

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 546 OF 2017

IN THE MATTER OF:

SATYAPAL AND OTHERS APPLICANTS

VERSUS

MINISTRY OF ENVIRONMENT OF FOREST
AND CLIMATE CHANGE & ORS RESPONDENTS

I N D E X N E X T D.O.H-13.08.2025

S.No.	Particulars	Page
1.	ADDITIONAL REPLY AFFIDAVIT ALONG WITH ADDITIONAL DOCUMENT ON BEHALF OF RESPONDENT NO. 7	1-4
2.	<u>ANNEXURE R/1</u> A Copy of the Judgment and Order dated 30.01.2017 passed by the Ld. Addl. Civil Judge(Sr. Division) Fatehabad in Civil Suit No.223-CS of 2014	5-35
3.	<u>ANNEXURE R/2</u> A Copy of the Judgement and order dated 23.03.2023 passed by Ld. Addl CJM, fatehabad in Crl.case no.319-I of 2017	36-49



(Sachar Anand)
Advocate for the Respondent No.7
14, 1st Floor, National Park
Lajpat Nagar-IV, New Delhi-110024
Phone No.-9958792346
Email- sachar_anand@yahoo.co.in

Place: New Delhi
Dated: 15.04.2025

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

OA NO. 546 OF 2017

IN THE MATTER OF

SATYAPAL AND OTHERS APPLICANTS

VERSUS

MINISTRY OF ENVIRONMENT OF FOREST

AND CLIMATE CHANGE & ORS RESPONDENTS

**ADDITIONAL REPLY AFFIDAVIT ALONG WITH ADDITIONAL
DOCUMENT ON BEHALF OF RESPONDENT NO. 7**

I Ashok Jakhar, S/o Chootu Ram Jakhar, Sarpanch, V.P.O Dhingsra, District Fatehabad, do hereby solemnly affirm and declare as under:-

1. That the present Original application OA No.546 of 2017 has been filed by the applicants alleging inter-alia therein that the loss to environment has been caused by cutting of trees without permission which were standing on the Village Common Land Commonly called Shamlat Deh and doing this the respondent has contravened notification no.SO8/P.A.2/1900/S.4/2013 dated 04.01.2013 issued by the State Government which prohibits cutting of the trees or timber without permission in areas specified in its annexed schedule.
2. That I am the Respondent No.7 in the present OA and am well conversant with the facts and circumstances of the case and am



07 APR 2025

competent to swear this affidavit, though, the answering respondent has already filed his detailed reply before this Hon'ble Tribunal on 28.11.2018, which kindly be read as part and parcel of the present reply as well and the same is not being reproduced herein for the sake of brevity, however, the answering Respondent No.7, is filing the present Additional reply/documents in terms of order dated 10.09.2024 as well as order dated 13.12.2024 passed by this Hon'ble Tribunal in the present OA No.546 of 2017.

3. That at the outset it is submitted that the Present application is not maintainable and tenable in law as there is no averment at all in the OA as to how the land in question comes under the heading of reserved forest or the protected forest area and when it was declared so.
4. *That in this regard it is further pertinent to mention here that as the land in question in the present case under the dispute is neither owned by the Government or by local body nor the land in question is the public land, rather, the land in question is a private land as is evident from the perusal of Judgment passed by the Ld. Addl. Civil Judge (Senior Division), Fatehabad in Civil Suit No.223-CS of 2014 titled as Brij Bhushan etc. vs. Gram Panchayat Dhingsra etc.*
5. This suit was filed by the plaintiffs therein seeking as declaration to the effect that the Plaintiffs are lawful owners as co-sharers of the land comprised in *khewat no.119 Kitat 17 measuring 192 Kanals 04 marlas and Khewat no.120 Kitat 198 measuring 1381 kanals 02 marlas, situated at village dhingsar, Tehsil and District Fatehabad on the basis of the sale deed no.4825 dated 07.09.2011, mutation no.4365 dated 01.10.2011, sale deed no.6051 dated*



