

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4309 of 2014 (O&M)

Date of Decision: 03.02 .2020

Gram Panchayat Palri Khurd

... Appellant(s)

Versus

Ishwar and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Sumit Sangwan, Advocate
for the appellant.

Mr. Vikram Punia, Advocate
for the respondents.

Anil Kshetarpal, J.

In the considered view of this Court, the following questions of law arise for consideration:-

1. Whether jurisdiction of the Civil Court to entertain and decide a civil suit is barred under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana) (hereinafter referred to as “the 1961 Act”), if the question arise for adjudication is whether the suit property is *shamlat deh* or not as defined in Section 2(g) of the Act directly or indirectly;
2. Whether, while finally deciding the civil suit, the Court is required to take into consideration the pleadings, the evidence led by the parties (documentary and oral) before deciding the question of maintainability of the

civil suit before the Civil Court or only the averments made in the plaint are to be examined.

The defendant/appellant-Gram Panchayat has filed the present appeal against concurrent finding of fact arrived at by the Courts below. The plaintiffs have pleaded that the land measuring 109 kanals 14 marlas is owned and possessed by the proprietors of the village and is being used for agricultural and allied purpose without interference. It was pleaded that in the revenue record, the land was recorded to be owned by the proprietors of the village and the entry was *Hasab Rasad Raqba Khewat*. However, subsequently, the mutation bearing No. 322 dated 26.07.1955 has been sanctioned and the land has been entered in the name of Gram Panchayat without notice to the plaintiff/proprietors of the village. The aforesaid mutation is on the basis of some communication from the government vide letter No. 782 ACH-54/305 dated 16.11.1954.

The defendant-Gram Panchayat contested the suit and pleaded that the Civil Court has no jurisdiction to try, entertain or adjudicate the suit as the land in dispute vests in the Gram Panchayat. It was claimed in the written statement that the land is *shamlat deh* and, hence, vests with the Gram Panchayat and is being used for various common purposes in the village.

The learned Civil Court, on examination of the pleadings, did frame an issue to the following effect:-

“3. *Whether the Civil Court has no jurisdiction to try and entertain the present suit? OPD*”

Both the Courts below, after relying upon the judgment passed in the case of *Lehna Singh v. The State of Haryana 1995 PLJ 506* have held that the Civil Court has the jurisdiction. The learned first Appellate Court has also relied upon the judgment passed by the Hon'ble Supreme Court in the case of *Abdulla Bin Ali and Others v. Galappa and Others 1985(2) SCC 54* to hold that while deciding on the question of maintainability of the suit before the Civil Court, only the assertions/averments made in the plaint are required to be examined.

At this stage, it would be relevant to note that before coming into force of the 1961 Act in the ownership column entry with regard to the land in dispute was *Shamlat Deh Hasab Rasad Raqba*, whereas in the cultivation column, it was recorded to be used for the various common purposes. Of course certain part of the land was recorded to be in possession of various persons.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the judgments passed by both the Courts below.

On the one hand, learned counsel for the appellant has contended that the question which arose before the Civil Court as to whether the suit property is *shamlat deh* or not and, therefore, the jurisdiction of the Civil Court is barred under Section 13 of the 1961 Act. On the other hand, learned counsel for the respondents has submitted that the prayer made in the suit was only to set aside a mutation and to correct the revenue entry and therefore, the jurisdiction of the Civil Court is not barred.

He referred to Section 45 of the Punjab Land Revenue Act, 1882 to claim

that such civil suit is very much maintainable.

In view of the respective contentions of learned counsel for the parties, the questions of law, which have been framed, arise for consideration. At this stage, it would be appropriate to extract Section 13 & 13-A of the 1961 Act as under:-

“13. No civil court shall have jurisdiction

- (a) to entertain or adjudicate upon any question whether -
 - (i) any land or other immovable property is or not shamilat deh;*
 - (ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a panchayat under this Act;**
- (b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or*
- (c) to question the legality of any action taken or matter decided by any revenue court, officer or authority empowered to do so under this Act”.*

13A. Adjudication

- (1) Any person or in the case of a panchayat either the panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the panchayat under this Act, may file a*

suit for adjudication, whether such land or other immovable property is shamilat deh or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a panchayat under this Act, in the court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated.

Provided that no suit shall lie under this section in respect of the land or other immovable property, which is or has been the subject matter of the proceedings under section 7 of this Act under which the question of title has been raised and decided or under adjudication.

(2) The procedure for deciding the suits under sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (Act 5 of 1908)”.

Section 45 of the Punjab Land Revenue Act is also extracted as under:-

“45. SUIT FOR DECLARATORY DECREE BY PERSONS AGGRIEVED BY AN ENTRY IN A RECORD - *If any person considers himself aggrieved as to any right of which he is in possession by an entry in a record-of-rights, or in an annual record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1963”.*

On careful reading of Section 13 of the 1961 Act, it is apparent that the jurisdiction of the Civil Court is barred whenever question arises as to whether the property is *shamlat deh* or not. The significant words are

shamlat deh or not. Thus, whenever before the Civil Court one party claims that the property is *shamlat deh* and other party disputes, the jurisdiction of the Civil Court stands excluded. The parties to the suit cannot be permitted to circumvent the exclusion of the jurisdiction of the Civil Court with respect to maintainability thereof by cleverly drafting the pleadings. The Court is required to examine the crux of the issue required determination in the civil suit and thereafter, adjudicate upon the question as to whether the Civil Court has the jurisdiction or not.

