

129 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5425-2018(O&M)
Date of decision :18.03.2024

Kabul Singh and others ...Appellants

Vs.

State of Punjab and another ...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Abhishek Sahu, Advocate for
Mr. B.S. Bhalla, Advocate
for the appellants.

Mr. Kanav Singla, AAG, Punjab.

ANIL KSHETARPAL, J.(Oral)

1. In this regular second appeal, the plaintiffs assail the correctness of concurrent findings of the facts arrived at by the Courts below while dismissing the suit for the grant of decree of declaration that they are owner in possession of land measuring 24 kanals 12 marlas.
2. In substance, the plaintiffs claimed that they are proprietors of the village and the suit land was carved out after applying a pro-rata cut as a fine of consolidation of holdings, which was entered in the revenue record as *Mushtarka Malkaan*. However, subsequently in the year 1965, the land was recorded to be owned and possessed by the Gram Panchayat.
3. The defendant-Gram Panchayat while contesting the case claimed that the suit is barred under Section 11(1) of the Punjab Village Common Lands (Regulation) Act, 1961 and it was leased out to the plaintiffs in the year 2012-13.

4. Both the Courts below came to the conclusion that the Civil Court has no jurisdiction and in view of amendment in East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the suit land cannot be partitioned.

5. The learned counsel representing the appellants contends that previously this land was recorded in the revenue record as *Jumla Mushtarka Malkan*. He submits that the aforesaid expression itself denotes that the property vests in the proprietors and not in the Gram Panchayat.

6. This Court has considered the submission.

7. In substance, the plaintiffs want a decree of declaration that the suit property is not *shamilat deh*, which vests or deemed to have vested in the Gram Panchayat. Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 reads as under:-

"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. It is evident that the revenue record 1965, reflects that the property vests in the Gram Panchayat. In these circumstances, the jurisdiction of the

Civil Court is excluded from adjudicating upon any question, whether any property or any right or interest in any property is or is not *shamilat deh* vested or deemed to have vested in the Gram Panchayat. The power to adjudicate such disputes is vested in the Court of Collector under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961.

9. In view of the aforesaid facts, no ground for interference is made out.
10. Hence, dismissed accordingly.

18.03.2024

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Whether speaking/reasoned :
Whether Reportable :

(ANIL KSHETARPAL)
JUDGE

Yes	No
Yes	No