

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2412-2018 (O&M)

Date of decision: 04.07.2022

Reserved on : 25.03.2022

Samar

....Appellant

Versus

Roshan Lal and others

..Respondents

CORam: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Aashna Gill, Advocate for the appellant

Mr. R.P.S.Ahluwalia, Advocate for respondent no.1 and 2

Mr. Ojas Bansal, Advocate for

Mr. S.K.Aggarwal, Advocate for respondent no.3

ANIL KSHETARPAL, J

While assailing the concurrent findings of fact arrived at by both the courts below, defendant No. 1 has filed the present Regular Second Appeal.

In the considered opinion of this Bench, the question of law which requires adjudication is as “whether the Civil Court has the jurisdiction to decide as to whether a particular property is a part of *Shamlat Deh* or not in view of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as ‘the 1961 Act’)?”

After having heard learned counsel representing the parties, this Court is of the considered view that the Civil Court has erred while

returning a finding that a civil suit for mandatory and permanent injunction is maintainable with respect to the property, which is alleged by the plaintiff to be part of *Shamlat Deh* whereas it is denied by defendant No. 1 as well as defendant No. 2 (Gram Panchayat of the village).

Some peculiar facts of the present case are required to be noticed. The plaintiff filed a suit with a prayer to grant mandatory injunction as well as permanent injunction claiming that defendant No. 1 has encroached upon a part of the common *Chowk/* area, which vests with the Gram Panchayat. It is claimed that the Gram Panchayat has brick paved the street and all the inhabitants including the plaintiffs have used the same for common purposes. The plaintiffs claimed that the defendant initially constructed a *Khurali* for tethering his cattles but thereafter, raised construction and included the property in his own house. The defendant contested the suit while asserting that the suit is not maintainable. It was claimed that the suit is hit by doctrine of res judicata as predecessors-in-interest of the defendant, Sh. Satpal and Sh. Bheem and others, whose property was purchased by Sh. Joginder Singh son of Sh. Babu Ram, filed a suit for declaration in which it was declared that the suit property is owned and possessed by the predecessors-in-interest of the defendant. It has further been asserted that defendant No. 1 has reconstructed the property after dismantling the old construction which was in dilapidated condition. The defendant claimed that the property belongs to him. Defendant No. 2 Gram Panchayat filed its written statement submitting that the suit property is not a part of the

street or *Chowk* maintained by it.

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

“1) Whether the suit property is the part of common chowk and end of the gali and was being maintained by defendant no.2 and defendant no.2 had bricks paved the above said gali with its own funds? OPP.

2) Whether the inhabitants of the village including the plaintiffs had been using the suit property as common chowk? OPP.

3) Whether the defendant no.1 constructed the khurali and on 23.02.2002 threatened to encroach upon the suit property and including the same in their own house? OPP.

4) Whether on 30.03.2009 the defendant had encroached upon the suit property? OPP.

5) If all the issues are proved, whether the plaintiffs is entitled to relief of mandatory injunction as prayed for? OPP.

6) Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP.

7) Whether the suit not maintainable in the present form? OPD.

8) Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD.

9) Whether the plaintiff has not come to the court with clean hands? OPD.

10. Whether the plaintiff has suppressed the true and material facts from the court? OPD.

10 (i). Whether the suit of the plaintiffs is barred by the principle of resjudicata? OPD.

10 (ii) Whether Civil Court has got no jurisdiction to entertain and try the present suit? OPD. (Issues no.10 (i) and 10 (ii) were framed vide order dated 05.02.2015 as an additional issues).

11). Relief.”

Since, this Court is of the view that the jurisdiction of the Civil Court is barred, therefore, it will not be appropriate to discuss the evidence in detail.

At this stage, it will be appropriate to extract the definition of

expression *Shamlat Deh* in Section 2(g), Section 13 and Section 13-A of the 1961 Act as applicable to the **State of Haryana**.