Now let us examine the judgments relied upon by the learned counsel for the parties. This Court has carefully read the judgment relied upon by the learned counsel for the respondents. In the case of ***Lehna Singh*** (*supra*), at the outset, this Court is compelled to observe that sometimes the Courts below place reliance upon the judgments without completely reading and understanding the same. The aforesaid judgment has absolutely no concern with the question of jurisdiction of the Civil Court. In the aforesaid case, area of a village had come within the municipal area. A writ petition was filed in the High Court claiming that the mutation entered in favour of the municipal committee is not correct. The High Court, on finding that the disputed questions of facts are involved, relegated the parties to the alternative remedy. In that context, it was observed that any person considering himself aggrieved as to any right of which he is in possession by an entry in a record of rights can file a suit for declaration in the Civil Court. However, the aforesaid judgment does not lay down as a proposition of law that the Civil Court has a jurisdiction even if it is claimed by the one party that the property is *shamlat deh*.

This Court has also carefully read the judgment passed by the Supreme Court in the case of ***Abdulla Bin Ali*** (*supra*). In the aforesaid case also, initially an application was filed before the Tehsildar with allegations that she had only executed a mortgage deed and not a sale deed. The Tehsildar, after investigation, came to the conclusion that a sale deed was executed. The appeal was also dismissed and the parties were directed to approach the Civil Court for proper redressal of the grievances. Thereafter, a suit for declaration of title with respect to the disputed land was filed which was decreed. Thereafter, an application for recovery of the amount of rent was also filed. The proceedings were also initiated for correction of tenancy register. The tenant had denied the title. In those circumstances, the Court examined the issue of jurisdiction of the Civil Court to entertain and decide the suit and observed that the allegations made in the plaint are required to be examined to decide the forum. The relevant observations on which the learned counsel for the respondents has laid much stress are extracted as under:

“5. There is no denying the fact that the allegations made in the plaint decide the forum. The jurisdiction does not depend upon the defence taken by the defendants in the written statement. On a reading of the plaint as a whole it is evident that the plaintiffs-appellants had filed the suit giving rise to the present appeal treating the defendants as trespassers as they denied the title of the plaintiffs-appellants. Now a suit against the trespasser would lie only in the civil court and not in the revenue court. The High Court, however, took the view that the

plaintiffs-appellants had not claimed a declaration of title over the disputed plots and all that has been set up by them in the plaint is the relationship of landlord and tenant.

6. *In our opinion the High Court was not quite correct in observing that the suit was filed by the plaintiffs-appellants on the basis of relationship of landlord and tenant. Indeed, when the defendants denied the title of the plaintiffs and the tenancy the plaintiffs filed the present suit treating them to be trespassers and the suit is not on the basis of the relationship of landlord and tenant between the parties. It is no doubt true that the plaintiffs had alleged that the defendant No. 2 was a tenant but on the denial of the tenancy and the title of the plaintiffs-appellants they filed a suit treating the defendant to be a trespasser and a suit against a trespasser would lie only in the civil court and not in the revenue court.*

7. *We are, therefore, of the considered opinion that on the allegations made in the plaint the suit was cognizable by the civil court and that the High Court has erred in law in non-suiting the plaintiffs-appellants on the ground that the civil court had no jurisdiction”.*

In the considered view of this Court, the aforesaid judgment does not lay down as *ratio decidendi* that while adjudicating upon the question of bar to the maintainability of the suit before the Civil Court, the suit is debarred from examining the pleadings and the evidence led by both the parties (documentary and oral). If the arguments of learned counsel for

the respondents is accepted, then the statutory bar to the jurisdiction of the Court can be easily avoided by clever drafting of the plaint. Such cannot be an intention of the law.

Now let us examine the arguments of learned counsel for the respondents with respect to Section 45 of the Punjab Land Revenue Act. Section 45, no doubt provides that any person aggrieved of an entry in the revenue record is entitled to file a civil suit. The Punjab Land Revenue Act was enacted in 1887. Thereafter, a special statute was enacted to deal with the common lands which are normally known as *shamlat deh*. Once a specific Statute has been framed constituting an alternative Forum for adjudication of the dispute, Section 45 of the Land Revenue Act, 1887 has to be read in the context of the specific statute enacted for dealing with common lands (*shamlat deh*). A specified Statue dealing with a specified subject or property has to be given precedence over the general provision. Still further, the bar of jurisdiction is absolute.

Keeping in view the aforesaid discussion, this Court is of the considered view that both the Courts below have erred in decreeing the suit filed by the plaintiff/respondents. The parties, in the considered view of this Court, are required to be relegated to the remedy before the Forum constituted under Section 13-A of the 1961 Act. Hence, while setting aside the judgments & decrees passed by the Courts below, the present appeal is allowed.

Once it has been held that the Civil Court has no jurisdiction, therefore, any finding/observations made in the impugned judgments & decrees or in this order would not bind the parties and the Forum, deciding

the respective claims, shall proceed to independently decide the dispute, if any, filed.

The miscellaneous application(s), if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

February 03, 2020
“DK”

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