

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

RSA No.5815 of 2017 (O&M)

Date of Order: 01.08.2018

Gulab Singh and another

..Appellants

Versus

Municipal Corporation and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Aggarwal, Advocate,
for the appellant.

Mr. Sanjeev Soni, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Plaintiffs-appellants are in the regular second appeal against the judgments passed by the courts below.

Plaintiffs had filed a suit against Municipal Corporation, Bathinda, claiming that certain property was owned and possessed by them and in the revenue record such land is described as “Shamilat Patti”.

Both the courts below primarily dismissed the suit on the ground that the civil court does not have jurisdiction in view of the provisions of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act of 1961').

In the considered opinion of this court the entire approach of the courts below was erroneous. The Punjab Village Common Lands (Regulation) Act, 1961, as applicable to the State of Punjab would have no application with respect to the property situated within Municipal limits.

Therefore, jurisdiction of the civil court has been wrongly held to be barred.

Still further both the courts have failed to consider whether as per Section 2(g) of the Act of 1961, the land, which is entered in the revenue record as “Shamilat Patti” but not used according to the revenue record for the benefit of the village community or part thereof or for common purposes of the village is excluded from the definition of “Shamilat Deh”. On careful reading of the judgments passed by the courts below, even this aspect has not been examined.

Taking into consideration these facts, this court is of the considered opinion that since the judgments passed by the courts below are erroneous qua bar to the jurisdiction of the civil court as well or failure to examine whether the land which was described in the revenue record as “Shamilat Patti” was used for any common purpose or a part thereof was ever used, therefore, this court is of the considered opinion that the judgments under appeal are liable to be set aside and the case is required to be remitted back to the learned trial court to frame proper issues and adjudicate thereupon in accordance with law after granting opportunity to the parties to record further evidence, if any.

Disposed of accordingly.

Parties through their counsels are directed to appear before the trial court on 21.08.2018.

August 01, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No