

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106

RSA No.4487 of 2001 (O&M)

Date of decision: 04.12.2018

Jagbir Singh and others

..... Appellants

Versus

Bimlesh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Pankaj Jain, Advocate
for the appellants.

Mr. Arun Jain, Sr. Advocate with
Mr. Sumeet Goel, Advocate and
Ms. Kaavya Jariyal, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below dismissing their suit for declaration to the effect that the property is gair mumkin pond and they are co-owners in Shamlat Deh. The suit was filed under Order 1 Rule 8, CPC.

The defendants contested the suit and pleaded that there is no pond and the area is covered by huge construction. The defendants further pleaded that all the proprietors of the village had orally gifted the property to late Sh. Bhagat Prem who was a renowned saint of the area. Plea of adverse possession was also taken.

Learned trial Court as well as First Appellate Court have decided that the defendants are owners in possession of the property.

In the considered opinion of this Court that the suit itself was

not maintainable before the Civil Court. Once the plaintiffs themselves claim that the property is gair mumkin pond reserved for common purposes, obvious the question which would arise, whether the property is Shamlat Deh or not as defined under Section 2(g) of the Punjab Village Common Land (Regulation) Act, 1961 (for short as 'Act of 1961')? Section 13-A of the Act of 1961 clearly provide that only authority constituted under the Act of 1961 shall have jurisdiction to decide a suit for adjudication whether such land or other immovable property is Shamlat Deh or not and whether any land or other immovable property or any right, title or interest therein vest or does not vest in Panchayat under this Act. The jurisdiction of the Civil Court is barred under Section 13 of the Act. Section 13 and 13-A as applicable in the State of Haryana are 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).”

As noticed above, pleaded case of the plaintiffs is that the property is gair mumkin pond reserved for common purposes. Obviously, first question which would require adjudication is whether the property is Shamlat Deh or not. Hence, the suit filed by the plaintiffs is mis-conceived. Accordingly, the suit is dismissed with liberty to the plaintiffs or any one else to institute appropriate proceedings before the authority constituted under the Act of 1961.

Since, it has been held that the Civil Court has no jurisdiction, therefore, the findings arrived at by both the Courts are also without jurisdiction. If any suit is filed, the authorities would proceed and decide the matter without being influenced by the findings of the Civil Court.

With these observations, the appeal is disposed of.

04.12.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No