

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA No.854 of 2001 (O&M)****Mahavir Singh****. . . . Appellant****vs.****Gram Panchayat and others****. . . . Respondents****Reserved on: March 27, 2026****Pronounced on: April 01, 2026****Pronounced fully/operative part : Fully***** * * *****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA****Argued By:-** Mr. Amit Jain, Sr. Advocate with
Mr. Aryaman Thakur, Advocate for the appellant.

Mr. Sumit Sangwan, Advocate for respondent No.1.

DEEPAK GUPTA, J.

The present second appeal has been preferred by one of the plaintiffs, assailing the judgment & decree dated 05.12.2000 passed by the First Appellate Court, whereby the suit filed by the plaintiffs came to be dismissed upon reversal of the judgment & decree dated 27.03.1999 granted by the trial Court.

2. For the sake of clarity and to avoid any confusion, the parties shall be referred to as per their original status before the trial Court. The record of the trial Court, as available on the Document Management System (DMS), has been duly perused.

3.1 The factual matrix, in brief, is that the plaintiffs, residents of village Dhani Bhakran and claiming to be *biswedars* therein, instituted the suit seeking decree of declaration to the effect that they are owners in possession of the suit land measuring 7 kanal 18 marla, as reflected in the jamabandi for the year 1990–91. It was their specific case that prior to them, their father, Sheo Narain, was in cultivating possession of the suit land as owner, and upon his demise, the plaintiffs continued in possession thereof.

3.2 The grievance of the plaintiffs arose upon discovering that the defendant—Gram Panchayat, Dhani Bhakran, had allegedly procured sanction of Mutation No. 410 dated 10.09.1983 in its favour, clandestinely and without any lawful authority. According to the plaintiffs, the said mutation was illegal, void, and liable to be set aside, *inter alia*, on the ground that the suit land did not fall within the category of *shamlat deh* and, therefore, could not vest in the Gram Panchayat. It was further asserted that the mutation had been sanctioned without issuance of any notice to them, thereby violating principles of natural justice.

3.3 On these pleadings, the plaintiffs sought a decree of declaration affirming their ownership and possession over the suit land, along with a consequential relief of permanent injunction restraining the defendant from interfering in their possession.

4.1 Defendant—Gram Panchayat contested the suit raising various preliminary objections. It was contended that the jurisdiction of the Civil Court was barred under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”). The suit, instituted in the year 1996, was also pleaded to be barred by limitation, as the impugned mutation was stated to have been sanctioned as far back as in the year 1983. The plaintiffs were alleged to have no locus standi to institute the suit, and the suit was further stated to be bad for mis-joinder and non-joinder of necessary parties.

4.2 On merits, the defendant asserted that the plaintiffs had not approached the Court with clean hands. It was specifically pleaded that proceedings had earlier culminated in an order dated 31.07.1993 passed by the Assistant Director, Grade-I, Siwani, whereby Sheo Narain, the father of the plaintiffs, had been ordered to be ejected from the suit land. On the strength of the said order, it was contended that neither Sheo Narain nor the plaintiffs had any subsisting right to retain possession of the suit land. The suit was also alleged to be barred by the principle of *res judicata*. The defendant maintained that Mutation No. 410 had been validly sanctioned in

accordance with law and that the present suit had been filed merely to harass the Gram Panchayat and to unlawfully grab the land, which, according to the defendant, vested in the Gram Panchayat as *shamlat deh*. On these pleadings, the defendant prayed for dismissal of the suit.

5. The trial Court framed necessary issues. Both sides led oral as well as documentary evidence in support of their respective claims, which was thereafter duly appreciated by the trial Court.

6.1 On a comprehensive evaluation of the material on record, the trial Court returned finding that the suit land did not fall within the ambit of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”), and, therefore, could not be treated as *shamlat deh*. It was consequently held that the Gram Panchayat had no lawful claim over the suit property on the basis of such classification.

