IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1859 of 2018 (O&M)
Date of decision: 17.05.2018

Rajwanti ... Appellant

Versus

Ishwar ... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Deepak Girotra, Advocate for the appellant.

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REKHA MITTAL, J. (Oral)

CM No.7935-C of 2018

Heard.

Allowed as prayed for. Affidavit of Sh. Deepak Girotra, Advocate is taken on record.

CM No.5198-C of 2018

Heard.

Allowed as prayed for. Delay of 31 days in re-filing the appeal stands condoned.

Main Case

The present appeal directs challenge against judgments and decrees passed by the Courts whereby suit for permanent and mandatory injunction filed by the appellant restraining the respondent/defendant from blocking the street towards western side of the house of plaintiff shown in

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red color, in the site plan and also from raising any kind of construction thereon and so also the relief of mandatory injunction directing the respondent/defendant to restore the street in question in its original position has been dismissed by the trial Court vide judgment and decree dated 30.05.2017 and the appeal preferred by the plaintiff/appellant did not find favour with the Additional District Judge, Rohtak.

One of the issues framed by the trial Court is with regard to jurisdiction of the Civil Court and the same reads as follows:-

> Whether the court has no jurisdiction to entertain the present suit?OPD

The trial Court, on consideration of Section 13 of the Punjab Village Common Lands Regulation Act, 1961 (in short 'the Act') as applicable to State of Haryana answered the said issue against the respondent/defendant and in favour of the appellant/plaintiff but issues No.1 and 2 pertaining to entitlement of the plaintiff for permanent injunction were answered against her and eventually the suit was dismissed. The findings recorded by the trial Court on issues No.1 and 2 were affirmed by the Court in appeal in view of discussion in para 16 onwards of the judgment.

Counsel for the appellant, in response to a query, would fairly inform that there is no evidence on record to establish that the respondent/defendant encroached upon the street in question during pendency of the suit. Meaning thereby that the appellant prayed for the

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relief of mandatory injunction for removal of encroachment allegedly made by the respondent prior to institution of the suit. He has also not disputed that the appellant does not claim ownership rights in the street in question or to say that she does not dispute that the street/gali in question belongs to Gram Panchayat. Though the Courts have held that the appellant has failed to prove the existence of any such gali/street towards western side of house of the plaintiff/appellant but assuming that any such gali belonging to the Gram Panchayat existed there which is stated to have been encroached by the respondent/defendant, jurisdiction of the Civil Court to entertain and try the present suit qua relief of mandatory injunction is otherwise barred in view of Section 13 of the Act read with Section 7 thereof.

Section 7 of the Act deals with power to put panchayat in possession of certain lands. It says that an Assistant Collector of the first grade having jurisdiction in the village may either suo motu or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer or any other officer authorized by the Block Development and Panchayat Officer, after making such summary inquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorized possession of the land or other immovable property in the shamlat deh of that village which vests or is deemed to have been vested in the panchayat under this Act and put the panchayat in possession thereof and for so doing the

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Assistant Collector of the first grade may exercise the powers of a revenue court in relation to execution of a decree for possession of land under the Punjab Tenancy Act, 1887.

Section 13 of the Act deals with bar of jurisdiction of Civil Court and reads as follows:-

> *"No civil court shall have any jurisdiction over any matter arising out of the operation of this Act."*

Taking into consideration the discussion made hereinbefore coupled with conjoint reading of Sections 7 and 13 of the Act, it can be safely held that suit for mandatory injunction seeking removal of encroachment from alleged gali belonging to panchayat of the village is clearly barred under Section 13(b) of the Act. As jurisdiction of the Civil Court is barred, this Court need not to dilate on other issues raised by the appellant.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

No order as to costs.

17.05.2018 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No

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