

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

**CR No.4831 of 2018 (O&M)
Date of decision: 21.07.2022**

Jasmer Singh and others

....Petitioners

Versus

Dalip Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rajesh Tushar, Advocate
for the petitioners.

Mr. Parveen Gaur, Advocate
for respondent No.1.

Mr. R.S. Budhwar, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN J. (Oral)

The order dated 04.05.2018, vide which the application filed by the petitioners/defendants under Order 7 Rule 11 CPC was dismissed, reads as under:-

“The instant application moved by defendants is for dismissal of suit. The provisions under which it is made has not been mentioned. In the suit after filing of written statement, issues have been framed and plaintiffs evidence is being recorded. One of the issues which were in this case on 06.10.2015 is on jurisdiction. Obviously this issue can be decided only after entire evidence is led by parties. Reading of the plaint does not shown that suit is barred by law. As per plaint, the suit property is a bara reserved for the common use of Balmiki's in the village and is owned by Gram Panchayat. Plaintiff is not claiming any interest in the property adverse to that of Gram Panchayat. Plaintiff is only seeking a perpetual injunction restraining

defendants No.1 to 3 from raising construction in the suit property. Apparently, there is no bar to the suit of such a nature. Section 13 of Punjab Village Common Land would apply only when plaintiff claim some right in Shamlat Deh is derogation to the right of Gram Panchayat. Learned counsel for plaintiff has relied upon Sarjeet Singh (D) Th, LRs vs Hari Singh & Ors. 2014 Apex Court Judgment 736 (S.C.) which is rendered in a different context. It is distinguishable on facts and does not lay down that plaint is to be rejected where a plaintiff seeks an injunction against encroachment by unauthorized person over the Gram Panchayat property. Therefore, there is no merit in the present application and the same is hereby dismissed.”

Counsel for the petitioners has argued that the respondent/plaintiff – Dalip Singh has filed a suit for permanent injunction on the ground that the disputed land is *Gair Mumkin Bara* situated within the revenue estate of village Madanpur, Tehsil Shahabad, District Kurukshetra, and is reserved for the common use of the inhabitants during the consolidation.

A reference is made to the *Jamabandi* for the year 2011-12, in which *Khasra* No.332 (1K-3M) is shown as *Gair Mumkin Bara* in possession of the *Balmiki* Community.

It is also stated that as per the Scheme of consolidation, the same was reserved for the aforesaid purpose and the defendants in collusion with each other are trying to raise construction over the same, for which they have no right or title. The decree prayed for is that the defendants No.1 to 3 be restrained from raising any construction over the suit property or changing the nature of the same.

The petitioners filed a written statement and stated that the

suit is barred under Section 11 CPC as on an earlier occasion, a suit was filed titled as "*Dalip Singh, etc. vs Sukhdev Singh, etc.*", and the same was dismissed vide judgment and decree dated 08.09.2000 and even the appeal filed by Dalip Singh, was dismissed by the Lower Appellate Court. It is further stated in the written statement that the defendants have purchased the property vide sale agreement dated 10.06.1993 and the previous owner Sukhdev Singh had sold the same for a consideration of Rs.15,000/- and it is the petitioners, who are in possession of the said property in terms of the agreement to sell dated 10.06.1993.

The defendant No.4/Gram Panchayat also filed a separate written statement, in which it is stated that the land in dispute is *Gair Mumkin Bara* comprising in *Khasra* No.332 for the use of *Balmiki* Community in the village of the petitioners/defendants, cannot be permitted to raise a construction. Thereafter, the petitioners filed an application for dismissal of the suit on two grounds. Firstly, that the jurisdiction of the Civil Court is barred under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to State of Haryana) and secondly, that the suit is barred by *res judicata*. The application was contested by the respondent/plaintiff and the trial Court vide impugned order dated 04.03.2018, dismissed the same as noticed above.

It is worth noticing that this petition is pending since 2018 and while issuing notice of motion, the proceedings before the trial Court were stayed on 01.08.2018 and the interim order is continuing.

Counsel for the petitioners has submitted that since the land is *Shamilat* land under Section 13(c) of the Punjab Village Common Lands (Regulation) Act, 1961, the jurisdiction of the Civil Court is barred as the land in dispute under Section 2(g) defining a *Shamilat Deh* land is included in the said land.

Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961, reads as under:-

“13. Bar of Jurisdiction in Civil Courts:- No civil court shall have jurisdiction:-

(a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not Shamilat deh vested or deemed to have been vested in a Panchayat under this Act; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act, or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.”

The definition of '***Shamilat deh***' as per Section 2 (g) of the Punjab Village Common Lands (Regulation) Act, 1961, reads as under:-

“2 Definition- In this Act, unless the context otherwise requires,

2(a) to 2(f) XXXX XXXX XXXX

2(g) “Shamilat deh” includes –

(1) Land described in the revenue records as Shamilat deh excluding abadi deh.

(2) Shamilat Tikkas,

(3) Land described in the revenue records as shamilat, Tarafs, Pattis Pannas and Tholas and used

according to revenue records for the benefit or the village community or a part thereof for common purposes of village.

