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

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Date of decision:-01.05.2023

Reserved on : 25.04.2023

Piare Lal

.... Petitioner

Vs.

Gram Panchayat of Village Shafipur

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Akash Yadav, Advocate for the petitioner.

None for the respondent.

Manisha Batra, J.

The appellant before this Court was the plaintiff in a suit for permanent injunction that had been filed by him against the defendant-Gram Panchayat seeking a relief of injunction. The suit had been filed on the averments that the plaintiff was owner in possession of the plot in dispute which was existing in the abadi of village Shafipur, District Ropar (Punjab). It was pleaded that he had been using this plot for the purpose of tethering cattle, for storing fuel wood and cow dung cakes and as a manure pit. It was alleged that the defendant-Gram Panchayat through its Secretary, Bhajan Singh and others was interfering in its possession over the disputed plot and was bent upon uprooting the

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trees/plants grown by him over the same. Hence prayer had been made for restraining the defendant from doing so.

2. The defendant in its written statement had taken preliminary objection as to the civil Court having no jurisdiction to entertain and try the suit. It was admitted that the disputed plot was situated within *abadi deh* but it was asserted that major portion of this plot was part of the village pond and the remaining area was part of phirni comprised in Khewat No.43, Khatoni No.60 and Khasra No.61, which was used by the public. It was denied that plaintiff was either owner or in possession of the disputed plot or that the trees grown over the same, belonged to him. While controverting the remaining averments, dismissal of the suit had been prayed for.

3. The plaintiff in his replication asserted that disputed property was originally owned by and was in possession of his grandfather and had come to him as an ancestral property. It was asserted that the village pond was existing at the distance of 4 to 5 feet and in the southern side of the disputed plot whereas the village Phirni was existing on its northern side.

4. On the pleadings of the parties, learned trial Court culled out the following issues:-

1. Whether plaintiff is in possession of the suit property?

OPP

2. Whether civil court has jurisdiction to try the suit?OPP

3. Relief.

5. The parties adduced evidence in support of their respective claims. The plaintiff examined himself as PW-1 and produced PW-2, Nachatar Singh, Member Panchayat of his villager. In documentary evidence, he produced Ex. P-1 and Ex. P-2 rough site plans of the disputed plot whereas the defendant examined DW-1, Bhajan Singh. In documentary evidence, it produced Ex.D-1, copy of jamabandi for the year 1983-1984, Ex.D-2, copy of Aksh Sijra and Ex.D-3 report of Halka Kanungo.

6. Learned trial Court on appraisal of evidence before it and considering the contentions raised by both the parties, granted the relief of permanent injunction to the plaintiff thereby restraining the defendant from interfering in possession of the plaintiff over the disputed plot and also from removing the tress grown over the same. The defendant had preferred appeal before the first appellate Court who decided both the issues against plaintiff and held that the jurisdiction of civil Court was barred and set aside the judgment and decree of learned trial Court. Aggrieved from the same, the instant appeal has been filed by the plaintiff.

7. Learned counsel for the appellant-plaintiff argued that the judgment and decree passed by learned first appellate Court were not sustainable in the eyes of law and were liable to be set aside. He stressed that both the parties were *ad idem* on the point that the disputed plot was existing within the *abadi deh* of village Shafipur and there was specific pleading in the plaint in this regard which was not controverted. The

learned First Appellate Court, however, in total disregard to the pleadings of the parties, held that the appellant had failed to plead that the disputed property was situated within *abadi deh* or within the *Lal Dora* of the village. He further argued that the property in dispute being situated in *abadi deh*, did not fall within the definition of '*Shamlat Deh*' as given in Section 2(g)(1) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred to as 'Act 1961') and therefore, the dispute raised by the appellant with regard to this property could not be held to be barred from the jurisdiction of civil Court within Section 13 of the Act, 1961. He argued that a grave mistake was committed by learned first appellate Court in holding so.

