

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

RSA No.5973 of 2017(O&M)
Date of decision: 28.11.2018

Inder Singh (since deceased) through his LR's and othersAppellants

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Aashna Gill, Advocate for the appellants.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration filed by plaintiffs/appellants that they are owners in possession of land measuring 1092 kanal 11 marlas situated in village Barota, Tehsil Gohana, District Sonapat with consequential relief of mandatory injunction directing the defendants to correct revenue entries of suit land in favour of plaintiffs and for possession of suit land was dismissed by the trial Court vide judgment and decree dated 25.02.2012 and appeal preferred by unsuccessful plaintiffs/appellants did not find favour with the first Appellate Court.

The plaintiffs have staked their claim to suit land on the premise that it is recorded as *jumla mustarka malkan wa deegar hakdaran hasab rasad rakba* in the jamabandi for the year 1989-90. An amendment was made in the Punjab Village Common Lands (Regulations) Act, 1961 (in short 'the Act') on the basis whereof, mutation of suit land was sanctioned in the name of Gram Panchayat, Barota vide mutation No.2293 dated 30.05.1993. The amendment of the said Act was challenged in Civil Writ Petition No.5977 of 1992 and was declared ultra vires by the Punjab

and Haryana High Court. The suit land belongs to proprietors of village and the Gram Panchayat has no right, title or concern with the same.

The respondents/defendants contested the claim and raised preliminary objections inter alia that the suit is not maintainable; plaintiffs have no locus standi to file the suit; the civil Court has no jurisdiction to try the present suit and plaintiffs have suppressed true and material facts from the Court. The facts of Civil Writ Petition No.5977 of 1992 were entirely different and same are not applicable to the case at hand. The proprietors of village Barota are not owners in possession of suit land. The suit land was reserved for common purposes during consolidation. The same is under management and control of Gram Panchayat Barota, therefore, the plaintiffs are not entitled to its possession. All other material averments of the plaint are denied with a prayer for dismissal of the suit.

The trial Court framed issues, reproduced in para 4 of the judgment. One of the issues framed by the trial Court is, 'whether Civil Court has no jurisdiction to try the present suit?'

Parties were permitted to adduce evidence in support of their respective claims. Having heard counsel for the parties in the light of materials on record, the trial Court answered issue No.1 against the plaintiffs whereas issues No.2 to 4 including jurisdiction of the civil Court was answered in favour of the defendants and consequently suit filed by the plaintiffs was dismissed. As has been noticed hereinbefore, the judgment passed by the trial Court came to be affirmed in appeal without any variance.

A relevant extract from order dated 05.09.2018 passed by this Court reads as follows:-

“Counsel for the appellants prays for time to examine and advance arguments with regard to jurisdiction of the Civil Court in view of provisions of Section 2(g) (6) and 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana).”

Counsel for the appellants, in response to order dated 05.09.2018, would concede that jurisdiction of the Civil Court is barred in view of the provisions of Section 2(g) (6) read with Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana). However, it is argued that as civil Court does not have the jurisdiction to entertain and try the present suit in view of definition of ‘shamlat deh’ in Section 2 (g) read with Section 13 of the Act, findings recorded by the Courts qua merits of the case are nullity, therefore, cannot cause prejudice to rights of appellants/plaintiffs, if they file a petition before a competent fora claiming title to the suit land. It is further argued that a decree passed by the civil Court which lacks inherent jurisdiction does not constitute res judicata, therefore, findings recorded by the trial Court touching merits of the case may be set aside. In support of her contention, she has relied upon judgments of Hon’ble the Supreme Court **Balvant N. Viswamitra and others Vs. Yadav Sadashiv Mule (D) through LRs and others, 2004(4) RCR (Civil) 230, Sayyed Ali Vs. Andhra Pradesh Wakf Board, Hyderabad, 1999(2) RCR (Civil) 32, Chandrabhai K. Bhoir and others Vs. Krishna Arjun Bhoir and others, 2009(1) RCR (Civil) 266 and Kiran Singh and others Vs. Chaman Paswan and others, AIR 1954 SC 340.**

I have heard counsel for the appellants, perused the paper-book particularly the judgments impugned.

The Courts have consistently held that civil Court has no jurisdiction to entertain and try the present suit on account of its jurisdiction being expressly barred by the provisions of the Act. Counsel for the appellants has not disputed findings of the Courts on the question of jurisdiction, therefore, the same are liable to be affirmed.

There cannot be any dispute about settled position in law that a decree passed by a Court that lacks inherent jurisdiction to decide the matter would be non-est and nullity, therefore, would not constitute res judicata in subsequent proceedings lodged before a competent Fora. In this view of the matter, in case the appellants raise the dispute in an appropriate forum if the law permits to do so, they would always be at liberty to raise a plea that findings recorded by the civil Court would not cause prejudice to their right as the civil Court lacked inherent jurisdiction to try the suit, therefore, decree passed by the civil Court is not binding upon the parties.

In view of what has been discussed hereinabove, appeal fails and is accordingly dismissed. No order as to costs. As the appeal has been decided on merits, applications for condoning delay in re-filing as well as filing the appeal are of academic relevance only.

NOVEMBER 28, 2018

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no