2(g)" *shamlat deh* " includes (1) lands described in the revenue records as [*Shamlat deh* or *Charand*] excluding *abadi deh*;

(2) *shamlat tikkas*;

(3) lands described in the revenue records as *shamlat*, *tarafs*, *pattis*, *pannas* and *tholas* and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

(4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within the *sabha* area as defined in clause (mmm) of section 3 of the Punjab Gram Panchayat Act, 1952, excluding lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (Eas Punjab Act 50 of 1948), the management and control whereof vests in the State Government under section 23 A of the aforesaid Act)

(4a) vacant land situate in *abadi deh* or *gorah deh* not owned by any person]

(5) lands 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) becomes or has become *shamlat deh* due to river action or has been reserved as *shamlat* in villages subject to river action except *shamlat deh* entered as pasture, pond or playground in the revenue records,

(ii) has been allotted on quasi - permanent basis to a displaced person, [((ii-a) was *shamlat deh*, but has been allotted to any person by the Rehabilitation Department of the State Government, after the commencement of this Act but on or before the 9th day of July, 1985]

(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 *shamlat deh* and is so recording in the *jamabandi* or is supported by a valid deed;

(v) is described in the revenue records as *shamlat taraf*, *pattis*, *pannas*, and *thola* and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

[(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) -----]

(viii) was shamilat deh, was assessed to land revenue and has been in the individual cultivating possession of co - sharers not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950; or

(ix) is used as a place of worship or for purposes subservient thereto; [(6) lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under section 23 - A of the aforesaid Act.

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

(a) to entertain or adjudicate upon any question whether (1) 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 of 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 sub - section

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

In the present case, it is the case of the plaintiffs that the suit property is a part of the common area/*Chowk*/street. Section 2(g) (4) provides that the land used or reserved for the village community including streets, lanes are part of the *Shamlat Deh*. Moreover, Section 2(g) (4a) provides that any vacant land situated in Abadi Deh, not owned by any person is *Shamlat Deh*. It is also evident on careful reading of Section 13 that the jurisdiction of the Civil Court is barred from entertaining or adjudicating upon any question as to whether any land or immovable property is or is not *Shamlat Deh*. Clause (ii) of Section 13(A) provides that whenever the question arises as to whether any immovable property or land vests or does not vest in a Gram Panchayat, the jurisdiction of the Civil Court is barred. Further, Section 13-A provides for an alternative Forum for getting such disputes adjudicated. The Collector has been conferred exclusive jurisdiction to entertain and decides such questions.

In fact, both the courts have fundamentally erred in deciding the aforesaid question, although, an issue in this regard i.e. issue 10(ii) was culled out by the court. The trial court has held that since the suit is for grant of mandatory injunction, therefore, the jurisdiction of the civil court is not barred. For grant of decree of mandatory injunction in the present suit, the Civil Court is expected to decide as to whether the property in dispute is *Shamlat Deh* or not. In the absence of such decision, the court cannot pass a decree. In other words, before granting

the relief, the court is required to first decide as to whether the property is or is not a part of the *Shamlat Deh*. Hence, this determination is *sinaqua-non* for giving the relief in the suit. In fact, both the courts have recorded a finding that the property is *Shamlat Deh* and hence, maintained by the Gram Panchayat. In view of the provisions of Section 13 of the 1961 Act, the jurisdiction of the Civil Court is completely excluded.

Both the courts have relied upon judgment passed by the Supreme Court in '**Hari Ram vs. Jyoti Prashand and another**' (2011) 2 SCC 6468. This Court has carefully read the aforesaid judgment. In the aforesaid judgment, the Supreme Court decided the issue of limitation. It was held that in view of Section 22 of the Limitation Act, 1963, a suit for grant of decree of mandatory injunction or permanent injunction against encroachment of the public property such as public road is a continuous wrong, hence, the suit cannot be said to be barred by limitation. It is evident from the reading of the judgment that the attention of the Supreme Court was never drawn to Section 13 of 1961 Act. Before the court follows a judgment passed by Supreme Court, it is incumbent on the court to carefully examine the judgment in order to understand its *ratio decidendi*. The expression *ratio decidendi* means the issue which has been discussed in detail in the judgment and has, finally, been decided. In the absence thereof, a judgment passed by the court cannot be held to be laying down a *ratio decidendi* on a particular issue. In the present case, the language of the statute is clear, unequivocal and unambiguous. It is provided that the jurisdiction of the Civil Court shall

stand excluded to entertain or adjudicate upon any question as to whether any land or other immovable property is or is not part of the *Shamlat Deh*. Similarly, the court has no jurisdiction to decide as to whether any land or property or whether any right, title or interest in such land or immovable property vests or does not vest in the Gram Panchayat. Reliance in this regard can be placed on '**Ram Singh and others Vs. Gram Panchayat Mehal Kalan and others**' (1986) 4 SCC 364. 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. Consequently, the judgments and decrees passed by the courts below are set aside. The parties are relegated to the remedy before the Collector under Section 13-A of the 1961 Act.

Disposed of.

04.07.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE