

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 4368 of 2019(O&M)

Date of Order: 08.12.2023

Naini Jain

.Petitioner

Versus

The Deputy Commissioner-cum-Collector and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Deepak Jindal, Advocate
for the petitioner.

ANIL KSHETARPAL, J

1. The petitioner herein prays for setting aside the Executing Court's order passed on 29.05.2019, while dismissing the execution petition.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief are required to be noticed.
3. The plaintiff (petitioner) filed a suit for grant of mandatory injunction directing the Deputy Commissioner and the Tehsildar-cum-Assistant Collector Ist Grade to sanction mutation in her favour. The plaintiff's suit was based upon the sale deed.
4. The trial court partly decreed the suit, however, with respect to the land comprised in khasra no.6535 (1 kanal and 1 marla) the suit was dismissed. In the first appeal, the First Appellate Court modified the decree to the following extent:-

“It is ordered that the findings of the learned Civil Judge (Jr. Divn.), Rohtak, regarding khasra no.6535 are hereby set aside and the respondents-revenue authorities are directed to consider the case of the appellant-plaintiff for

sanctioning of mutation of the land purchased by her from Harnand etc as per sale deed dated 9.11.2006 on the aforesaid terms. This appeal filed by Naini Devi bearing no.152 of 2014 stands allowed with costs and original suit filed by the appellant/plaintiff Naini Devi stands decreed with costs on the aforesaid terms.”

5. The petitioner filed the execution petition. The Executing Court found that the property is a 'Shamilat' land, and its ownership normally vests with the Gram Panchayat. Thus, the Executing Court has dismissed the execution.

6. The learned counsel representing the petitioner contends that the order passed by the Executing Court is erroneous.

7. This court has considered the submissions of the learned counsel representing the petitioner.

8. On careful reading of the judgment and decree passed by the First Appellate Court on 09.09.2016, (already extracted), shows that the revenue authorities were directed to consider the case of the petitioner for sanction of the mutation. There was no mandate to the revenue authority to sanction the mutation. The learned counsel representing the petitioner admits that the revenue authorities considered the petitioner's case and rejected the same.

9. Moreover, ordinarily the 'Shamilat' land vests with the Gram panchayat which has not been impeladed as a party in the civil suit. In the ordinary course, the civil court has no jurisdiction to adjudicate the question “whether the property is 'Shamilat Deh' or not and it vests in the Gram Panchayat or not?”

10. The exclusive jurisdiction in this regard is vested in the Court of

Collector under Section 13-A of the Punjab Village Common Land (Regulations) Act, 1961 (hereinafter referred to as 'the 1961 Act'). Section 13 of the 1961 Act completely bars the jurisdiction of the civil Court.

11. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

12. Dismissed, accordingly.

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

December 08, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO