

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

115

**Civil Revision No.2824-2021
Date of decision: 17.11.2021.**

BALWAN SINGH

...Petitioner

Versus

SATBIR SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Vikram Singh, Advocate,
for the petitioner.**

ANIL KSHETARPAL, J (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The petitioner (defendant no.3 in the suit) has invoked the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India with a prayer to set aside the order dated 12.10.2021, passed by the learned first appellate court whereby the application filed by the plaintiff for permission to lead the additional evidence has been allowed.

The plaintiff filed the suit for mandatory injunction for issuing direction to defendant no.3 to 6 to vacate a parcel of land which was claimed to be reserved for 'gair mumkin bara'. In fact, the plaintiff claims that the aforesaid land falls within the definition of 'Shamlat Deh'. The suit was dismissed. However, when an appeal was filed against the same, the appellant filed an application for permission to lead additional evidence to prove that in fact, the land in question is a 'gair mumkin pond' (water body) and not 'gair mumkin bara'.

The first appellate court keeping in view the aforesaid facts of the case has allowed the application particularly when defendant no.1 and 2 have jointly made a statement that they have no objection, if the additional evidence is allowed.

The learned counsel representing the petitioner contends that the application has been filed at a belated stage and if the property is 'Shamlat Deh', then the civil court shall not have jurisdiction in the matter.

At this stage, only an application for additional evidence has been allowed. The plaintiff has been permitted to produce jamabandi for the year 1967-68, which is *per se* admissible. The courts have been established to do substantive justice in the litigation. The Code of Civil Procedure lays down the procedure for the guidance of the Court. Order 41 Rule 27(1)(b) enables the Appellate Court to admit in additional evidence any document which is required for doing substantive justice between the parties. Hence, mere delay on the part of the plaintiff is not sufficient to dislodge the application for permission to lead additional evidence.

As regards the objection with regard to the jurisdiction of the Civil Court, it is open for the petitioner (defendant no.3) to contest the appeal on the ground of lack of jurisdiction.

At this stage, learned counsel representing the petitioner contends that since the subsequent jamabandies have been prepared in which the property has been recorded as 'Gair Mumkin Bara' (the place reserved for tethering milkable animals and residence), therefore, the plaintiff was required to challenge the aforesaid entries.

The revenue record is not the final document to ascertain the nature of the property. The court is required to examine the record of

the consolidation of holdings to come to the conclusion whether a particular property has been reserved for a common purpose or not? In such circumstances, the plaintiff is not bound to challenge an entry in the revenue record independently.

Hence, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

November 17, 2021
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(ANIL KSHETARPAL)
JUDGE

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