8. The next limb of the argument as raised by learned counsel for the appellant was that since the appellant had not sought any relief of declaration as to his title over the disputed plot and had filed a simpliciter suit for permanent injunction and the factum of his possession over the disputed plot stood established from the evidence produced on record, therefore, also the learned trial Court had erred in declining the relief as claimed by him. With these broad arguments, it was submitted that the impugned judgment and decree were liable to be set aside, the suit deserved to be decreed and further that the appeal deserved to be allowed. To fortify his arguments, learned counsel for the appellant has placed reliance upon the authority cited as ***Ram Narayan and another Vs. Dhanak Community and others***, 2017(2) RCR (Civil) 190.

9. It will not be out of place to mention here that the respondent

had been duly represented on previous dates of hearing but as on the date of rendering final arguments, none had appeared on its behalf and it had been proceeded against ex-parte.

10. This Court has heard learned counsel for the appellant at length and with his able assistance has perused the record requisitioned from the Courts below.

11. Considering the contentions put forth by learned counsel for the appellant and on appraising the material placed on record, it emerges that the appellant while claiming that he was owner of the disputed plot, the same being his ancestral property, had further asserted his possession over the same in the capacity of owner and had sought relief of injunction as against the respondent-defendant, Gram Panchayat by alleging that it was interfering in his established possession over the said plot. Undisputedly, the well settled proposition of law is that where the plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, he has to right to protect his possession against such defendant who does not prove a better title and a suit for injunction simpliciter will lie. However, when a cloud is raised over the title of the plaintiff and he is also under threat of dispossession from defendant, then he will have to sue for declaration of title and consequential relief of injunction. Where there are necessary pleadings regarding title in a suit for injunction, then the Court may decide the issue regarding title even in a suit for injunction if the jurisdiction of the civil Court is not barred otherwise. Reference in this

regard may be made to a case cited as ***Chennaiah @ Doddachennaiah, Gangaiah and other v. Bylappa, Smt. Narasamma and others***, 2044(4) KantLJ 393, wherein similar observations were made by Hon'ble Supreme Court.

12. On applying the above discussed position of law to the peculiar facts and circumstances of the present case, it has been observed that learned trial Court had not given any finding on the question of title of the appellant over the disputed property and by observing that he was proved to be in possession of the same and for granting relief of injunction, it was not necessary to go into the question of title, the said relief had been granted. Learned first appellant Court, on the other hand, had considered the issue that there was dispute with regard to title of the plot in dispute between the parties and with regard to the question that this plot vested in Gram Panchayat or not, had held that the civil court had no jurisdiction to entertain and try the suit in view of the bar created under Section 13 of the Act, 1961. Learned first appellate Court had also observed simultaneously that since the appellant had not claimed himself to be in possession simply and also claimed ownership over the disputed plot and did not prove so, therefore also he was not entitled to the relief of injunction.

13. On scrutiny of the material available on record, this Court is of the opinion that the first and foremost question that requires consideration is whether the learned first appellate Court was justified in declining the relief of injunction to the appellant on the ground that the

civil court had no jurisdiction to entertain and try the suit? In this context, it will be important to discuss the relevant provisions of the Act, 1961, as per which the exclusive jurisdiction to decide the question as to whether a particular property is '*shamlat deh*' or not vests with the Collector. Section 13 of the Act says that no civil Court shall have jurisdiction to entertain or adjudicate upon any question whether any land or other immovable property is or is not '*shamlat deh*' and any right, title or interest in such land or other immovable property vests or does not vest in the '*shamlat deh*'. As per Section 2(g) of the Act, 1961, '*shamlat deh*' includes:-

1. *land described in the revenue record as shamlat deh excluding abadi deh.*
2.
3.
4. *lands used or reserved for the benefit of the village, community including, streets, lands, playgrounds, schools, drinking well or pond within adadi deh or gora deh.*