6.2 The trial Court further held that the plaintiffs had successfully established their ownership as well as possession over the suit land. While dealing with the objection regarding jurisdiction, it was observed that with the repeal of Sections 13-A and 13-B of the Act by the Haryana Amendment Act No. 9 of 1992, the only forum available to an aggrieved person for adjudication of title disputes was the Civil Court. Accordingly, it was held that the Civil Court possessed the requisite jurisdiction to entertain and decide the present suit.

6.3 However, it is pertinent to note that the issues relating to maintainability of the suit and the bar of *res judicata* were not adjudicated upon by the trial Court, as the same were stated to have not been pressed during the course of arguments.

6.4 In view of the aforesaid findings, the trial Court, vide judgment and decree dated 27.03.1999, decreed the suit in favour of the plaintiffs by declaring them to be owners in possession of the suit land and further restraining the defendant–Gram Panchayat from interfering in their possession except in due course of law.

7.1 Aggrieved against the said judgment, the defendant–Gram Panchayat preferred an appeal, which came to be allowed by the First Appellate Court.

7.2 The First Appellate Court, upon reappraisal of the record, reversed the findings of the trial Court on multiple counts. It was primarily held that, in view of the bar contained under Section 13 of the Act, the jurisdiction of the Civil Court to determine the nature of the suit land, particularly whether it constituted *shamlat deh*, was ousted. Consequently, the finding of the trial Court affirming its jurisdiction was set aside.

7.3 The Appellate Court further held that the suit was barred by the principle of *res judicata*. In this regard, reliance was placed upon the ejectment order dated 31.07.1993 (Ex.D-2), passed against Sheo Narain, father of the plaintiffs, by the Assistant Collector Grade-I, Siwani. It was observed that Sheo Narain had initially appeared in those proceedings but subsequently failed to contest the matter and was proceeded against ex parte. Importantly, the said ejectment order had attained finality, as no appeal or revision had been preferred against it. The plaintiffs, being successors-in-interest, were held to be bound by the said order.

7.4 The Appellate Court also found the suit to be barred by limitation. It was noticed that the impugned Mutation No. 410 had been sanctioned in September 1983, whereas the present suit was instituted only in the year 1996. Even otherwise, the suit had been filed beyond a period of three years from the date of the ejectment order dated 31.07.1993, thereby rendering it time-barred.

7.5 Additionally, it was observed that Mutation No. 410 pertained to a much larger extent of land, including land owned by *Shamlat Malkan Hasab Rasad Malgujari Khudkasht in possession of Malkan*. In such circumstances, the Appellate Court held that the suit, having been filed without impleading other co-sharers/proprietors of the village, was bad for non-joinder of necessary parties.

7.6 In light of the aforesaid conclusions, the First Appellate Court set aside the judgment and decree dated 27.03.1999 passed by the trial Court and, vide judgment dated 05.12.2000, dismissed the suit filed by the plaintiffs. Thus, the findings of the trial Court declaring the plaintiffs to be owners in possession were held to be unsustainable.

8.1 Assailing the judgment and decree passed by the First Appellate Court, learned senior counsel appearing for the appellant has advanced elaborate submissions questioning the legality of the reversal.

8.2 It is contended, at the outset, that Mutation No. 410 dated 10.09.1983, on the basis of which the Gram Panchayat claims title over the suit land, has been sanctioned merely on the strength of a Government letter dated 22.09.1961, which, according to the learned senior counsel, is wholly impermissible in law and cannot confer any proprietary rights. In support of this submission, reliance has been placed upon the judgments in ***Mohinder Singh v. Commissioner, Ferozepur Division, Ferozepur, 1993(1) RRR 400***; and ***Joginder Singh now represented by his LRs v. The Gram Panchayat, Village Balian, District Sangrur and others, 2009 (3), PLR 270***.

