

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

RSA 6020 of 2017 (O&M)

Date of Decision: 06 March, 2020

Jai Narain

...Appellant

Versus

HAFED Hisar and others

... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Kulwant Singh, Advocate
for the appellant.

FATEH DEEP SINGH, J. (Oral)

The appellant Jai Narain (then plaintiff) filed a suit for declaration against then respondents claiming that he was resident of village Barwala and the President of Vyapar Mandal, Barwala and that the suit property consisting of 07 Kanal 15 Marlas fully detailed in the suit is a *gair mumkin* pond used for the common purposes of the inhabitants of the village and that defendants have tried to encroach upon the same and changed the nature of the land by making illegal construction. The plaintiff has further claimed that the public at large used to

worship of a temple of Goddess situated in the suit property and perturbed over the act of the defendants had sought to seek the above stated relief.

The defendants in their stand denied the claim of the plaintiff taking the plea that the suit was owned and possessed by Market Committee Barwala and has been transferred to HAFED/defendant No.1 for the purposes of constructing a Godown and Plinth and denied each and every averment of the plaintiff.

The trial Court framed the following issues:-

1. Whether the suit land measuring 07 Kanals 15 Marlas as detailed in the head note of the plaint as *GAIR MUMKIN JOHR* with platform and park meant for use for common purpose by residents of Barwala?OPP.
2. Whether the plaintiff is entitled for injunction as prayed for? OPP.
3. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD.
4. Whether the suit of the plaintiff is bad for want of notice under Section 80 CPC and under Section 124

of the Haryana Co-op. Societies Act? OPD.

5. Whether the plaintiff has not approached the Court with clean hands? OPD.
6. Whether the plaintiff has no pre-existing legally enforceable rights or claim in suit land? OPD.
7. Whether the suit is bad for non-joinder of necessary parties?OPD.
8. Whether the Court has no jurisdiction to decide the suit?OPD.
9. Relief.

The plaintiff examined himself as PW1 and proved documents Ex.P1 to P7 and the defendants examined Shri Sandeep Singh, Mandi Supervisor, Office of Market Committee, Barwala as DW1 and Shri B.B. Thakur as DW2, S.D.E., HAFED, Hisar and proved documents Ex.D1 and D11.

The Court of learned Civil Judge (Junior Division) dismissed the suit of the plaintiff.

Aggrieved over these findings, the plaintiff filed an appeal and the Court of learned District Judge through impugned judgment and decree dated 01.02.2017 dismissed the appeal. The present appeal is an outcome of the same.

Heard Mr. Kulwant Singh, Advocate for the appellant and perused the record.

It is the plaintiff, who has filed the suit and, therefore, the onus lay heavily upon him to prove his stand and case to the hilt. The claim of the appellant's counsel that the suit land is a *Shamlat Deh* and kept for common purposes under the provisions of Punjab Village Common Lands (Regulation) Act, 1961 and, therefore, a heavy onus lay upon the plaintiff to establish the fact through documentary means to be so. In the impugned findings, the learned appellate Court has well considered the fact that suit land is shown to be *Gair Mumkin Johar* and which under the Punjab Land Revenue Assessment Rules, 1929 shows that the land has become uncultivable being either under roads, building, streams, canals, tanks or such like or barren sand or ravine and, therefore, cannot be termed within the definition of land. To the specific query of the Court Shri Kulwant Singh learned counsel for the appellant could not put forth any evidence to show how and by what means the suit

property was left out for common use of the inhabitants of the village. The onus to prove the issue No. 1 was primarily on the plaintiff, who has only placed on record jamabandi for the year 1968-69 as Ex.P1, jamabandi for the year 2003-04 as Ex.P2 and photostat copies of the sale deeds Ex.P3 and P4. Moreover, the claim of the plaintiff that there is merely a temple and people pray and have religious sentiments attached to it are not at all established by any means, rather own document of the plaintiff Ex.P1 jamabandi for the year 1968-69 shows that under column No. 5 it is shown to “Makbuja Mehakma Mandiat” and further jamabandi for year 2003-04 Ex.P2 shows it to be the property of Market Committee Barwala. The two Courts below have rightly drawn the conclusion that the suit land vests in the provincial government and, therefore, being a government land it could be utilized as per the requirements of the State Government, to which, persons like plaintiff cannot show any indulgence and there is nothing apparent illegality or perversity of the two Courts below. As such, the impugned findings are

upheld.

The appeal is hopelessly without any merits and stands dismissed.

March 06, 2020
amit rana

(FATEH DEEP SINGH)
JUDGE

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