0 1 APR 2024

15.11.2011, sale deed no.6052 dated 15.11.2011 and sale deed no.6193 dated 21.11.2011 and on the basis of these title, the plaintiffs sought possession of the suit land from the Tehsildar, Fatehabad who has been appointed as receiver by the orders of the Sub-Divisional Magistrate, Fatehabad vide Judgment and Order dated 30.01.2017, and the Ld. Court ordered that the plaintiffs are lawful owners as co-sharers of the land comprised in Khewat No.119 Kitat 17 measuring 192 Kanals 04 marlas and Khewat no.120 kitat 198 measuring 1381 kanals 02 marlas, situated at village Dhingsara and allowed lawful possession of the plaintiff and copy of the Judgment and Order dated 30.01.2017 passed by the Ld. Addl. Civil Judge(Sr. Division) Fatehabad in Civil Suit No.223-CS of 2014 titled as Brij Bhushan etc. vs. Gram Panchayat Dhingsraetc is annexed herewith as **Annexure R/1**.

6. That the answering respondent has followed the due process and necessary permissions have been taken from the competent authority for the removal of the shrubs and vegetation from the disputed area. It is also submitted that the aforesaid area was neither declared as the reserved forest nor comes under the category of forest under Forest(Conservation) Act, 1980. It is pertinent.
7. Pertinently, an FIR No.257 dated 07.09.2016, which was also registered against the answering respondent under Section 188, 447 IPC for destruction of trees and violation of the orders passed under Section 145 of Cr.P.C. and vide Judgment and order dated 23.03.2023 in Crl. Case No.319-I of 2017 it was held that there is no evidence on record to prove that any of the Kikar or Neem tree was sold by Sarpanch/answering respondent for his benefit and



0 / 1 / 2023

copy of the Judgement and order dated 23.03.2023 passed by Ld. Addl CJM, fatehabad in Crl.case no.319-I of 2017 is annexed herewith as **Annexure-R/2**.

Therefore, the OA is devoid of merit and hence the present Original Application merits dismissal.

Aiakhari
DEPONENT

VERIFICATION

Verified at fatehabad on this 7th day of February, 2025 that the facts stated in the above affidavit are true to best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

Contents of the Affidavit are Explain to the Deponent who is /are Identified by Sh. *Aiakhari* DEPONENT

Power filed

Ush
NOTARY, FATEHABAD



ATTESTED
Ush
NOTARY
FATEHABAD-125050

07 APR 2025

ANNEXURE R/1

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 1

In the Court of Sh. Vikas Gupta, Addl. Civil Judge (Senior Division), Fatehabad (UID no. HR-0224).

CIS no.CS-3763 of 2014
Civil Suit No. 223-CS of 2014
Date of Instt:- 21.07.2014
Date of Decision: - 30.01.2017.

1. Brij Bhushan aged 48 years son of Sh. Rattan Lal Bansal, resident of House no. 276, E-Block, Sirsa, Tehsil and District Sirsa,
2. Smt. Aasha Rani, aged 50 years, wife of Padam Kumar Bansal son of Sh. Bansi Dhar Bansal,
3. Smt. Sunita Bansal, aged 35 years, wife of Amit Bansal son of Sh. Padam Kumar Bansal, residents of near City Police Station, Sirsa, Tehsil and District Sirsa.

-----Plaintiffs

Versus

1. Gram Panchayat Dhingsara, Tehsil and District Fatehabad, through its Sarpanch,
2. Subhash Jakhar, Ex-Sarpanch,
3. Vijay Thakarwal, Vice President, Committee,
4. Shankar Lal, Lumberdar, Member Committee,
5. Subhash Mood, Member Committee,
6. Devi Lal Dudi, Vice President Committee,
7. Preet Pal Dudi, Member Committee,
8. Om Parkash Fauji, Member Committee,
9. Bhaga Ram Rav, Member Committee,
10. Satpal Cashier, Committee,
11. Bajrang Singh, Member Committee,
12. Pepa Singh, Member Committee,
13. Biloo Singh Member Gram Sabha,
14. Satpal Singh Member Gram Sabha,
15. Dilawar Singh, Member Gram Sabha, all residents of village Dhingsara, Tehsil and District Fatehabad.

-----Defendants.

Suit for Declaration

Present:- Sh. S.K.Batra, Advocate for the plaintiffs.
Sh. J.S.Rana, Advocate for defendant no.1.
Sh. S.K.Jain, Advocate for defendants no.2 to 6 and 8 to 13.
Defendants no. 7, 14 and 15 already ex parte v.o.d
17.10.2014, 30.08.2014, 25.11.2014

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 2

Judgment:-

Plaintiffs have filed the present suit for a decree of declaration to the effect that the plaintiffs are lawful owners as co-sharers of the land comprised in khewat no. 119 kitat 17 measuring 192 kanals 04 marlas and khewat no. 120 kitat 198 measuring 1381 kanals 02 marlas, situated at village Dhingsara, Tehsil and District Fatehabad, previously comprised in khewat no. 83, khatoni no. 458 to 461 kitat 214 total land measuring 1573 kanals 06 marlas, as per copy of jamabandi for the year 2005-2006, on the basis of sale deed no. 4825 dated 07.09.2011 and resultant mutation no. 4365 sanctioned on 01.10.2011, sale deed no. 6051 dated 15.11.2011 and sale deed no. 6052 dated 15.11.2011 in favour of the plaintiff no.1 and sale deed no. 6193 dated 21.11.2011 in favour of plaintiffs no. 2 and 3 and on the basis of their lawful title, the plaintiffs are entitled to the possession of the suit land from the Tehsildar, Fatehabad, who has been appointed as receiver by the orders of the Sub Divisional Magistrate, Fatehabad by exercising his powers under sections 145/146 (1) of Cr.P.C.

2. Precisely stated, it has been mentioned in the plaint that the plaintiffs are co-sharers in possession of the land comprised in khewat no. 119 kitat 17 measuring 192 kanals 04 marlas and khewat no. 120 kitat 198 measuring 1381 kanals 02 marlas, situated at village Dhingsara, Tehsil and District Fatehabad, previously comprised in khewat no. 83, khatoni no. 458 to 461 kitat 214 total land measuring 1573 kanals 06 marlas, as

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 3
per copy of jamabandi for the year 2005-2006. Plaintiff no. 1 purchased
the land measuring 06 kanals 04 marlas being 62/15733 share of the total
land measuring 1573 kanals 06 marlas comprised in khewat no. 83,
khatoni no. 458 to 461 kitat 214, situated at village Dhingsara, Tehsil and
District Fatehabad, as per copy of jamabandi for the year 2005-2006 vide
registered sale deed no. 4125 dated 07.09.2011 executed by Smt. Uchhal
Kanwar widow, Lokender Singh, Parveen Singh sons of Randhir Singh
son of Berishal, residents of village Dhingsara, Tehsil and District
Fatehabad. Plaintiff no. 1 also purchased land measuring 05 kanals 06
marlas 06 sarsai from Tej Singh son of Jai Singh son of Govind Singh,
Karan Singh son of Jitender Singh, Smt. Madan Kanwar, Magan Kanwar,
Prem Kanwar daughters of Jai Singh son of Govind Singh, Sudesh
Kanwar widow, Anju Kanwar daughter, Dharambir son of Shakti Singh
son of Jai Singh, Smt. Raj Kanwar widow, Bhawani Singh, Kesar Singh
sons of Man Singh son of Jai Singh @ Jaimal Singh, Smt. Kamlesh
Kanwar widow, Sipi Kanwar, Sanju Kanwar daughters, Bhagender Singh
son of Bhim Singh son of Jai Singh @ Jaimal Singh, residents of village
Dhingsara, Tehsil and District Fatehabad, vide sale deed no. 6051 dated
15.11.2011 out of this khewat and plaintiff no.1 further purchased land
measuring 19 kanals 17 marlas being 794/62932 share of the total land
measuring 1573 kanals 06 marlas comprised in khewat no. 83, khatoni no.
458 to 461 kitat 214, situated at village Dhingsara, Tehsil and District
Fatehabad, vide registered sale deed no. 6052 dated 15.11.2012 and