14. As discussed above, the main argument as raised by learned counsel for the appellant was that there was no dispute between the parties that the disputed plot was existing within the '*adadi deh*' and being so, it was excluded from the definition of '*shamlat deh*' and hence the jurisdiction of civil court could not be stated to be barred. The argument so raised by learned counsel for the appellant appears to be attractive but on scrutiny of the material available on record, the same cannot be accepted. The claim of the appellant with regard to ownership

of the disputed property is shown to be based on oral evidence as lead before learned trial Court and it is revealed that no documentary proof with regard to his ownership over the property in dispute or same being his ancestral property, had been produced on record. The only witness examined by him namely, PW-2 though supported the case of the appellant in his examination-in-chief by saying that the disputed plot was owned by the appellant but during cross-examination, his version was that the land of the village pond was previously abutting the phirni. He stated that now the pond was existing at a distance of 30-35 feet from phirni and the intervening land was in possession of the appellant. Meaning thereby that it was admitted by this witness that in fact the land of the pond which was previously abutting the phirni, was in possession of the plaintiff and it was not some property inherited by him from his ancestors and owned by him. Even the appellant had admitted during his cross-examination that a part of the land of the pond which had dried up, was in his possession. Though, in the subsequent part of his cross-examination, he changed his version but he did not utter even a single word as to how he had become owner of the property in dispute. The position which therefore, emerges is that the oral evidence led by the appellant with regard to his claim of ownership was not at all satisfactory.

15. Further, the pleadings in the replication, as to the location of the plot in dispute stand contradicted from the sworn deposition of appellant because he deposed that the village pond was existing at a

distance of 5-7 feet from the disputed plot whereas in the replication, it was pleaded that it was existing at a distance of about 15 feet. The site plans Ex.P1 and Ex.P-2, on the other hand show the village pond to be existing on the southern side of the disputed plot and rather just abutting it. All this goes to show that appellant-plaintiff himself was not sure about the exact location of the disputed plot what to talk of his being owner of the same. In either manner, since the disputed plot has been claimed to be part of village Phirni and the pond by the respondent-defendant in contrast with the claim of the appellant that it was owned by him, hence certainly there was dispute with regard to the fact as to whether the disputed plot was *shamlat deh* or not? As such, the argument as raised by learned counsel for the appellant that the disputed plot being situated in *abadi deh* was excluded from the definition of *shamlat deh* as per Section 2(g)(2) of the Act, 1961, cannot be accepted. In view of the fact that he made no reference to Section 2(g)(4) of the Act, 1961 as per which the land used or reserved for benefit of village including street (common rasta) or pond within the *abadi deh* also falls within the definition of *shamlat deh* and since the disputed plot is claimed to be part of village phirni and the pond which are situated in *abadi deh*, therefore, a dispute had certainly arisen as to whether this plot was *shamlat deh* or not. Since the jurisdiction of civil court is barred to decide such question therefore, this court is of the confirmed opinion that learned first appellate Court committed no mistake in holding that the jurisdiction of the civil court to try the suit, filed by the appellant, stood barred.

Accordingly, no ground has been made out to interfere with the findings as arrived by learned trial Court on this point.

16. Now the next question which naturally arises for consideration is as to whether the appellant was still entitled to relief of injunction qua the disputed plot against the respondent as his claim was based on possession. In this context, it may be mentioned that the well settled proposition of law is that where there are necessary pleadings and issue regarding title in suit for injunction but if the matter involves complicated questions of law relating to the title, then the court will either relegate the parties to the remedy by way of comprehensive suit for declaration of title instead of deciding the issue in a suit for mere injunction and if jurisdiction of civil Court with regard to the decision of suit issue is barred then the parties may be relegated to any other appropriate remedy. Since in this case, the appellant has sought relief of injunction qua interference in his possession over the disputed plot based on claim of title therefore, the suit for injunction simpliciter could not be stated to be maintainable. The disputed plot is unquestionably a vacant plot of land. The appellant claimed that his possession was in the form of tethering of cattle, preparing cow dung cakes and having manure pit over this property. The well settled proposition of law is that mere acts of user, such as placing dung cakes, tethering cattle, digging manure pit or installation of pegs may be only weak links to say that a particular litigant is using the property but such user has to be secluded separately from the acts of possession, for which overt act, it is necessary for the

