

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

RSA No.2837 of 2016 (O&M)
Date of Decision : 13.03.2018

Lal Singh and others

..... Appellants

Versus

Ram Kishan and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Parduman Yadav, Advocate
for the appellants.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing a suit filed by the plaintiffs-appellants.

The claim of the plaintiffs-appellants was that they were among the proprietors of village Khawaspur Sub Tehsil Farrukh Nagar, District Gurgaon. Land measuring 32 kanals 16 marlas was given by the co-sharers to the ancestors of defendants on Bhondedari in lieu of services to be performed by them towards the proprietors in the form of 'Piao' for villagers and passersby. It is further pleaded that that property was given into shamlat deh after making *pro-rata* cut from the land of the proprietors and had been mutated in the favour of the Gram Panchayat. It is further alleged that the respondents had stopped providing the services of 'Piao' and had changed the nature of the land and consequently, it was prayed that a decree of declaration be issued to the effect that the appellants and the other proprietors have become full fledged owners in possession of the suit land.

Both the Courts held the following :-

- (i) The land being part of shamlat deh the civil court had no jurisdiction;*
- (ii) The appellants having admitted that the respondents were in possession had not sought the consequential relief of possession;*
- (iii) Once the appellants were claiming to have filed the suit in a representative capacity they were bound to fulfill the requirements of Order 1 Rule 8 CPC.*
- (iv) Once the property was shamlat deh it was only the Panchayat who could initiate action against the respondents.*
- (v) Another finding which was given was that the 'Piao' was still in existence.*

Learned counsel has vehemently argued that there is ample evidence on the record to show that the respondents are no longer maintaining the 'Piao' and have failed to fulfill their obligation of providing drinking water to the villagers and passersby. In the first place this is a pure finding of fact returned by both the Courts. Secondly learned counsel has not been able to assail the findings on the first 4 points which have been mentioned above.

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(**AJAY TEWARI**)
JUDGE

13.03.2018

Pooja sharma-I

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No