

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

Date of decision: 24.1.2020

1. **RSA No.708 of 2015(O&M)**

Gram Panchayat village Sohian KalanAppellant

VERSUS

Major Singh and othersRespondents

Present: Ms. R.K. Thind, Advocate for the appellant.

Mr. G.S. Nagra, Advocate for respondents No.1 to 3.

2. **COCP No.2782 of 2019(O&M)**

Gram Panchayat village Sohian KalanPetitioner

VERSUS

Major Singh and othersRespondents

Present: Ms. R.K. Thind, Advocate for the petitioner.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of RSA No.708 of 2015 and COCP No.2782 of 2019 as decision of RSA has material bearing for decision of COCP No.2782 of 2019. For facility of reference, facts are taken from RSA No.708 of 2015.

Challenge in the present appeal has been directed against judgment and decree dated 15.12.2014 passed by the Additional District

Judge, Amritsar whereby appeal against judgment and decree dated 03.09.2013 passed by the trial Court partly decreeing suit of the respondents/plaintiffs was allowed, findings on the question of jurisdiction of the Civil Court were set aside and the respondents/plaintiffs as well as performa defendants Nos.5 to 8 were declared to be owners in possession of suit land and order passed by defendant No.3 therein was declared as illegal, null and void and without jurisdiction etc.

The facts relevant for disposal of appeal are that respondents/plaintiffs staked claim to suit land measuring 31 kanal 19 marlas, detailed in para 2 of the judgment of trial Court on the allegations that the same was owned by *jumla mustarka malkan*. Dalip Singh, father of the plaintiffs and defendants No.5 to 8 was in possession of the suit property. He filed petition for consolidation of holdings before the Consolidation Authorities under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (in short 'the Act'), decided by Surat Singh, Consolidation Officer, Jalandhar on 12.05.1986. The suit property was allotted to Dalip Singh and mutation No.6255 was sanctioned Mahinder Singh filed appeal against the said order which was rejected by the Additional Director, Consolidation Holding, Punjab, Chandigarh. After death of Dalip Singh, mutation of inheritance was sanctioned in favour of plaintiffs, defendants No.5 to 8 and Gurdip Kaur, widow of the deceased. After death of Gurdip Kaur, she has been succeeded by the plaintiffs and defendants No.5 to 8 and they have become owners in possession of suit property and their names were duly incorporated in the revenue records. It is further averred that in the year 2002, defendant No.1 filed an application under Section 7 and 11 of the

Punjab Village Common Lands (Regulation) Act, 1961 (in short '1961 Act') against Dalip Singh though the Gram Panchayat had no right, title or interest in the suit property. The application was accepted vide order dated 26.02.2010 and Gram Panchayat village Sohian Kalan was declared to be owner of the suit land. However, application under Section 7 for eviction of Sh. Sh. Dalip Singh was withdrawn. The order was challenged being wrong, null and void and without jurisdiction.

Having heard counsel for the parties in the light of materials on record, the trial Court answered issue No.4 with regard to jurisdiction of the Civil Court to decide qua title to the suit land against the respondents but allowed their prayer restraining the defendants from dispossessing plaintiffs and defendants No.5 to 8 from suit land except in due course of law. As has been noticed hereinbefore, the decree passed by the trial Court was modified by the Court in appeal and suit of the respondents/plaintiffs was decreed in toto.

Counsel for the appellant (Gram Panchayat village Sohian Kalan) would argue that as the application filed under Sections 7 and 11 of 1961 Act in respect of title to the suit property had been decided in favour of Gram Panchayat and appeal filed by the respondents/plaintiffs against that order before competent authority under the 1961 Act was dismissed during pendency of the suit, findings of the Appellate Court that Civil Court has jurisdiction to examine legality or otherwise of order dated 26.02.2010 that merged in the order passed by the Appellate Authority cannot be allowed to sustain when examined in the light of provisions of Section 13 of the 1961 Act. It is vehemently argued that the trial Court, on detailed consideration of the matter, had rightly arrived at a conclusion that

Civil Court does not have jurisdiction to decide the question of title to the suit land, therefore, modification of the judgment and decree by the Appellate Court and upholding plea of the respondents/plaintiffs with regard to their title to the suit land cannot be allowed to sustain.

