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

R.S.A No. 1509 of 2017 (O&M)

Date of Decision:- 01.11.2018

Lallu (D) through LRs & Ors.

....Appellants

Versus

Rehman Khan & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

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

AMIT RAWAL J. (Oral)

Appellants-defendants have not been successful in defending the suit claiming the declaration that the revenue entry in favour of defendant Nos. 1 and 2 and possession being illegal was to be corrected and possession be declared null and void. Initially the plaintiff arrayed the Punjab Waqf Board and thereafter removed from the array of parties. It was alleged that land was used for burial purposes, the defendant had no right to make construction. Defendants No.1 to 5, 10 and 11 filed a written statement and remaining defendants do not contest. They stated that they were Bhoondedar and had been rendering services to the society. Jurisdiction of the Court was also challenged. Defendant No.10 filed a separate written statement. Trial Court on the basis of the aforementioned pleadings framed the following issues

“ 1.Whether the plaintiff is entitled for decree of declaration to this effect that revenue entry in favour of the defendants Nos. 1 to 5 as Bhondedarri is illegal, null & void and liable to be

corrected? OPP

2. Whether the plaintiff is entitled for decree of permanent injunction, the defendants are restrained to creating any hindrance to change in the nature of the suit property? OPP

3. Whether this Court has no jurisdiction to entertain the present suit? OPD

4. Whether the plaintiff has concealed the true and mater facts from this Court? OPD

5. Whether the plaintiff has no cause of action to file the present suit? OPD

6. Relief.”

Plaintiffs brought on record three jamabandies P-A to P-C commencing from 1980-81, 1966-67, 2005-2006. The trial Court decreed the suit by holding that defendants had no right to make construction over the property and the lower appellate Court also affirmed the findings of the trial Court.

Mr. Ashish Gupta, learned counsel appearing on behalf of the appellants submitted that once the plaintiffs admitted the ownership of the property to be of Punjab Wakf Board, jurisdiction of the Civil Court is barred.

I have heard learned counsel for the appellants and of the view that there is no force and merit in the submission because once the jamabandi placed on record proved the property to be a burial ground, entry in the revenue record could not have been made in favour of defendants. It is in these circumstances trial Court decreed the suit restraining the

defendants. It was found that as per jamabandi for the year 2005-06 the suit land is recorded as Gair Mumkin Kabristan. This fact was also reflected in Jamabandies Ex. D4 to D8. The electricity bills relied upon by the defendants did not reflect identity of the property.

I am afraid that the afore-mentioned argument of Mr. Gupta, with regard to the jurisdiction of Civil Court would not come to the rescue of the defendants, for, title of the property was not involved in the present suit.

There is no illegality and perversity in the impugned judgment and decrees passed by the Courts below. Accordingly, the present appeal is dismissed.

November 01, 2018
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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : No