

RSA-4950 of 2019 (O&M)

2023:PHHC:122334

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

RSA-4950 of 2019 (O&M)
Date of decision: 15.09.2023

Azad Singh and others

.....Appellants

vs.

Gram Panchyat, Khatiwas and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. R.S. Sangwan, Advocate,
for the appellants.

NAMIT KUMAR, J. (ORAL)

1. This Regular Second Appeal has been filed against the judgment and decree dated 06.10.2015 passed by the Court of learned Civil Judge (Junior Division), Charkhi Dadri, whereby suit filed by the appellant-plaintiffs for declaration was partly decreed as well as against the judgment and decree dated 23.04.2019 passed by the Court of learned Additional District Judge, Charkhi Dadri, whereby appeal preferred by the appellant-plaintiffs, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that plaintiffs filed a suit in the representative capacity seeking a decree of declaration to the effect that plaintiffs and proforma defendant are the owners in possession of the suit land mentioned in the head note of the plaint and mutation No.258 dated 22.12.1957 sanctioned in favour of defendant-Gram Panchayat is wrong, illegal, null and void. Plaintiffs also prayed for restraining the defendants from carving out plots out of the suit land and

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allotting them to BPL families and also from interfering in the possession of the owners of the suit land. It was pleaded that as per jamabandi the suit land is described as '*Mustarka Malkan Hasab Rasad Rakba Khewat*'. However, mutation No.258 dated 22.12.1957 was sanctioned qua suit land in favour of Gram Panchayat. The plaintiffs challenged the correctness of that mutation being not binding on their rights as the suit land has never been vested in Gram Panchayat and proprietors are using the same for cultivation and some part is used as a grazing ground.

3. Upon notice, defendant No.1 appeared and filed its written statement pleading therein that the suit land has been transferred since long in favour of Gram Panchayat and the same is managed and controlled by the same body. There are 2-3 ponds over the suit property, where the animal drink water and some part of the land is being used as grazing ground. After denying remaining version of the plaint, prayer for dismissal of the suit was made. Defendant No.2 was proceeded against *ex parte*.

4. Plaintiffs filed replication rebutting the claim of the defendant and reiterating the contentions made in the plaint. From pleadings of the parties, following issues were framed:-

1. Whether the plaintiffs and other proprietors of village Khatiwas are owners in joint possession of the suit land as mentioned in the plaint by virtue of mutation no.258 dated 12.12.1957 being illegal, null and void? OPP
2. If issue no.1 is proved, whether plaintiffs are entitled to injunction as prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD

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4. Whether the plaintiffs have no cause of action to file the present suit? OPD

5. Relief.

5. Parties led oral as well as documentary evidence in support of their respective contentions.

6. After hearing arguments and after appreciating evidence on record, trial Court partly decreed the suit of plaintiffs vide judgment and decree dated 06.10.2015. The operative portion of the said judgment reads as under: -

“In view of the foregoing discussion on various issues in details, suit of the plaintiff is hereby partly decreed. The defendants are specifically directed not to carve out the plots over the suit land nor to implement any other scheme of the State Government without acquiring the land as per the Land Acquisition Act applicable in concern of the suit land.”

7. Aggrieved against the judgment and decree of the trial Court, plaintiffs preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 23.04.2019.

8. Only contention raised by learned counsel for the appellants is that the suit filed by the appellant-plaintiffs was partly decreed vide judgment and decree dated 06.10.2015 against which they preferred an appeal, which has been dismissed by the Lower Appellate Court vide judgment and decree dated 23.04.2019. He submits that there is no observation in the judgment of the Lower Appellate Court with regard to suit of the plaintiffs being partly decreed by the trial Court.

9. I have heard learned counsel for the appellants and perused the record.

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10. Relevant portion of the judgment dated 23.04.2019 is reproduced as under: -

“8. In present case, the appellants-plaintiffs are claiming the suit property as relating to Hasab Rasad Rakba Khewat but mutation Ex.P11 reveals that it has been Shamlat Hasab Rasad property and same had vested in Gram Panchayat in the year 1957 vide mutation Ex.P3, Since the time of the vesting of that land in Gram Panchayat, the same is managed and controlled by the Gram Panchayat and no objection was ever taken in this regard by any inhabitant of the village.

9. At the time of conducting of consolidation of holdings, certain lands are taken Prorata from the holdings of proprietors. Such lands are either reserved for the common purposes or kept separate for without any specific purpose. The land, which is kept separate without any specific purpose, may revert to the proprietors but by approaching the competent authority in this regard.

10. In present case, the version of PW1 and PW2 and the pleadings of appellants-plaintiff's themselves prove that the suit property is used as ponds, wherein the villagers use to take their animal for drinking water and other part of property is grazing ground. Meaning thereby, suit property is used for common purpose. Under the Punjab Village Common Land Act, the question of title with regard to the land of Shamlat Deh can only be adjudicated by Collector concerned. Therefore, learned Lower Court was justified in declining the part of relief seeking the decree of declaration qua the suit property.”

11. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellants has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. It is clarified that the suit

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of the plaintiff was partly decreed by the trial Court vide judgment and decree dated 06.10.2015 against which appellant-plaintiffs preferred an appeal which has simply been dismissed without disturbing any finding recorded by the trial Court.

12. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

13. Disposed of accordingly.

14. Pending application(s), if any, stand disposed of accordingly.

15.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No