

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.6133 of 2017 (O&M)

Date of decision: 05.09.2018

Rakha Singh (deceased) through LR

..... Appellant

Versus

Darshan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. K.S. Khehar, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while dismissing the suit for permanent injunction restraining the defendants from demolishing the wall which is alleged to be part of the house of the plaintiff and restraining the defendants from dispossessing the plaintiff from the property in dispute.

The plaintiff claimed that he is owner in possession of the house whereas defendants contested the suit and pleaded that the plaintiff has no locus standi to file the suit. It was further pleaded that the suit property is part of shamlat deh except two rooms. It was further pleaded that the Block Development and Panchayat Officer had also restrained the plaintiff from raising the boundary wall. Learned trial Court found that Panchayat Officer had got demolished the wall and the plaintiff is only tying the cattle and there is no document of title. The aforesaid finding has been

affirmed by the learned First Appellate Court.

Ultimate dispute between the parties is whether the property in question is shamlat deh or not. Such dispute can only be decided by the authority constituted under the Punjab Village Common Lands (Regulation) Act, 1961 as applicable to State of Punjab. Section 11 of the aforesaid Act clearly specifies that any dispute whether the property is shamlat deh or not can only be decided by the Collector before whom any person or a Panchayat claiming right, title or interest in any property is entitled to file a suit. Section 11 of the Act is extracted as under:-

“Decision of claims of right, title or interest in shamlat deh.

(1) {Any person or a Panchayat} claiming right, title or interest in any land, vested or deemed to have been vested in a panchayat under this Act or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time, as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed.

(2) Any person or a Panchayat aggrieved by an order of the Collector made under sub-section (1) may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form and manner as may be prescribed and the Commissioner may after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit.”

Still further, the jurisdiction of the Civil Court is barred to determine the question whether the property is shamlat deh or not. Since the plaintiff in the present case has claimed to be owner in possession which is being disputed by the defendants, therefore, in the considered opinion of this Court, the remedy for the plaintiff is to file a suit as provided under

Section 11 of the Act of 1961.

Keeping in view the aforesaid facts, the appeal is disposed of while granting liberty to the plaintiff to file a suit as provided under section 11 of the Act of 1961.

Needless to say that any observations made by the Civil Court while deciding the present suit would not in any way influence the decision of the Collector in a suit which will be filed by the plaintiff.

With these observations, the appeal is disposed of.

05.09.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No