8.3 Developing the argument further, it is submitted that proceedings under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”) are summary in nature and are confined only to the eviction of unauthorized occupants. Such proceedings do not entail a final adjudication on questions of title. Consequently, any order passed in such proceedings cannot operate as *res judicata* in subsequent proceedings, where title is directly in issue. In this regard, reliance has been placed upon ***Pritam Dass and others v. The Joint Director, Panchayats Punjab and others, 2012 (2), LAR 1***; and ***Raj Karan v. State of Haryana and others, 2023 (2) PLR 120***.

8.4 It is further argued that since the proceedings under Section 7 of the Act did not involve any determination of title, the findings recorded

therein cannot operate as *res judicata* or give rise to any estoppel against the plaintiffs in the present proceedings.

8.5 Learned senior counsel has further argued that, as per the consistent revenue entries, the suit land has been recorded as owned by *Shamlat Malkan Hasab Rasad Malgujari*, and has been shown in self-cultivation and possession of *Makbuja Malkan* since the very inception. It is emphasized that the land was never reserved for any common purposes of the village, nor has it ever been utilized by the Gram Panchayat for any such purpose. On the contrary, the possession of Sheo Narain, and thereafter of the plaintiffs, stands duly reflected in the revenue record at least since the year 1982–83. Attention has also been drawn to the statements of the witnesses examined on behalf of the defendant, wherein the status of Sheo Narain as a *bisweddar* (proprietor) of the village has been admitted. On the strength of these facts, it is contended that the land in question, though recorded as *Shamlat Malkan*, continued to remain in possession of the proprietors and, having never been used for common purposes, would not fall within the definition of *shamlat deh* so as to vest in the Gram Panchayat.

8.6 In support of this proposition, reliance has been placed upon the Full Bench judgment of this Court in ***Jai Singh and others v. State of Haryana, 2003 (2) PLR 658***, which has since been affirmed by the Hon'ble Supreme Court in ***The State of Haryana v. Jai Singh and others (Civil Appeal No. 6990 of 2014, decided on 16.09.2025)***.

8.7 Another limb of the argument is that Section 13-A of the Act, which earlier provided a remedy for determination of title, stood repealed by the Haryana Amendment Act No. 9 of 1992 and was reintroduced only in the year 1999. Thus, for the interregnum period between 1992 and 1999, there existed no statutory forum for adjudication of such disputes. In that situation, the Civil Court alone had the jurisdiction to entertain a suit for declaration of title. Accordingly, it is contended that the present suit, instituted in the year 1996, was perfectly maintainable before the Civil Court.

8.8 On the basis of the aforesaid submissions, learned senior counsel prays that the judgment passed by the First Appellate Court be set aside and that of the trial Court be restored by allowing the present appeal.

9. *Per contra*, learned counsel appearing for respondent No.1—Gram Panchayat has supported the impugned judgment. It is contended that an ejectment order had already been passed against Sheo Narain, father of the plaintiffs, in the year 1993, and the said order having attained finality, the plaintiffs, being his successors, are bound by the same and are estopped from re-agitating the matter by way of the present suit. It is further argued that, in view of the express bar contained under Section 13 of the Act, the jurisdiction of the Civil Court is excluded in such matters, and, therefore, the suit itself was not maintainable.

10. This Court has heard learned counsel for the parties at length and has carefully perused and appreciated the entire record.

11. Upon consideration of the rival submissions and perusal of the record, this Court finds that the controversy essentially hinges upon the true nature and legal character of the suit land.

12. The revenue record indicates that the land is recorded as *Shamlat Malkan Hasab Rasad Malgujari*, with possession reflected as that of *Makbuja Malkan*, i.e., the proprietors. The name of the Gram Panchayat came to be recorded only on the basis of Mutation No. 410 dated 10.09.1983, which itself is founded upon a Government communication of 1961, which is impermissible in law and cannot confer any proprietary rights, as held in ***Mohinder Singh v. Commissioner, Ferozepur Division, Ferozepur***; and ***Joginder Singh v. Gram Panchayat of Village Balian, District Sangrur***, (*supra*)

13. It is well settled that mutation entries do not confer title and cannot, by themselves, alter proprietary rights, particularly when based merely upon executive instructions. Therefore, respondent Panchayat can not claim title only on the basis of Mutation No. 410 dated 10.09.1983.

14. Further, proceedings under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 are summary in nature, not entailing final adjudication on questions of title, unless issue is raised. Consequently, any order passed in such proceedings cannot operate as *res judicata* in subsequent proceedings, where title is directly in issue, as has been held in ***Pritam Das v. Joint Director, Panchayat Punjab***; and ***Raj Karan v. State of Haryana (supra)***. Therefore, respondent Gram Panchayat can not be given advantage of eviction order dated 31.07.1993, unless issue of title is determined.

15. Further, when the matter is examined in light of the latest legal position, particularly as settled by Hon'ble Supreme Court in ***State of Haryana v. Jai Singh and others (2025) [supra]***, this Court finds that certain material aspects have not been properly examined by the Courts below.

16. It is now well settled that land described as *Shamlat Malkan Hasab Rasad Malgujari*, which remains in possession of proprietors and is not shown to have been reserved for common purposes in the consolidation scheme, does not vest in the Gram Panchayat merely by virtue of such description. The crucial test, therefore, is whether the land was ever reserved for common purposes under the consolidation proceedings.

17. In the present case, although the revenue entries indicate ownership as *Shamlat Malkan* and possession with proprietors, there is no clear or conclusive finding recorded by either of the Courts below as to whether the land was reserved for common purposes in the consolidation scheme prepared under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948.

18. Further, the First Appellate Court has invoked the bar under Section 13 of the Act, without first conclusively determining, whether the land in question answers the description of shamlat deh, which is a jurisdictional pre-condition.

19. Similarly, the finding regarding res judicata based upon the ejectment order dated 31.07.1993 also requires reconsideration, particularly in view of the legal position that proceedings under Section 7 of the Act are summary in nature and the question of title would operate as res judicata, only if it had been specifically raised and finally adjudicated.

20. The aspect of limitation and non-joinder of parties has also not been examined in the proper legal perspective.

21. In view of the above, this Court is of the considered opinion that the matter requires fresh adjudication on the foundational issues after affording adequate opportunity to both parties to lead evidence.

22. Accordingly, the present appeal is partly allowed. The judgment and decree dated 05.12.2000 passed by the First Appellate Court are hereby set aside. The matter is remanded to the learned First Appellate Court for fresh decision in accordance with law, after affording opportunity to the parties.

23. The First Appellate Court shall specifically consider and determine the following issues:

- Whether the suit land, though recorded as *Shamlat Malkan Hasab Rasad Malgujari*, was ever reserved for common purposes under the consolidation scheme prepared under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948?
- Whether the land continued to remain in possession of proprietors (Makbuja Malkan), and if so, what is its legal effect in light of the law laid down by Supreme Court in ***The State of Haryana v. Jai Singh and others (2025)***?
- Whether the bar of jurisdiction under Section 13 of the Act is attracted in the facts of the present case, particularly after determination of the nature of the land?

- Whether the ejectment order dated 31.07.1993 passed under Section 7 of the Act operates as res judicata, and specifically, whether the question of title was raised and finally adjudicated therein?
- Whether the suit is barred by limitation in the facts and circumstances of the case?
- Whether the suit is bad for non-joinder of necessary parties, and if so, its effect?

24. The parties shall be at liberty to lead additional evidence, particularly with regard to the consolidation record and the reservation of land for common purposes.

25. The learned First Appellate Court shall endeavour to decide the appeal expeditiously, preferably within a period of six months from the date of receipt of a certified copy of this judgment. No order as to costs.

April 01, 2026
Sarita

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No

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