

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

RSA No.2187 of 2015 (O&M)

Date of decision : 23.05.2018

Partap Singh

...Appellant

Versus

Prem Chand

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate for the appellant.

Ms. Pratibha Yadav, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court.

Learned First Appellate Court has found that the dispute whether a particular property is shamlat deh or not as defined in the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred as “the Act of 1961”) as applicable to the State of Haryana, jurisdiction of the Court of Collector is exclusive and the Civil Court does not have jurisdiction. The revenue record and *khana sumari* produced on file as Ex.PW6/B also prove that the property was kept for the common purposes for a particular community i.e. Kumharans (persons who make earthen pots).

The First Appellate Court after noticing this fact has observed that the parties can file a petition under the Act of 1961.

Learned counsel for the appellant has submitted that the Civil Court has already given a finding that the property is shamlat and, therefore, there would be no use of going to the Court of Collector under the Act of

1961.

This Court has considered the submission. However, once the Appellate Court has held that the jurisdiction of the Civil Court is barred under Section 13-A of the Act of 1961, then any finding that the property is shamlat or not is also without jurisdiction. Section 13-A of the Act of 1961 clearly provides that any adjudication whether a property is shamlat deh or not exclusively lies with the Collector and no other Court has the jurisdiction. Under Section 13 of the Act of 1961, the jurisdiction of the Civil Court to entertain or adjudicate upon any question whether the immoveable property is or is not shamlat deh is barred. Sections 13 and 13-A of the Act of 1961, are extracted as under:-

“13. Bar of Jurisdiction in Civil Courts:- *No civil court shall have jurisdiction:-*

(a) to entertain or adjudicate upon any question, whether

(i) any land or other immoveable property is or is not a shamlat deh;

(ii) any land or other immoveable 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 immoveable property vested or deemed to have been vested in the Panchayat under this Act, may filed a suit for adjudication, whether such land or other immoveable property is shamilat deh or not and whether any land or other immoveable 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 immoveable property is situated.

Provided that no such 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 the 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).”

In view of the aforesaid, the parties would be free to file the appropriate proceedings before the Collector and get adjudication thereupon. Needless to say that any finding by the Civil Court with regard to the nature of the property would be without jurisdiction.

In view of the above, the present Regular Second Appeal is dismissed.

23.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No