

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

Date of Decision: December 7, 2022

1. RSA-1440-2018 (O&M)

Gram Panchayat Village Behrhi, Tehsil and District Gurdaspur

..... Appellant

Versus

Teju and others

..... Respondents

2. RSA-1442-2018 (O&M)

D.A.V. Public School, Behrhi through its Manager/ Headmistress Renu Trehan

..... Appellant

Versus

Teju and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. A.S. Dhindsa, Advocate for
Mr. K.S. Chahal, Advocate for the appellant
in RSA-1440-2018.
Ms. Deepshikha Arora, Advocate for
Mr. R.S. Cheema, Advocate for the appellant
in RSA-1442-2018.

HARKESH MANUJA, J. (ORAL)

This order of mine shall dispose of two regular second appeals bearing RSA No.1440 of 2018 (filed by Gram Panchayat Village Behrhi- appellant/ defendant No.1) and RSA No. 1442-2018 (filed by DAG Public School, Behrhi- appellant/ defendant No.2) arising out of the judgments and decrees dated 10.09.2014 and 30.10.2017 passed by the Courts below; whereby suit for possession filed at the instance of respondents

No.1 to 7/ plaintiffs (hereinafter referred to as 'respondents No.1 to 7) has been decreed.

For convenience, facts are taken from RSA-1440-2018.

Brief facts of the case are that respondents No.1 to 7 filed a suit for possession for land measuring 4 Kanal 1 Marla comprising in Khasra No.27/1, Khewat No.58/83, Khatauni No.119 situated in Revenue Estate of Village Behrhi, Tehsil and District Gurdaspur, Harbast No.693.

It was pleaded in the plaint that predecessor-in-interest of respondents No.1 to 7 were landless persons of Village Behrhi belonging to Bazigar community and the suit property was allotted to the community during consolidation proceedings which took place in the year 1955 for the purposes of Gair Mumkin Abadi. It was further pleaded that respondents No.1 to 7 through their predecessors built their houses over the said land, however, the Gram Panchayat without there being authority in law allotted the same to appellant/ defendant No.2 D.A.V. Public School by way of 99 years lease which, by use of police force and misusing personal influence demolished the houses of respondents No.1 to 7 and occupied the suit property compelling them to file the present suit.

Upon notice, written statement has been filed at the instance of the appellant (s) as well as proforma respondent No.8 herein raising the plea of suit being barred under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961, (for short 'the Act'). The allotment of the land in question to the Bazigar community at the time of consolidation was also disputed and denied. The Gram Panchayat supported having leased out the land in question, besides a large chunk of other lands to the proforma respondent No.8 for a period of 99 years.

The trial Court vide judgment and decree dated 10.09.2014 decreed the suit in favour of respondents No.1 to 7.

Aggrieved against the same, the appellant as well as proforma respondent No.8 filed common appeal. The learned Appellate Court vide judgment and decree dated 30.10.2017 dismissed the appeal filed at the instance of appellant and proforma respondent No.8. It is the aforesaid judgment and decree dated 30.10.2017 which has been impugned by the appellant as well as proforma respondent No.8 by way of filing present two Regular Second Appeals.

It has been contended on behalf of the appellant that suit filed at the instance of respondents No.1 to 7 in their individual capacity was not maintainable as they were claiming right in the suit property based on allotment made in favour of the entire Bazigar community and as a representative, suit was required to be filed. It has also been submitted that respondents No.1 to 7 were not even residents of Village Behrhi and could not have thus claimed any right over the property in question. Learned counsel also submits that in the absence of any challenge to the revenue entries from Bazigar community to the Gram Panchayat, suit could not have been decreed in their favour particularly when the jurisdiction of civil Court was barred.

I have heard learned counsel for the appellants and have gone through the paper book. I am unable to accept the submission made at their instance.

Both the Courts below have recorded a concurrent finding of fact that during consolidation proceedings, the land in question was earmarked for Bazigar community and this was even finds recorded in the

jamabandi for the year 1966-1967, wherein it has been reflected as "*Gair Mumkin Ababdi Makbooja Bazigar*". The same entry has even been reflected in the jamabandi for the year 1986-1987, however, in the later revenue records, i.e. jamabandi for the year 2006-07, without there being any order passed by any of the competent authority/Court, the said entry has been changed to "*Gair Mumkin Plot*" for no reason at all. Both the Courts below have found that no order passed by any of the competent authorities has been produced or proved on record by the appellant as well as proforma respondent No.8 so as to show under what circumstances the change in the revenue record reflecting the suit property to be "*Gair Mumkin Abadi Makbooja Bazigar*" was made to "*Gair Mumkin Plot*".

Thus, I find no reason to interfere with the concurrent findings recorded by the Courts below in this regard being based on Para 9.9 of the Punjab Land Records Manual that enjoins the revenue authorities to issue notice to all concerned before carrying out any change in the revenue entries. Accordingly, the arguments raised at the instance of the appellants as regards there being no challenge made to the change in the revenue entries at the instance of respondents No.1 to 7 is also to be rejected especially on the ground that the change made in the revenue entries in favour of Gram Panchayat itself was bad in law being in violation of the procedure laid down under Para 9.9 of the Punjab Land Records Manual of granting opportunity or putting to notice to all concerned and affected.

As regards the contention raised on behalf of the appellants about the jurisdiction of the Civil Court, once the change in entries from

“*Gair Mumkin Abadi Makbooja*” to “*Gair Mumkin Plot*” have been found to be illegal and bad in law being in violation of the procedure laid down for the said purpose, no question of title was involved in the present dispute, thereby creating a bar of jurisdiction with the civil Court so as to entertain the present dispute as the appellants cannot be permitted to take benefit of their own wrong or the mistake committed by the revenue authorities by putting respondents No.1 to 7 to a disadvantageous position.

I also find no merit in the contention raised on behalf of the appellants to the effect that respondents No.1 to 7 were not residents of Village Behrhi. A concurrent finding of fact based on voter list as well as the statement made by PW3- Waryam Singh, Lambardar had been recorded by both the Courts below that respondent No.1 to 7 were having their houses and huts in the suit property.

On the contrary, no one appeared on behalf of the appellant as well as proforma respondent No.8 so as to rebut the factum of respondents No.1 to 7 being residents of the village being members of Bazigar community. It may be relevant to point out here that once respondents No.1 to 7 have been proved and found to be members of Bazigar community, there was no legal impediment for them to have filed suit for possession regarding the property earmarked for the common purposes of benefit of their entire community.

In view of the discussion made hereinabove, I do not find any illegally or perversity with the findings recorded by both the Courts below which are purely factual in nature and based on proper appreciation of evidence available on record and law applicable thereto, as such, no question of law much less substantial question of law is involved in the

present appeals warranting interference by this Court in exercise of power under Section 100 of CPC.

Accordingly, the present appeals are dismissed.

Pending application(s), if any, shall also stand disposed of.

A photocopy of this order be placed on the file of other connected appeal.

December 7, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>