

2024.PHHC.149336



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

102-1

RSA- 2482-1993

Date of Decision: 14.11.2024

DARSHAN SINGH

... Appellant

VERSUS

AJIT SINGH (DECEASED) THROUGH HIS LR.s.

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. J.S. Virk, Advocate for the appellant.

Mr. K.S. Dadwal, Advocate for the respondent(s).

VINOD S. BHARDWAJ, J. (ORAL)

The appellant-plaintiff is in second appeal against the judgment and decree dated 22.10.1993 passed by the then District Judge, Hoshiarpur in Civil Appeal No.179 of 1991 whereby, he reversed the judgment and decree dated 23.07.1991 passed by the then Sub-Judge First Class, Hoshiarpur in Civil Suit No.22 of 06.03.1986.

Briefly summarized, the facts in the controversy before this Court are that the appellant-plaintiff had instituted a Suit for Permanent Injunction for restraining the respondent-defendant from encroaching or raising construction over the plot detailed in the head note of the said suit. It was claimed that before the Bandobast (settlement) of 1911-12, the plot in question was bearing Khasra No.4731 and was Shamlat Taraf Sundarian and was being commonly used as passage by the inhabitants of the village. During the settlement in the year



1911-12, the said plot was included in the *abadi deh* but it remained in the common use of the village community as a passage and for other common purposes. A well was also dug in the plot in dispute and the same was being used by the village community. On enforcement of the Punjab Village Common Land (Regulation) Act, 1961 (hereinafter to be referred to as 'the Act of 1961'), the plot in question got vested in the Gram Panchayat of the village and that the respondent-defendant was contemplating to encroach upon the plot in dispute and to convert it to their own exclusive use by staking a claim that the same was their own property despite the fact that they had no right to do so. Hence, the suit for injunction was filed.

The said suit was contested by the respondent-defendant, who pleaded that a pakka house had been built over the property for more than 50 years by Waryam Singh and that the said house was later owned by Piara Singh and Resham Singh sons of Waryam Singh and they remained in continuous possession of the same for the last more than 50 years, hence it was not a *shamlat* property. Additionally, the objections regarding jurisdiction as well as maintainability of the suit before the Civil Court were also raised by the respondent-defendant. They denied that the site in question was ever used as a passage and submitted that the site bearing Khasra no.4731 was included in the *abadi deh* of the village in the settlement for the year 1911-12 and upon inclusion of the same in the *abadi deh*, it ceased to be a passage. The respondents-defendants claimed themselves to have been in lawful and legal



possession of the suit property and that now the same has acquired the status of private property. The well in the property, known as “Gujri Da Khoo”, was dug up after the name of Gujri- mother-in-law of Waryam Singh. The well had dried up and had been in disuse and thus was no more in use for common purposes of the villagers.

On consideration of the pleadings as well as evidence led by the respective parties, the trial Court decreed the suit filed by the appellant-plaintiff by placing reliance on the demarcation conducted in accordance with “Aksh Shajra Latha” for the year 1945-46 of village Nadalon. It was held by the Civil Court that the evidence adduced amply proved that the site in question was a common passage and owned by the Gram Panchayat of the village. In the khasra paimaish Ex.P5, Khasra No.4731 was recorded in the ownership column as “common land of taraf Sundarian”. The documentary evidence thus established the claim of the appellant-plaintiff. Accordingly, the suit was decreed by the Court. The finding on the issue of maintainability and the bar of jurisdiction of the Civil Court as per Section 13 of the Act of 1961 was also considered and it was held that since the Gram Panchayat has not been impleaded as party, hence, the bar would not become operable.

Aggrieved of the said judgment and decree dated 23.7.1991, the respondents-defendants preferred an appeal before the District Judge, Hoshiarpur. The said appeal was eventually allowed by the learned District Judge, Hoshiarpur by observing that the Civil Court had no jurisdiction to



entertain and try the suit in view of the specific bar under Section 13 of the Act of 1961. Even though, on the issue of findings with respect to the respondent-defendant having proved his title over the suit land, it was noticed by the Appellate Court that no document of title in favour of Waryam Singh or his mother-in-law had been produced to prove on record, however, as the plot in dispute is meant for common use of villagers for parking the carts, storing the manure without hindrance for their passing through it, hence, it would fall within the definition of *shamlat deh* within the meaning of Section 2(g) of the Act of 1961 and hence, the Civil Court did not have the competence and jurisdiction to entertain the civil suit or to grant the relief of injunction. Thus, the suit was held to be not maintainable, but liberty was granted to the appellant-plaintiff to invoke the provisions of the Act of 1961 for seeking appropriate relief from the Collector. Operative of the judgment of the appellant Court reads thus:

“8. After close scrutiny of the record in the light of the submissions of the learned counsel for the parties, the finding of the learned Sub Judge under issue No.3, is not sustainable and deserves to be set aside.