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 4
plaintiffs no. 2 and 3 also purchased the land measuring 131 kanals 02
marlas being 2622/31466 share of the total land measuring 1573 kanals 06
marlas comprised in khewat no. 83, khatoni no. 458 to 461 kitat 214,
situated at village Dhingsara, Tehsil and District Fatehabad, vide
registered sale deed no. 6193 dated 21.11.2011 and as such, the plaintiffs
are co-sharers in possession of the land comprised in khewat no. 83,
khatoni no. 258 to 461 kitat 214, as per copy of jamabandi 2005-2006,
which is now comprised in khewats no. 119 and 120, as per copy of
jamabandi for the year 2010-2011.

3. It has been further averred that the Gram Panchayat of village
Dhingsara, Tehsil and District Fatehabad i.e. defendant no. 1 and the other
residents of village Dhingsara, Tehsil and District Fatehabad i.e.
defendants no. 2 to 15 and the defendants no. 2 to 15 have got no lawful
right title or interest in the above referred suit land. Previously the Gram
Panchayat i.e. defendant no. 1 filed a suit in the Court of Assistant
Collector, 1st Grade, Fatehabad, Tehsil and District Fatehabad, claiming
the total land measuring 1466 kanals 2 marlas to be shamlat-deh. The
Gram Panchayat claimed that the land in question has vested in the Gram
Panchayat i.e. defendant no. 1, as shamlat-deh and therefore, the Gram
Panchayat be declared owner of the land measuring 1466 kanals 02
marlas and the revenue entries be also entered in favour of the Gram
Panchayat in respect of the above said land. The Assistant Collector Ist
Grade, Fatehabad dismissed the suit vide order dated 16.04.1986 holding

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 5

that this land belongs to the proprietors as their private land and it does not vest in the Gram Panchayat as shamlat-deh and that this land does not come within the preview of section 2 (g) of Punjab Village Common Lands Act. The proprietors whose names figured in the revenue record as owners were declared owners of the land in question. Aggrieved by the order dated 16.04.1986 passed by Assistant Collector Ist Grade, Fatehabad, the Gram Panchayat i.e. defendant no. 1 filed Executive Appeal no. 595 of 1986 in the Court of Collector, Hisar and the Collector, Hisar dismissed the appeal vide order dated 21.05.1994 holding that the land belongs to the proprietors and does not fall under the preview of section 2 (g) of the Punjab Village Common Lands Act. The proprietor namely Jawahar Singh also filed a civil suit for injunction against the Gram Panchayat i.e. defendant no. 1 and the said suit was decreed vide judgment and decree dated 25.08.1994, passed by the Court of Sh. Dharam Pal, the then learned Additional Senior Sub Judge, Fatehabad. The Gram Panchayat filed a Civil Appeal no. 46 of 1994 against the order dated 25.08.1994. The said appeal was also dismissed vide judgment and decree dated 03.04.1998 passed by the Court of Sh. A.K.Raghav, the then learned Additional District Judge, Hisar and thereby the Gram Panchayat was restrained from dispossessing the proprietor Jawahar Singh from the land in question without following the due course of law. Thereafter, the Gram Panchayat further filed RSA No. 2891 of 1998 before the Hon'ble Punjab and Haryana High Court against the judgment and decree dated

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 6
03.04.1998. The Gram Panchayat also filed a civil Writ Petition no. 11488
of 1994 titled as “Gram Panchayat village Dhingsara versus State of
Haryana and others” challenging the order dated 16.04.1986 passed by
the Assistant Collector Ist Grade, Fatehabad. Both the RSA no. 2891 of
1998 and the CWP no. 11488 of 1994 were decided together and both
were dismissed by the Division Bench of the Hon’ble Punjab and Haryana
High Court vide order dated 24.03.2009. Thereafter the Gram Panchayat
further filed SLP (Civil) no. 31954 of 2009 against the order dated
24.03.2009 passed in CWP no. 11488 of 1994 before the Hon’ble Apex
Court. The Hon’ble Supreme Court was pleased to dismissed the same
vide order dated 30.11.2010.