Another submission made by counsel is that order dated 12.05.1986 passed by Consolidation Officer, Jalandhar is in respect of making up deficiency qua area of khasra No.115//1/5 allotted to Sh. Dalip Singh but order vide which Dalip Singh was allotted land measuring 31 kanal 19 marlas has not been produced, therefore, the respondents/plaintiffs have wrongly been held to be owners of suit land on the basis of mutation No.6255 or entries in the revenue records based upon the said mutation.

Counsel representing the respondents/plaintiffs, on the contrary, has supported the judgment passed by the Court in appeal with the submission that since the land in dispute is *jumla mustarka malkan* and not shamilat land, order passed under Section 11 of the 1961 Act is without jurisdiction, therefore, its correctness and validity can be examined by the Civil Court. It is further argued that the Appellate Court has rightly held that Civil Court has jurisdiction to decide question of ownership in respect of land, admittedly, *jumla mustarka malkan*. He would further submit that respondents/plaintiffs adduced overwhelming evidence to establish their case with regard to allotment of suit land to Sh. Dalip Singh by the Consolidation Authorities on the basis whereof mutation No.6255 was sanctioned by the revenue authorities and consistent entries are recorded in jamabandis regarding Dalip Singh to be the owner and after his death his

LRs have been so recorded in the column of ownership as well as possession.

I have heard counsel for the parties, perused the paper-book and copies of documents supplied during the course of hearing.

Indisputably, the land in dispute is *jumla mustarka malkan*, created during consolidation by way of pro-rata cut on land of proprietors and the said land vests in Gram Panchayat only for the purpose of management and control but the ownership always remained with the proprietors.

Section 11 of the 1961 Act deals with decision of claims of right, title or interest in *shamilat deh*. A relevant extract from Section 11 (1) reads thus:-

“(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.”

Perusal of title of Section 11 coupled with that 1961 Act deals with *shamilat deh* defined in Section 2 thereof by prescribing as to what land would be included in *shamilat deh* and what not, there cannot be any quarrel with the settled position in law that the 1961 Act does not deal with *jumla mustarka malkan* land. The *jumla mustarka malkan* land is dealt

with in the Act. Since the authority that decided the application under Section 11 did not have jurisdiction to decide right, title or interest in land admittedly *jumla mustarka malkan* land, order passed by the said authority is beyond jurisdiction and is nullity in the eye of law. That being so, the Appellate Court has rightly held that jurisdiction of the Civil Court is not barred in view of provisions of Section 13 of the 1961 Act and it lies within the domain of Civil Court to decide question of title of land described as *jumla mustarka malkan*. In this view of the matter, contention raised by the appellant challenging jurisdiction of the Civil Court and findings of the Appellate Court in this regard is patently misconceived and resultantly rejected.

This brings the Court to findings of the Appellate Court with regard to ownership of suit land by Dalip Singh and his successors in interest. Order dated 12.05.1986 passed by the Consolidation Officer, Jalandhar clearly records that land measuring 31 kanal 19 marlas with khasra numbers thereof which was allotted to Sh. Dalip Singh. On the basis of allotment by Consolidation Officer that has attained finality upto the High Court of Punjab and Haryana in view of dismissal of writ petition filed by Sh. Mohinder Singh against orders passed by the Consolidation Authorities, mutation in respect of suit land was sanctioned in favour of Sh. Dalip Singh and accordingly, entries were made in the jamabandi reflecting Dalip Singh to be owner of the suit land. On death of Dalip Singh, the suit land was mutated in the name of his LRs vide mutation No.7326 and legal heirs of Dalip Singh were recorded to be owners of the suit land in column No.4 of jamabandi for the year 2001-02. A presumption of correctness is attached to entries made in the jamabandi

though the same is rebuttable one. Counsel for the appellant has failed to point out any materials on record to rebut that presumption of correctness attached to entries in jamabandis. In this view of the matter, I find myself unable to accept contention of the appellant that judgment passed by the first Appellate Court declaring the respondents/plaintiffs and their co-sharers to be owners of the suit land suffers from error much less perversity. That being so, the judgment of Appellate Court is affirmed.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs. Resultantly, COCP is dismissed.

JANUARY 24, 2020		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no