

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

CWP-5897-2018

Reserved on: 01.02.2023

Date of decision: 10.02.2023

JAGDISH SINGH AND OTHERS

...Petitioners

Versus

**THE DIRECTOR, RURAL DEVELOPMENT AND PANCHAYATS,
PUNJAB AND OTHERS**

...Respondents

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

Present: Mr. Ish Puneet Singh, Advocate
for the petitioners.

Mr. Mandeep Singh, DAG, Punjab

Ms. Prabhjot Kaur, Advocate for
Mr. Karanjit Singh, Advocate
for respondent No.3.

SURESHWAR THAKUR, J.

1. Gram Panchayat Harsha Cheena (Sabajpura) Block Harsha Cheena through Gurmej Singh, Presiding Officer Block Harsha Cheena, District Amritsar, instituted a petition under Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”) against the respondents therein, who are the petitioners herein. In the said petition it was claimed that the respondents are in unauthorized possession of the disputed land measuring 3 Kanal 8 Marlas, as thereon exists a playground. Therefore, it was averred that since the existence of a playground on the petition lands, causes change of user of the petition lands, from the common purpose, for which they became reserved for the village proprietary body. Thus, the petitioners' possession over the petition khasra numbers was averred to completely

unauthorized as well as unlawful. The learned Collector concerned, through a decision made thereons, on 03.09.2015 accepted the petition of the Gram Panchayat, and, ordered for the eviction of the respondents therein, from the petition lands.

2. The aggrieved therefrom preferred an appeal bearing No.133 of 2015 before the Competent Appellate Court. On the above appeal, the Competent Appellate Authority made a decision, hence affirming the verdict as became initially drawn by the learned Collector concerned.

3. The reason as becomes assigned therein, is that, given there existing a revenue entry of *Gair Mumkin Chappar qua* the petition lands, whereas, the appellants-petitioners herein raising thereons a shed for the keeping therein their livestock. Thus, there being an unlawful change of user, of the petition lands.

4. The aggrieved therefrom are obviously pained from the above concurrently made verdicts against them, and, are led to institute thereagainst the instant petition before this Court.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

5. The learned counsel for the petitioners, has much vigorously submitted before this Court, that since the learned Civil Courts concerned, as revealed by Annexure P-8, through a verdict drawn on 02.03.2005, had decreed the present petitioners' suit for permanent prohibitory injunction. Moreover, when the aggrieved therefrom defendants, had unsuccessfully challenged the verdict of the learned Civil Judge concerned, through rearing a Civil Appeal No.15 of 2005, but obviously resulting in the decree granted by the learned Civil Court concerned, on the plaintiffs'-petitioners' suit herein, being affirmed through a verdict comprised in Annexure P-9. Consequently, he submits, that in

so far as the instant petition is concerned, the subsequent thereto petition is barred by the principle of *res judicata*. He also submits that since there was no cogent proof adduced by the Gram Panchayat concerned, before the Authorities below suggestive that the revenue entries were aptly drawn or were based on a validly held, and, concluded consolidation operations in the *Mohal* concerned. Therefore, he submits that no credence is to be assigned to the revenue entries.

ANALYSIS OF THE SUBMISSIONS

6. The argument of the learned counsel for the petitioners, that the instant petition is barred by the principle of *res judicata*, as in the earlier instituted motion by the petitioners, they became recipients of a validly drawn Civil Court decree of permanent prohibitory injunction against the defendants therein, is however rejected. The prime reason for rejecting the above argument is rested, upon the factum that the prime requirement *qua* the principle of *res judicata* becoming attracted to the instant lis, is encapsulated in the triplicate test: i) similarity of causes of action in both the earlier, and, latter petitions, ii) similarity of parties in the earlier, and, the subsequent petition, iii) similarity of properties in the earlier, and, the latter drawn motion. However, on a reading of the judgment as rendered by the learned Civil Courts concerned, as becomes, respectively embodied in Annexure P-8, and, P-9, it is revealed that the Gram Panchayat was not therein impleaded as a party, besides also it is revealed that the suit khasra numbers, as mentioned the civil suit are different from the suit khasra numbers in the instant petition. Therefore, the above triplicate tests do not emanate. Thus, the principle of constructive *res judicata* is not applicable to the instant petition.

7. Moreover, since there is a complete ouster of jurisdiction of the learned Civil Courts concerned, rather through a mandate carried in Section 13

of the Act. Therefore, even if the Civil Courts concerned, did exercise jurisdiction over the civil suit, yet when their exercisings of jurisdiction, on the civil suit concerned, was interdicted by the mandate carried in Section 13 of the Act, provisions whereof becomes extracted hereinafter, resultantly no credit is to be assigned, to the Civil Court decrees, reiteratedly since the Civil Court decree, fell within the prohibitive domain, of the relevant statutory provisions, and/or, resultantly obviously no credit is assignable to the verdicts, as, drawn by the learned Civil Courts concerned.

“13. Bar of Jurisdiction in Civil Courts:- No civil court shall have jurisdiction:-

(a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not Shamilat deh vested or deemed to have been vested in a Panchayat under this Act ; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act; or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.] ”

8. The learned counsel for the petitioners has also submitted, that no credence, is to be assigned to the revenue entries concerned. The above argument falters, as it squarely falls, in the realm of his now, raising a question of title, with respect to the petition lands, whereas, such an argument never became raised earlier nor it became earlier pleaded before the Authorities below. Therefore, the petitioners are estopped from raising the above question of title before this Court, as, they earlier failed to raise the same, before the Authorities below, whereas, they were raisable only before them. Consequently, with the rule of estoppel working against the petitioners, to contend before this Court, that the petitioners have a valid title to the said khasra number, thus they are forbidden, to raise the above question of title before this Court. Resultantly, the

petitioners cannot argue, that the revenue entries cannot be assigned any credence, as they are falsely or fictitiously drawn nor in there any force in the argument of the learned counsel for the petitioners, that yet at this belated stage, there is any raisable question of title in the lis engaging the litigants concerned. Reiteratedly credence is to be assigned to the revenue entries. More so, when even before the learned Collector concerned, no endeavour was made to adduce cogent evidence, to rebut the presumption of truth, as, attachable to the apposite revenue entries.

SUMMARIZATION OF PRINCIPLES

- I. Any claim in respect of title vesting in the litigants concerned, has to be raised before the Court, where the previous/earlier petition was filed, and, no subsequent claim qua title in the petition lands vesting in the litigant concerned, can be raised in the subsequent petition, especially when the question of title as raised in any later petition, was not raised earlier by the petitioners concerned, qua the same suit land.
- II. Credence is to be assigned to the revenue entries concerned, unless potent evidence hence to bely the said presumption of truth, becomes adduced besides becomes lawfully proven before the Authorities below. The said argument cannot be raised in writ proceedings, as the evidentiary pedestal to support the said argument, remains unerected before the Authorities below.

FINAL ORDER

9. Thus, this Court finds no merit in the writ petition, and, the same is dismissed. The impugned orders are maintained, and, affirmed.

(SURESHWAR THAKUR)
JUDGE

10.02.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:

Yes/No