9. The substance of the case set up by the plaintiff is that the suit plot is in use as a 'rasta' (passage) since before the settlement of 1911-12 and it continued to be used as such even after the said settlement on its inclusion in the abadi deh and was also recorded as rasta in the revenue record and it vested in the Gram Panchayat of the village after coming into force of the Act.



Significantly he has also stated that the disputed plot is also being used for other common purposes and a well is also in it which was used by the village community for drinking water.

10. The defendant-appellant on the contrary denied about the suit plot being a rasta or having been used as such or for other common purposes and rather asserted that it was inherited by Piara Singh and Resham Singh from their father Waryam Singh and they put him in possession and that the Kotha was constructed by Waryam Singh about 50 years back.

11. It is, therefore, obvious that the question which directly arises in the wake of the aforesaid conflicting pleas of the parties is as to whether the plot in suit is a passage and vested in the Gram Panchayat as Shamlat deh under the Act or is the private property of Piara Singh and Resham Singh as claimed by the defendant.

12. The jurisdiction of the civil court is barred by Section 13 of the Act to entertain or adjudicate upon the said question.

Clause (a) of section 13 ibid in terms provide that no Civil court shall have the jurisdiction to entertain or adjudicate upon any question whether any property or any right to or interest in any property or is not Shamlat Deh vested or deemed to have been vested in a Panchayat under the Act.

13. However, the learned Sub Judge relying upon the decision in Bhagu's case (supra) negated the said objection of the suit being barred by Section 13 ibid.

14. The ratio of that decision, however, it not attracted in the fact and circumstance of the case because even though the plaintiff did aver that the suit plot is also being used by him as a passage to



his house but in his testimony as PW.1 no such claim was made by him and on the contrary it was stated by him the disputed site is shamilat Deh. It came to be included in the abadi in 1911-12, Villagers generally use it as a passage and for storing manure and for parking the carts. There is a kotha and a well in it.xx". There is no reference by him in his statement about his using the disputed site or any portion of it as a passage or about his having no other passage for access to his house except through the disputed plot nor does he claim about the house abutting this plot. Apart from his own statement, there is no evidence except for the report of the Local Commissioner which does not substantiate the claim of the plaintiff about the disputed site being in use as a passage nor could the Local Commissioner indeed say so, the report of the local Commissioner only shows that the disputed site is comprised in khasra No. 4731 and is recorded as a Rasta in the revenue and settlement record.

Besides, copy of Shijra Kisatwar of settlement of 1884 (Ext.P.3) shows that the passage ends at the western corner of the plot comprised in khasra No.4731 and there is a passage down below towards the south of khasra No.4731 and 4730.

The map Ext.LC/1 prepared by the Local Commissioner as part of his report also shows that there is a passage comprised in khasra No.1902 on its eastern side and phirni is comprised in khasra No.1874.

15. The Civil Court could have the jurisdiction to entertain and adjudicate upon aforesaid question arising from the pleadings of the parties only if the plaintiff had been able to establish his plea that the disputed site is in use by him for a passage as access to his house as of right and about there being no other passage which is



not the case. In this situation, the ratio of the decision in Hukama and others Vs. Daulat Ram and others, 1987, P.L.J. 636 would be attracted in upholding the objections of the defendant-appellant of the jurisdiction of the Civil Court being barred by Section 13 ibid.

In that case the plaintiff filed a suit for declaration that they alongwith others were entitled to use the land measuring 22 kanals which was recorded in the revenue record as pond and meant for common use of the village community and was being used as such and had sought permanent injunction to retain the defendants from interfering with the aforesaid rights but the defendants in their written statement had denied the said allegations but the claim of the plaintiffs was upheld. However, in appeal, the learned Additional District Judge came to the conclusion that the suit land fell within the definition of the shamilat and therefore, Section 13 was a bar to entertain the suit, and the plaint was directed to be returned which order was challenged in Regular Second Appeal by the plaintiffs. Reliance was placed for the appellants on Bhagu's case but it was negatived pointing out that the plaintiffs had not alleged any special damage so as to maintain the suit. Reference was also made by the learned counsel for the appellant to the decision in Chanan Singh Vs. Balkar Singh 1986, P.L.J. 664 in support of the said view.

