

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1) RSA-2361 of 1989(O&M)
Date of decision: 06.07.2022

BHAGAT RAM (SINCE DECEASED) THROUGH HIS LRS
AND OTHERS

...Appellant

Versus

MULAKH RAJ (SINCE DECEASED) THROUGH HIS LRS ETC.

...Respondents

(2) RSA-1116 of 1990 (O&M)

Ram Chand and others

...Appellant

Versus

Bhagat Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shivam Grover, Advocate
for the appellant (in RSA-2361 of 1989)
Mr. G.S.Jaswal, Advocate,
for the appellant(in RSA-1116-1990)
for the respondents (in RSA-2361-1989)

ANIL KSHETARPAL, J (Oral)

Two connected Regular Second Appeals arising from a common judgment passed by the First Appellate Court while deciding two connected first appeals shall stand disposed of.

The plaintiffs filed a suit in a representative capacity seeking declaration to the effect that the suit land measuring 2699 kanals and 14 marlas located in village Karura, District Anadpur Sahib, is reserved for grazing cattles and for fuelwood. It has been asserted that the land has been

carved out from previous khasra numbers 1 to 15 measuring 3556 kanals and 19 marlas during consolidation of holdings in the village.

The defendants, while contesting the suit, claim that the land was never reserved or assigned for grazing of cattles. They claim ownership on the strength of the revenue record. In alternative, they also claim adverse possession.

On appreciation of the pleadings, the trial Court culled out the following issues:-

1. Whether the suit land was reserved for the purposes of grazing cattle for all the inhabitants of the village?OPP
2. whether the plaintiffs have locus standi to file the present suit?OPP
3. Whether the suit is bad for non-joinder of necessary parties?OPP
4. whether the provisions of order 1 Rule 8 CPC have not been complied with, if so, to what effect?OPD
5. Whether the suit is not maintainable as alleged in the written statement?OPD
6. Whether the suit is within time?OPP
7. If issue no.1 is proved, whether the rights of the plaintiffs and other inhabitants of the village stand extinguished by the efflux of time?OPD
8. Whether the plaintiffs are entitled to the declaration prayed for?OPP
9. Relief.”

Both the Courts, on appreciation of evidence, have found that as

per “Shart Wajib-Ul-Arz”, which has the force of a local law, the land is reserved for grazing of cattles by the proprietors as well as by the non-proprietors. Thus, both the courts have decreed the suit.

These appeals have come up for hearing after a period of 32 years.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book and the record which was requisitioned.

The land reserved or utilized for grazing of cattles is one of the various common purposes which have been defined in Section 2(bb) of the East Punjab Holding (consolidation and prevention of Fragmentation) Act, 1948.

As per the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the 1961 Act'), the land utilized for common purposes may or may not be “Shamlat Deh”. In this case, the primary question arises for consideration is “whether the land is “Shamlat Deh” or not?

The exclusive jurisdiction to decide such question lies with the authority constituted under Section 2 of the 1961 Act and the jurisdiction of the Civil Court is barred under Section 13 of the 1961 Act, which is extracted 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.

13-A Adjudication - (1) Any person or in the case of a Panchayat, either the Panchayat or its Gram Sachive, 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 shamlat deh or not and whether any land or other immovable property or any right, title of 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 subsection (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (5 of 1908).”

None of the party has taken this objection before the Courts below. Further the Gram Panchayat has not been made a party to the suit.

Before determining the rights of the respective parties, the primary question as already noticed is required to be decided by the competent authority. Once the jurisdiction of the Civil Court is barred to decide as to whether the land in dispute is covered by the definition of “Shamlat Deh” or not, it would be appropriate to relegate the parties to the remedy before the competent authority under the 1961 Act. Reliance in this regard can be placed on **'Ram Singh and others Vs. Gram Panchayat**

Mehal Kalan and others' (1986) 4 SCC 364, wherein the Supreme Court

has held that the jurisdiction of Civil Court is excluded from deciding such a question irrespective of the nature of relief claimed. In view of the aforesaid discussion, this Court is compelled to set aside the judgments and decrees passed by the courts below on the ground of lack of jurisdiction. It is declared that the judgments passed by both the courts suffer from inherent lack of jurisdiction.

However, keeping in view the facts and circumstances of the present case, the directions issued by the Civil Court restraining the defendants from changing the nature of the property, or restraining the villagers including proprietors or non proprietors, from grazing their cattles shall continue to operate till the decision by the competent authority. Further, the competent authority shall be entitled to decide the case uninfluenced by the conclusion arrived at by the courts below.

Disposed of accordingly.

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

July 06, 2022
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(ANIL KSHETARPAL)
JUDGE

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