(4) Lands used or reserved for the benefit of the village, community including, streets, lanes, playgrounds, schools, drinking wells, or ponds within abadi deh or gora deh and

(5) Land in any village described as banjar qadim and used for common purposes of the village, according to revenue records;

but does not include land which: –

(i) 3[----]

(ii) has been allotted on quasi permanent basis to displaced persons;

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950.

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co sharer in the shamilat deh and is so recorded in the jamabandi or is supported by a valid deed.; 1[and is not in excess of the share of the co sharer in the shamilat deh.

(v) is described in the revenue records as Shamilat, Taraf, Patti Panna an Thola and not used; according to revenue records for the benefit to the village community or a part thereof or for common purposes of the village.

2[(vi) lies outside the abadi deh and was being used as gitwar, bara manure pit, house or for cottage industry, immediately before the commencement of this Act]

(vii) 3[----]

(viii) was Shamilat deh was assessed to land revenue and has been in the individual cultivating possession of co-shares not being in excess of their

respective shares in such shamilat deh on or before the 26th January, 1950, or

4[(ix) was being used as a place of worship or for purposes, subservient thereto, immediately before the commencement of this Act].”

Counsel for the petitioners has further submitted that since an earlier suit for mandatory injunction was dismissed regarding the same property, the present suit is also barred by the application of *res judicata* and therefore, the trial Court was bound to allow the application filed by the petitioners.

Counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in ***"P.V. Guru Raj Reddy Rep. by GPA Laxmi Narayan Reddy and another vs P. Neeradha Reddy and others"***, 2015(8) SCC 331, wherein it is stated that if in the plaint prima facie cause of action is not disclosed or on a reading of a suit appears to be barred by any provision, the plaint can be rejected.

Similar is the view taken by the Hon'ble Supreme Court in ***"Ponnala Lakshmaiah vs Kommuri Pratap Reddy and others"***, 2012(7) SCC 788, that after reading the plaint as a whole, if no cause of action is found, the same can be rejected under the provisions of Order 7 Rule 11 CPC.

Counsel for the petitioners has then, referred to the judgment passed by the Hon'ble Supreme Court in ***"Sarjeet Singh (D) Through LRs vs Hari Singh and others"***, 2015(1) SCC (Civil) 675, wherein with reference to Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961, it is held that if there is a dispute with

regard to the title of the land, a person is to approach the Collector for deciding any claim in respect of the land.

Counsel for the respondent has, however, submitted that the revenue record clearly reflects that the disputed land is comprising in *Khasra* No.332 is measuring 1 Kanal 3 Marlas, described as *Gair Mumkin Bara*, in possession of the *Balmiki* Community.

Counsel for the respondent has also argued that since it is a simplicitor suit based on the possession and changing the nature of the property, the Civil Court has jurisdiction to entertain the same.

The ld. counsel has submitted that earlier suit for mandatory injunction, was filed on different cause of action. The counsel relied upon the judgment “*Srihari Hanumandas Totala vs Hemant Vithal Kamat and others*”, 2021 (3) RCR (Civil) 768, to submit that it is held by the Hon’ble Supreme Court of India that to apply *res judicata*, following principles applies:-

“20. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows:

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defense made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by *res judicata*, it is necessary that (i) the ‘previous suit’ is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same

parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused."

After hearing the counsel for the parties, I find no merit in the present petition.

It may be noted that there is no dispute with regard to the judgments referred by counsel for the petitioner, however, the same would apply only in case where the question of title is raised before the Civil Court whereas in the instance case, the dispute is simplicitor with regard to possession, for which a decree of permanent injunction is being prayed for and therefore, the said judgments are distinguishable.

Firstly, the land which is described as *Gair Mumkin Bara* in the revenue record and was allotted for the specific purpose during the consolidation, do not fall in the definition of *shamilat deh* as per Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961. Secondly, Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961, providing bar of jurisdiction before Civil Court is with regard to adjudication upon a question whether any land or immovable property or any *shamilat deh* or with regard to the title over the said property, which vests with the Panchayat. On the face of it, the land which is described as *Gair Mumkin Bara* in possession of the

Balmiki Community, there is no dispute with regard to the title and the trial Court is only to decide dispute regarding the possession over the property and if the defendants have any right to raise the construction as the title is clear in the revenue record. Even otherwise, the question of *res judicata* is a disputed question of fact and law and the petitioner/defendant has neither placed on record the plaint of earlier suit nor has filed the judgment and decree of the said suit, therefore, in view of *Srihari's case (supra)*, noticing that the trial Court has framed an Issue in this regard, therefore, finding no illegality or infirmity in the impugned order passed by the trial Court, rejecting the application under Order 7 Rule 11 CPC, this petition is ***dismissed***.

However, considering the fact that there is a stay operating regarding further proceedings for the last 04 years, the trial Court is expected to dispose of the suit expeditiously.

(ARVIND SINGH SANGWAN)
JUDGE

21.07.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No