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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : April 13, 2023

RAJ BALA AND ANOTHER

-Petitioners

V/S

STATE OF HARYANA AND OTHERS

-Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Vivek Lamba, Advocate
for the petitioners.

Mr. P.P. Chahar, DAG, Haryana.

SURESHWAR THAKUR, J.(ORAL)

1. Despite co-respondent No.6 being served, the said respondent is not appearing through any validly authorized counsel. Therefore, the co-respondent No.6 is ordered to be proceeded against ex parte.

2. The present petitioners are the owners of Khasra No.154. A 'Gair Mumkin Street' exists on Khasra No.131. The above referred khasra numbers are comprised in Khewat No.570, Khatauni No.777, Rect. and Killa No.131(2-5), in the revenue estate of Village Soldha, Tehsil Bahadurgarh, District Jhajjar. The Gram Panchayat concerned, as revealed by Annexure P-7, instituted a suit for permanent injunction, before the Id. Civil Judge concerned, impleading therein, one Rajbala, one Manjeet, and, one Naveen, as defendants. However, the dispute as reared in the said suit for permanent injunction, did relate, to the defendants (supra) making an encroachment upon Khasra No.131, which as above stated, is designated as a 'Gair Mumkin Street', and, which is owned and possessed by the Gram

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Panchayat concerned. However, the learned Civil Judge, through a decision made on 22.02.2019, upon the said civil suit, did not grant the espoused relief to the plaintiff, but yet, proceeded to make observations in its judgment and decree dated 22.02.2019, to the effect, that the plaintiff Gram Panchayat concerned had raised some construction on Khasra No.154, which is admittedly owned and possessed by the defendants, who are the petitioners before this Court.

3. It is fairly stated at the bar, by the learned counsel for the petitioners, that the judgment and decree (supra) has not been assailed before the learned first appellate court concerned, therefore, obviously the said judgment and decree of dismissal, as made on the civil suit concerned, besides, the observations (supra) as carried therein, do but acquire a conclusive, and, a binding effect.

4. It appears that on the basis of the said binding, and, conclusive observations, as occur in the judgment and decree (supra), as, made by the learned Civil Judge concerned, the petitioners proceeded to access the revenue authorities concerned, including the Id. Collector concerned, for ensuring that the Gram Panchayat concerned, causes the removal of the encroachments, as are made by it, on the Khasra No.154, hence owned and possessed by the petitioners herein. Since the said endeavours, have not yielded the requisite results, thus the petitioners are led to institute the instant writ petition before this Court, with a prayer that a mandamus be made upon the respondent(s) concerned, to enforce the observations, which have acquired a binding, and, a conclusive effect, and, which are carried in the judgment (supra) of the learned Civil Judge concerned.

5. However, the petitioners herein were defendants in the said

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civil suit, and as such, they cannot, in the said capacity, institute any petition for execution of the observations (supra), as are carried in the judgment (supra), as under law, the capacity to execute a judgment and decree, if any, which becomes passed in favour of the plaintiff, is always vested in the plaintiff, and obviously, the competence to enforce any observation(s) favourable to the defendants, as, occur in the judgment of dismissal, as, made upon the plaintiff's suit, cannot be furthered through the defendants casting an execution petition, before the ld. court of first instance, or, before the executing court concerned. Therefore, the apposite observations favourable to the defendants, who are the petitioners herein, and which but reveal, that the Gram Panchayat concerned has encroached upon Khasra No.154, owned and possessed by the petitioners herein, cannot be enforced at the instance of the petitioners, through theirs instituting an execution petition, before the court of the first instance or before the learned executing court concerned.

6. If that be so, the remedy which is now available to the petitioners is also not through this Court, on their request, directing the B.D.O. concerned, to institute a petition under Section 7 of the Haryana Village Common Lands Act, nor can this Court direct the petitioners herein to move such a petition, under the said provision, as the availment of the remedy prescribed under the said Section, is subject to the suit lands being admittedly 'shamlat deh' lands. Since the suit land is comprised in Khasra No.154, and, it is owned by the present petitioners, therefore, obviously it does not become 'shamlat deh' land, and, nor the above asked for request can be acceded to, by this Court.

7. Therefore, essentially the only remedy available to the

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petitioners to enforce the observations (supra) is not through this Court making a mandamus upon the respondent(s) concerned to draw warrants of possession against the Gram Panchayat concerned, for enforcing the said observations, as are carried in the judgment and decree (supra), as the said direction for the drawing of warrants of possession, for all the above stated reasons, rather would be grossly impermissible. Therefore, yet for carrying forward the ends of justice, this Court reserves liberty to the petitioners to, on the basis of the said unchallenged observations, as are carried in the judgment and decree (supra), as, made by the Id. Civil Court concerned, hence institute a suit for possession, but as plaintiffs, under Section 9 of the CPC, against the Gram Panchayat concerned, but, only before the Civil Court of competent jurisdiction.

8. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

April 13, 2023
devinder

Whether speaking/reasoned.	:	Yes/No
Whether Reportable	:	Yes/No