

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

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1)

CR-3394-2019

Decided on : 19.04.2022

Gram Panchayat Hansawas Khurd

... Petitioner(s)

Versus

Dhan Singh and others

... Respondent(s)

2)

CR-14336-2018

Gram Panchayat Hansawas Khurd

... Petitioner(s)

Versus

Dhan Singh and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Sumit Sangwan, Advocate
for the petitioner(s)
(in CR-3394-2019 & CR-14336-2018).

Mr. Sushil Sheoran, Advocate
for the respondent(s).

Mr. Rohit Arya, DAG, Haryana.

MANJARI NEHRU KAUL, J.

This order shall dispose of CR-3394-2019 and CR-14336-2018,
as both the above noted revision petitions are inter connected.

In CR-3394-2019 filed under Article 227 of the constitution of
India, the petitioner is seeking setting aside of the order dated 04.05.2019
(annexed as Annexure P-1), passed by the learned Civil Judge (Sr. Divn.),
Charkhi Dadri, whereby, it dismissed an application under Order 7 Rule 11
of CPC, filed by the petitioner/defendant – Gram Panchayat, seeking

rejection of plaint on account of lack of jurisdiction.

Further, in CR-14336-2018 filed under Article 227 of the constitution of India, the petitioner is seeking setting aside of the order 23.02.2018 (annexed as Annexure P-2), vide which the injunction application filed by the respondents/plaintiffs under Order 39 Rule 1 CPC was allowed by learned Civil Judge (Sr. Divn.), Charkhi Dadri and also seeking setting aside of the order dated 12.11.2018 (annexed as Annexures P-1), whereby, the appeal filed by the petitioner/defendant against the order dated 12.11.2018, was dismissed, by the learned Additional District Judge, Charkhi Dadri.

Parties to the *lis* hereinafter shall be referred to by their original positions in the suit.

Learned counsel for the defendant – Gram Panchayat (petitioner herein) submits that the plaintiffs (respondents herein) filed a suit for title under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act') for declaring them as owners in possession of the suit land before the Court of Collector, Charkhi Dadri. During the pendency, of the suit before the Court of Collector, plaintiffs also filed the suit in question i.e. Civil Suit i.e. CS-870-2017, before the learned Civil Judge (Sr. Divn.), Charkhi Dadri, for restraining the defendant from dispossessing or interfering into the peaceful possession of the plaintiffs in the suit property. Learned counsel further submits that while passing the impugned order, the Court below committed a patent illegality in failing to appreciate that since the jurisdiction of the Civil Court was specifically barred under Section 13 of the Act, the suit in question was not maintainable. He still further submits that the trial Court

gravely erred in observing that since the trial was at the stage of evidence, an application under Order 7 Rule 11 of CPC was not maintainable. Learned counsel submits that as long as the trial had not concluded, an application under Order 7 Rule 11 of CPC could be filed.

Learned counsel for the plaintiffs on the other hand has vehemently disputed the submissions made by the counsel opposite by urging that the plaintiffs have been in physical possession of the suit land since the year 1928. He submits that the suit land has been wrongly mutated in the name of the defendant vide mutation No. 156 without even issuing any notice to them. Learned counsel submits that the suit for permanent injunction to restrain the defendants was not barred under Section 13 of the Act, more so, when they had already filed a suit for title before the Court of the Collector. Learned counsel, therefore, submits that the civil suit in question was maintainable as there was no other remedy available to the plaintiffs to restrain the defendant from interfering in to their peaceful possession.

I have heard learned counsel for the parties and perused the relevant material on record.

It would be apposite to reproduce the relevant provisions of Section 13 of the Act”-

“13. Bar of Jurisdiction in Civil Courts:-

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.(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 subsection (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (Act 5 of 1908)."

A perusal of the above provisions leaves no manner of doubt that the jurisdiction to decide any dispute as to whether any right, title or

interest in any land or immovable property vests in the Gram Panchayat or not, would exclusively lie with the Collector, to the exclusion of the Civil Court.

Adverting to the case in hand, the relief claimed in the civil suit involves the adjudication of rights of the parties over the suit property, hence, the jurisdiction of the Civil Court over the matter would, therefore, be barred under Section 13 of the Act.

Coming next to the contention of the learned counsel for the plaintiff that there was no alternative remedy available to them for restraining the defendants, is devoid of any merit. Section 13-A(2) of the Act provides for deciding the suits under Section 13-A(1) in the same manner, as is provided for, in the Code of Civil Procedure (CPC). Hence, the Collector also does have all such incidental powers to decide the suit effectively and also has the powers to grant injunction.

The plaintiffs would be at liberty to avail of the alternative remedies before the appropriate Forum/Collector under the provisions of the Act, if so advised.

This Court has no hesitation to hold that the trial Court has also erred in observing that since the evidence had commenced, an application under Order 7 Rule 11 of CPC was not maintainable. It needs to be clarified and reiterated that the powers of the Court conferred under Order 7 Rule 11 of CPC are mandatory in nature and can be exercised at any stage of the suit, but before the conclusion of the trial.

As a sequel to the above, more so, since the question of right of the parties over suit property is involved, the impugned orders dated

23.02.2018 (Annexures P-1 & P-2, respectively) (in CR-14336-2018), are set aside and the revision petitions are accordingly allowed.

(MANJARI NEHRU KAUL)
JUDGE

April 19, 2022
J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*