

In the High Court of Punjab and Haryana, at Chandigarh

**Civil Misc. No. 493-C of 2024 And
Civil Misc. No. 494-C of 2023
In/And Execution Second Appeal No. 13 of 2022 (O&M)**

Date of Decision: 24.01.2024

Dayawanti and Others

... Appellant(s)

Versus

Assistant Collector 2nd Grade-cum-Naib Tehsildar, Nahar and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. J.P.Sharma, Advocate
for the appellant(s).

Anil Kshetarpal, J.

CM-493-C-2024

1. For the reasons stated in the application, the same is allowed and delay of 147 days in filing an application for restoration of the appeal is condoned.

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2. For the reasons stated in the application, the same is allowed. The appeal is ordered to be restored at its original number and the same is taken up for hearing on the board of this Court.

ESA-13-2022

3. The appellants herein are the decree holders from the Civil Court. They filed a suit for the grant of decree of declaration against Sushil son of Bhai Ram and others claiming that they are the owners in possession

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of the property.

4. The defendants did not contest the suit. The suit was filed under Order I Rule 8 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”). On the basis of the *ex parte* evidence, the suit was decreed vide judgment dated 01.12.2015. The appellants filed the execution petition in which the objections were filed by the officials of the Revenue Department. It was asserted by the government pleader that the property in the revenue record is recorded as ‘*shamlat deh*’ and the Director General Land Records-cum-Inspector General, Registration, Haryana, has directed that mutation of the suit land in favour of the private individuals should not be sanctioned. The Executing Court has dismissed the execution petition.

5. Heard the learned counsel representing the appellants at length and with his able assistance, perused the paper-book.

6. The learned counsel representing the appellants contends that the property is ‘*shamlat panna ahiran*’ and not ‘*shamlat deh*’. He submits that this parcel of land belongs to Ahiran community and the Panchayat has no role to play.

7. This Court has considered the submissions of the learned counsel representing the petitioners.

8. Section 13 and 13A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to “the 1961 Act”), as applicable to the State of Haryana, are extracted as under:-

“13. Bar of Jurisdiction:-

No civil court shall have jurisdiction:-

(a) *to entertain or adjudicate upon any question, whether*

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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.*

13A Adjudication:-

- (1) Any person or in the case of a panchayai, either the panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is shamilat deh or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a panchayat under this Act, in the court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated:*

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Provided that no suit shall lie under this section in respect of the land or other immovable property, which is or has been the subject matter of the proceedings under section 7 of this Act under which the question of title has been raised and decided or under adjudication.

(3) *The procedure for deciding the suits under sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (Act 5 of 1908)."*

9. It is evident that jurisdiction of the Civil Court is barred to adjudicate upon any question, "whether any land or immovable property is or is not a 'shamlat deh'?"". Section 13A of the 1961 Act confers exclusive jurisdiction upon the Court of the Collector to adjudicate upon the dispute. Thus, obviously, the judgment passed by the Civil Court is without jurisdiction.

10. Keeping in view the aforesaid facts, the appellants, if so advised, may avail the remedy under the 1961 Act.

11. With the observations made above, the present appeal is dismissed.

12. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

January 24, 2024
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No