16. The finding of the learned Sub Judge under the additional issue, however, is unassailable.

Firstly, the objections of the defendant-appellant were vague and he did not point out as to in what manner the instructions of the High court were violated in carrying out the measurements by the Local Commissioner. As is evident from the report of the Local Commissioner he fixed the pucca points after recording the



statement of the parties including the defendant and took pains to locate the khasra No.4731 and measured it according to prescribed procedure. He had associated the patwari of the Halqa also in the matter.

It is also to be noticed that defendant in para No.1, of his written statement did not dispute that the site in dispute is comprised in khaara No.4731 and his plea was simply to the effect that it was the property of Waryam Singh and his wife and after their death' the two sons of Waryam Singh inherited and they put him in possession of the kotha constructed by Waryam Singh and that it was not a passage nor was it used as such.

The finding of the learned Sub Judge under additional Issue is, therefore, affirmed.

17. Even though it is not necessary to record a finding on merits on the controversy covered by issue No.1 but it may appear to be expedient in the ends of justice to do so.

18. No doubt in the settlement of 1882 the land comprised in the said Khasra number was recorded as rasta and so is the position in the khasra pamaish attached to the settlement giving the area of khasra number as 17 marlas and another portion of it as 10 marlas but the bald testimony of the plaintiff himself shows that it was not in use exclusively as a passage and in fact it is in the shape of plot and was outside the abadi of the village till 1911-12. It was in the settlement of that year that it was included in the abadi of the village. The shape of the plot is also suggestive of its character being more as a plot meant for or common purposes by the villagers like parking of carts and storing of manure as was deposed by the plaintiff himself. The report of the Local Commissioner and the evidence of the plaintiff as well as the



defendant would show that the Kotha is only in two marlas of this plot and at a small distance from that Kotha is a well which is not in use and is deserted and bushes are growing around it as also mentioned in the report of the Local Commissioner. There is no boundary wall and the plot is open except for the kotha on a small portion of it. There is, thus, no bar to the villagers passing through the plot but at the same time it cannot be described as a passage or rasta as such.

19. *The defendant was unable to produce any credible evidence of the ownership of Waryam Singh or his mother-in-law His own statement and that of his four witnesses namely, D.W.1 Piara Singh, DW-2 Shangara Singh, DW3 Harbhajan Singh and D.W.4 Mohan Lal at best proved that the kotha was constructed by Waryam Singh and used it as such for sometime. There is no document of title in favour of Waryam Singh or his mother-in-law. No document is claimed by his sons either.*

20. *The conclusion that can, therefore, be safely reached on the evidence is that the plot in suit is meant for common use of the villagers for parking the carts, storing the manure without hindrance for their passing through it and it would, therefore, be Shamilat Deh within the meaning of Section 2(g) of the Act.*

21. *However, in view of the finding under issue No.3 relief of injunction cannot be granted to the plaintiff.*

22. *In the result, the appeal is allowed. the judgment and decree of the trial court are set aside and the suit of the plaintiff-respondent shall stand dismissed as not being maintainable clarifying that it will be open to him or anyone else to invoke the provisions of the Act for the appropriate relief from the Collector. No order as to the costs in the circumstances of the case.”*



During the course of arguments, counsel for the appellant-plaintiff did not dispute the applicability of the Section 13 of the Act of 1961. He contends that he had already taken recourse to filing an appropriate petition before the Collector under Section 11 of the Act of 1961.

Since the counsel for the appellant-plaintiff fairly concedes that the bar under Section 13 of the Act of 1961 would be applicable to the facts and circumstances of the present case, I find that the judgment and decree dated 22.10.1993 passed by the District Judge, Hoshiarpur allowing the appeal filed by the respondent-defendant does not warrant any interference by this Court and the same is hereby affirmed. As the issue is being decided solely on maintainability, other issues are not being commented upon lest they may have an adverse impact on the rights of the respective parties.

Accordingly, the instant Regular Second Appeal is dismissed.

14.11.2024.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No