

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

105

Date of Decision: 21.11.2018

1. RSA No.3466 of 1997 (O&M)

Mohinder Singh and others

..... Appellants

Versus

Gram Panchayat

..... Respondent

2. RSA No.1242 of 1998 (O&M)

Gram Panchayat

..... Appellant

Versus

Mohinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ravindra Jain, Advocate
for the appellants (in RSA-3466-1997).
for the respondents (in RSA-1242-1998).

Mr. S.S. Dinarpur, Advocate
for the appellant (in RSA-1242-1998).
for the respondent (in RSA-3466-1997).

ANIL KSHETARPAL, J. (ORAL)

Vide this judgment, I shall be disposing of two appeals bearing
RSA No.3466 of 1997 and RSA No.1242 of 1998 which are connected.

Gram Panchayat-appellant in RSA No.1242 of 1998 had filed a
suit for permanent injunction restraining the defendants-appellants in RSA
No.3466 of 1997 from cutting and removing the trees standing on the land
measuring 8 kanals and 9 marlas claiming that the land is part of a common

passage reserved during consolidation of holdings. The defendants contested the suit pleading that they are owners in possession of the property and some portion of the land is being used as a private passage. Both the Courts after appreciating the evidence held that since the land is described in the revenue record as a public passage, therefore, management thereof vest with the Gram Panchayat, although, in the ownership column, all the proprietors of the village have been recorded as owners. Both the Courts have also granted injunction in favour of the Gram Panchayat restraining the defendants from stopping any one from using the passage.

Since the defendants are claiming to be owner of the property, therefore, the primary issue which needs determination is whether the defendants are owners and whether the property falls within the definition of Shamlat Deh as defined under Section 2(g) of the Punjab Village Common Land (Regulation) Act, 1961.

As per Section 13-A of the Act of 1961, the adjudication of the question whether a property is Shamlat Deh or not exclusively vests with the authorities constituted under the Act of 1961. Section 13 further bars the jurisdiction of the Civil Court. Section 13 and 13-A as applicable to Haryana is extracted as under:-

- “13. Bar of Jurisdiction. No Civil Court shall have jurisdiction-***
- (a) to entertain or adjudicate upon any question whether:-*
 - (i) any land or other immovable property is or is not shamlat deh;*
 - (ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under this Act;*
 - (b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine, or*
 - (c) to question the legality of any action taken or matter decided*

by any revenue Court, officer or authority empowered to do so under this Act.

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 authorized 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 lie 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 sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (5 of 1908).”

On careful reading thereof, it is apparent that the dispute with regard to ownership can only be decided by the authorities constituted under the aforesaid Act. Both the Courts have already passed an order of injunction restraining the defendants from interfering in the passage i.e. the land in dispute. The defendants have also been restrained from interfering in the usage of the aforesaid passage.

Learned counsel for the Gram Panchayat has submitted that the defendants have cut and removed the trees standing on the land and have also taken over the possession of some of the land. He submits that a

separate petition for initiation of contempt proceedings is pending. While deciding the appeal, this Court cannot go into the aforesaid issue. Since the jurisdiction of the Civil Court is barred, therefore, the parties are relegated to the remedy of instituting appropriate proceedings under the Act of 1961. However, the decree for injunction passed by both the Courts below is maintained and the defendants are restrained from interfering in the user of the passage by the inhabitants of the village.

Needless to say that the Gram Panchayat would be at liberty to initiate proceedings for recovery of the amount for removal of the trees in accordance with law while filing its claim before the authority constituted under the Act.

Both the appeals are disposed of.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

21.11.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No