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2024:PHHC:042416

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

RSA No.971 of 2020 (O&M)

Date of decision: 29.02.2024

Ram Pal and another

.... Appellants

Versus

Gram Panchayat, Bahrapur

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. S.K. Panwar, Advocate, for the appellants.

GURBIR SINGH, J.

CM No.3189-C-2020

Prayer in this application filed under Section 5 of Limitation Act is for condonation of delay of 26 days in filing the present appeal.

For the reasons mentioned in the application, same is allowed and the delay of 26 days in filing the present appeal is condoned.

CM No.3190-C-2020

Application for exemption from filing certified copies of the judgments and decrees of courts below and ground of appeal, is allowed as prayed for.

RSA No.971 of 2020 (O&M)

1. Present regular second appeal has been filed against the judgment and decree dated 23.09.2019 passed by learned Additional District Judge, Yamuna Nagar at Jagadhri, whereby the appeal filed by the plaintiffs, appellants herein, against the judgment and decree dated

07.07.2015 passed by learned Civil Judge (Junior Division), Yamuna Nagar at Jagadhri, has been dismissed.

2.1 The parties are being addressed as per their original status in the suit. The plaintiffs filed a suit for permanent injunction restraining the defendant i.e. Gram Panchayat, Bahrapur, District Yamuna Nagar, through its Sarpanch Shri Chand Ram from interfering in the suit land which is plot No.169 situated within the 'lal dora' and 'phirni' in abadi deh of Village Bahrapur. The case of the plaintiffs is that said suit land was under the ownership of Soran, Birkha Ram and Gurdayal to the extent of equal shares. The plaintiffs are the sons of Birkha Ram. He died many years ago. The plaintiffs have constructed *pucca chhans* in the suit land and about 30 poplar trees are standing there. After the death of Birkha Ram, the plaintiffs, being his sons, have inherited 1/3rd share in the suit land. They are in actual, physical and peaceful possession of the suit property without any interference from any corner since the time of scheme ishtemal (consolidation). The defendant-Gram Panchayat has no authority over the suit property as it has lost the character of shamlat deh due to its being situated within 'lal dora' and 'phirni' of the abadi. Though the mutation has been sanctioned but it is shown as being cultivated by proprietors of the village.

2.2 Upon notice, the defendant appeared and filed written statement stating that Birkha Ram was in illegal possession of panchayat land and he was ejected vide order dated 11.02.2003 and the present suit

has been filed by the plaintiffs to escape from said ejectment. It was further stated that the property is not abadi land rather the same is panchayat deh having khasra number.

2.3 After appreciating the evidence on record, the trial Court dismissed the suit and the appeal filed against thereof was also dismissed. Aggrieved, the plaintiffs have approached this Court.

3. Learned counsel for the appellants-plaintiffs has argued that the suit land falls under the 'lal dora' and 'phirni'. The Gram Panchayat has prepared the Field Book Ex.P3 and Naksha of abadi Ex.P4 wherein the suit land has been shown in the name of appellants and other persons and no one raised any objection while preparing said Field Book and Naksha of abadi of Gram Panchayat, Bahrapur. The appellants are in possession of suit land and in a suit for injunction, only possession of parties is to be seen. They were never evicted from the suit land by any court of law at any point of time. However, all these aspects were ignored by the courts below.

4. I have heard the submissions of learned counsel for the appellants and have gone through the record.

5. The case of the appellants-plaintiffs is that their father Birkha Ram (since deceased) was the owner of suit land to the extent of 1/3rd and after his death, the suit land was inherited by them and they are in possession thereof. They are seeking permanent injunction of

respondent-defendant by contending that the suit land is situated within 'lal dora' and 'phirni' in abadi and is plot No.169. On the other hand, the stand of the respondent-defendant is that the suit land is having kharsa number. In the plaint itself, the plaintiffs themselves admitted that in the revenue record, the suit land has been recorded as shamlat. If it was so, the plaintiffs should have challenged that entry before the Revenue Authority, but they did not do so for the reason best known to them. The nature of suit land is shamlat deh and as per Section 13 of Punjab Village Common Lands (Regulation) Act, 1961, the jurisdiction to decide that issue vests with the Collector and not with the Civil Court. So, before granting permanent injunction, as sought by the plaintiffs, it is necessary to adjudicate upon the nature of suit property and the jurisdiction to decide that issue by the civil court is barred, as stated above.

5.1 The other contention raised by the appellants that suit land which has been numbered as plot No.169 and they are residing there since the time of their forefathers and constructed their residential houses and *chaans* etc., has no force since they did not produce any evidence regarding its demarcation. There is no evidence regarding installation of electricity connection in the suit land. From the evidence of PW1 and PW2, it is clear that the suit property is an open vacant land which is adjoining the abadi land. To substantiate their claim, the appellants also produced Field Book Ex.P3, but it does not bear the signature of competent authority and the site plan Ex.P4 bears the signature of

Sarpanch only whereas it was required to be signed by majority of the Panches of Village. Birkha Ram (since deceased), father of the plaintiffs, was already ejected from the suit land vide order dated 11.02.2003 by the court of Assistant Collector Ist Grade, Jagadhri and this fact was admitted by one of the plaintiff, namely, Yash Pal, but even then, the plaintiffs filed the present suit.

5.2 In view of above, it is clear that the plaintiffs failed to prove their possession over the suit property. The nature of suit property is shamlat land so the jurisdiction of civil court is barred. Hence, the relief of permanent injunction as sought by the plaintiffs cannot be granted.

6. The courts below have recorded concurrent findings of facts. There is neither any misreading of evidence nor any substantial question of law is involved in the present appeal. The same is without any merit and is dismissed accordingly.

7. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

February 29, 2024

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No