

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2068 of 2013(O&M)

Date of decision: 08.07.2022

Sahabuddin

...Appellant

Versus

Ali Mohammad and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Panwar, Advocate, for the appellant.
Mr. Ajay Ghangas, Advocate, for respondent no.2 to 8.

ANIL KSHETARPAL, J (Oral)

The appellant before this court is the plaintiff in a suit for grant of permanent injunction.

Both the courts below have dismissed the suit on the ground that the plaintiff has failed to prove his ownership though he was found in possession of the property. Even the defendant's counter claim has been dismissed. As per the revenue record for the year 1963-64, in the ownership column, the property is entered as 'Shamlat Patti Ghisa'. The nature of land is "Gair Mumkin Kabristan(graveyard). The trial court, on appreciation of pleadings, culled out the following issues:-

- “1. Whether plaintiff is owner and in possession of suit land?OPP
2. Whether plaintiff is entitled for a decree of permanent injunction in his favour and against the defendants?OPP
3. Whether plaintiff has no locus standi to file the present suit?OPD
4. Whether the plaintiff has no cause of action to file the

present suit?OPD

5. Whether plaintiff is estopped from filing the present suit by his own acts and conduct?OPD
6. Whether petitioner has not come with clean hands?OPD
7. Relief.

On the counter claim, the following issues were framed.-

1. Whether the counter claimants are entitled for a decree of declaration as prayed for ?OPD
2. Whether the entries in the revenue record qua the suit land is null, illegal, void and against the provisions of law and the same are liable to be corrected?OPD
3. If issue No.1 and 2 are proved, whether the counter claimants are owners in possession over the suit land?OPD
4. Whether the counter claim filed on behalf of the counter claimants/defendants is not maintainable in the present form?OPE
5. Relief.”

The property is situated in the area of Gram Panchayat. In the ownership column, the entry continues to be “Shamlat Patti Ghisa” though the nature of the land has been changed from 'Gair Mumkin Kabristan' to 'Chahi' (cultivable). This litigation is being fought without impelading the Gram Panchayat as party. The record of consolidation of holdings has not been produced to prove as to whether the land was ever reserved for common purposes i.e. 'Kabristan (Graveyard)' or not. There is no explanation as to how the land which was originally entered as 'Gair

Mumkin Kabristan' has suddenly become cultivable.

The learned counsel representing the appellant contends that though the plaintiff has failed to lead evidence to prove his ownership, still the appellant is entitled to an injunction.

As per the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 1961 Act'), the exclusive jurisdiction to decide as to whether the property is 'Shamlat Deh' or not, vests with the Collector. Section 13 and 13-A of the 1961 Act are extracted as under:-

13. Bar of Jurisdiction-No civil court shall have jurisdiction:-

- (a) to entertain or adjudicate upon any question, whether
 - (i) any land or other immovable property is or is not shamlat 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. Adjudication.-- (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 shamlat 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 [he suits under subsection (I) shall be the same as laid down in the Code of Civil Procedure, 1908 (Act 5 of 1908).”

The jurisdiction of the Civil Court is barred to entertain or adjudicate upon any question as to whether any land or other immovable property is or is not 'Shamlat Deh'

This court after relying upon the judgment passed by the Supreme Court in *Ram Singh and others vs. Gram Panchayat Mehal Kalan and others, (1986) 4 SCC 364*, has formed an opinion that even an injunction suit is not maintainable once the jurisdiction of the Civil Court is barred.

Hence, dismissed.

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

July 08, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No