

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

**RSA No.4578 of 2012 (O&M)
Date of Order:28.09.2018**

Raj Pal and others

..Appellants

Versus

Anoop Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Adish Gupta, Advocate,
for the appellants.

Mr. Deepa Jain, Advocate, for
Mr. Yash Dev Kaushik, Advocate,
for respondent nos.2, 6, 7, 9 and 10

Mr. Jasbir Mor, Advocate,
for respondent no.8

ANIL KSHETARPAL, J(Oral)

Plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below while dismissing the suit filed by the plaintiffs claiming declaration that they were owners of the property and, therefore, entitled to compensation.

The land, admittedly, is recorded as “Shamilat Deh Hasab Rasad Kabja Jamin Bandobasat”. It is pleaded case of the plaintiffs that the land was utilized for common purposes.

Both the courts on appreciation of evidence have found that once the property is “Shamilat Deh”, it vests in the panchayat of the village including proprietary rights and therefore, there is no substance in the suit filed by the plaintiffs.

No doubt, learned first appellate court has also dismissed the appeal on the ground that jurisdiction of the civil court is barred under Section 13A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act of 1961'). However, that finding is obviously erroneous as after the property had fallen within the municipal limits, the Act of 1961 would not apply. However, even the courts have examined the case on merits and found that the plaintiffs have led no evidence to prove that the property was carved out after imposing a pro-rata cut or in any way exempted from the definition of “Shamilat Deh” as defined in Section 2(g) of the Act of 1961. Admitted facts are that previously the land fell in village Fatehpur Chandiala and revenue entry was “Shamilat Deh”. It was also entered as “Panchayat Deh” in the revenue record before the land came within the municipal limits.

As per Section 4 of the Act of 1961, all “Shamilat” lands unless exempted from the Act, came to vest in Panchayat absolutely. Section 4 of the Act is extracted as under:-

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, 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 in cultivating possession of Shamilat deh, for more than twelve years 1 [immediately preceding the commencement of this Act] 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.”

Before the Act of 1961, there was another Act which covered this field i.e. the Punjab Village Common Lands (Regulation) Act, 1953.

Section 3 of Act of 1953 also provided for vesting. Section 3 of the Act is extracted as under:-

3. Vesting of rights in Panchayats and in non-proprietors.- (1) *Notwithstanding anything to the contrary contained in any other law for the time being in force, and notwithstanding any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests whatever in the land,-*

(a) which is included in the Shamilat Deh of any village, shall, on the appointed date, vest in a panchayat having jurisdiction over the village;

(b) which is situated in the Abadi Deh of a village and which is under the house owned by a non-proprietor, shall at the commencement of this Act vest in the said non-proprietor.”

In view of the aforesaid provisions, in absence of any evidence to the contrary, no fault can be found with the findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

September 28, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No