counsel for the defendants did not press these issues.

In view of the aforesaid discussion, I do not find that the trial Court has committed any error in discussing issues No.2, 3 and 4 collectively.

Learned counsel for the appellants, in the last, submitted that in the absence of the Gram Panchayat, the suit was not maintainable.

The street situated within the village vests in the Gram Panchayat, however, it is for common use of the public at large. Ownership of the Gram Panchayat was not being decided in the present case. In the facts and circumstances of the case, I do not find any force in the submission of the learned counsel for the appellants.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

The appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

14.09.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No