litigant to establish that he had been exercising his possession over the disputed property with the intention to retain. Mere tethering of cattle etc. over open land cannot be taken as proof of exclusive possession as it is quite common in villages to tether cattle and place cow dung cakes in open spaces and the same cannot be allowed to be used as evidence to grab land by any person. Reliance in this regard can be placed upon ***Bhan Singh and others v. Tej Singh and others***, 1997 (1) RCR (Civil) 46 & judgment dated 01.04.2005 passed by Delhi High Court in RFA No.134 of 1982 titled as ***Shahabuddin V. State of U.P. and others***, wherein similar observations had been made. As such, the claim of the appellant based on the plea that he had been tethering cattle over the disputed plot and even his claim of growing trees cannot be taken to mean his established possession over the said plot.

17. Apart from this, in view of the discussion as made above to the effect that a complicated question of law had certainly arisen with regard to title of the disputed plot, in the opinion of this Court, learned first appellate Court was justified in holding that the appellant was not entitled to relief of possession. In this regard, this court relies upon a recent judgment dated 08.07.2022 passed by a co-ordinate Bench of this Court in RSA No. 2068 of 2023, titled as ***Sahabudeen Versus Ali Mohd. and others***, wherein the courts below had dismissed the suit of plaintiff on the ground that he had failed to prove his ownership though he was found in possession of the disputed property. The appellant-plaintiff had contested that though he had failed to lead evidence to prove

his ownership, still he was entitled to injunction on the basis of possession. It was held that once the jurisdiction of civil Court was barred to entertain or adjudicate upon any question as to whether the land was shamlat deh or not, even injunction suit was not maintainable. The co-ordinate Bench had relied upon judgment passed by Apex Court in ***Ram Singh and others VS. Gram Panchayat, Mahal Kalan and others*** (1986)4 SCC 364, wherein the plaintiffs claimed themselves to be owners of the suit land and had avoided to seek declaration that it was not shamlat deh. The defendant-Gram Panchayat had expressly claimed that the land in question belonged to it as shamlat deh. It was observed by apex Court that the plaintiff could not by drawing their plaint clearly by not claiming a declaration that the land in question was not shamlat deh, confer jurisdiction on the civil Court when by virtue of Section 13 of the Act, the jurisdiction of the civil Court to try said suit had been taken away. It was held that it would not be possible in the circumstances for the civil court to make a declaration in favour of the plaintiff without deciding the question whether the property in question was shamlat deh or not and whether it belonged to the Panchayat or not and also to grant relief of injunction. In view of the ratio of law as laid down in the above cited judgments, this Court has no hesitation to hold that since a cloud had been raised over the title of the appellant over the disputed plot and the claims of the parties with regard to the ownership over this plot are in contest, therefore, the exclusive jurisdiction to decide the nature of this property certainly vests with the Collector and hence the relief of

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injunction based on the claim of possession of the apellant cannot be granted. Reliance placed by the apellant upon *Ram Narayan's* case cited (supra) does not help him as in that case, the question of title of gram panchayat over the property in question was not disputed and the plaintiff had filed a bare suit for permanent injunction for restraining the Panchayat from interfering within the right of the plaintiff to use the same and it was in that peculiar circumstance that a bench of this Court had observed that the bar of jurisdiction of civil court under Section 13 of the Act, 1961 was not applicable.

18. In view of the discussion as made above, it is held that the findings given by learned first appellate Court are well reasoned and do not warrant any interference and deserve to be affirmed. No such substantial question of law has arisen in this case which deserves to be decided in favour of the apellant. Resultantly, finding no merit, the appeal is dismissed. There is no order as to costs.

19. Miscellaneous application(s), if any, also stand disposed of.

(MANISHA BATRA)
JUDGE

01.05.2023
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<i>Whether speaking/reasoned</i>	: Yes/No
<i>Whether reportable</i>	: Yes/No