4. It has been further averred that it is very much clear that the
land in dispute is not shamlat land and the proprietors whose names are
described in the revenue record are lawful owners of the same, which has
already been decided from the Court of Assistant Collector Ist Grade,
Fatehabad up to the Hon’ble Supreme Court of India and the decision has
become final in this regard. The plaintiffs have purchased the land from
the proprietors, who were owners in possession of the land in dispute as
per revenue record. The details of the purchase of the land by the
plaintiffs is given above and as such the plaintiffs have stepped into the
shoes of the proprietors, who were owners-in-possession of the suit land
and sold the same in favour of the plaintiffs.

5. It has been further averred that defendants no. 2 to 15

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 7
succeeded in getting a kalandra filed under political pressure, before the
Sub Divisional Magistrate, Fatehabad, Tehsil and District Fatehabad.
Defendants no. 2 to 15 also succeeded in getting an order passed by the
Sub Divisional Magistrate, Fatehabad on 18.06.2012 under sections
145/146 (1) of Cr.P.C., whereby the land in dispute was ordered to be
attached and the Tehsildar, Fatehabad was appointed as receiver in respect
of the entire land. In compliance of the order dated 18.06.2012 passed by
the Sub Divisional Magistrate, Fatehabad, the possession of the land was
taken by the Tehsildar Fatehabad in the capacity of the receiver appointed
by the orders of Sub Divisional Magistrate, Fatehabad, vide rapat no. 318
dated 29.06.2012 and since then the possession of the entire land is with
the Tehsildar Fatehabad, being receiver.

6. It has been further averred that one Baba Gopal Dass
declared openly that *shilanayas* ceremony for the construction of Goshala
will be conducted on the spot i.e. the land, which is subject matter of the
proceedings under section 145 of Cr.P.C., in collusion with the Gram
Panchayat and the local Administration and the bricks were installed as
shilanayas for the construction of Goshala. Since the land was attached
and the possession has been taken over by the Tehsildar, the plaintiffs
filed an application dated 01.11.2012 before the Tehsildar, Fatehabad in
this regard in order to know that why the *shilanayas* and *havan* etc. was
allowed in spite of the fact that the land in possession of the receiver. On
the application of the plaintiffs, a report by the Halka Patwari was made to

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 8
the effect that *havan* ceremony was done by 100's of peoples of the village on 29.10.2012 and 10/15 bricks are found to be installed with cement $\frac{1}{2}$ foot under the earth and the Kanungo, Dhingsara also reported that on 02.10.2012 *havan* was done on the disputed property, which is under section 145 of Cr.P.C. and some bricks were installed under the earth. In these circumstances, the Tehsildar, Fatehabad allowed the wrong doers how claimed the land in question for the construction of Goshala in collusion with Gram Panchayat i.e. defendant no. 1 and some private persons i.e. defendants no. 2 to 15.

7. It has been further averred that the plaintiffs have also filed a CWP no. 2220 of 2013 before the Hon'ble Punjab and Haryana High Court, which was disposed of on 04.09.2013 thereby directing the Superintendent of Police, Fatehabad to take the necessary action against the concerned party forth with. Even thereafter, the private persons started raising construction on the land comprised in khasra no. 107//19, 20 and constructed a boundary wall of bricks and no action has been taken by the Tehsildar, who is receiver of the land and defendant no.1 in spite of the information and the application by the plaintiffs. On 20.02.2014, one Mahender Singh son of Ami Lal resident of village Dhingsara, Tehsil and District Fatehabad, cut a tree and took away the wood from the land under the prohibitory order. He loaded the wood in his Tractor-trolley and took away. The application was also given to the SHO, Bhattu Kalan in this regard, but no action had been taken. Some private persons of the village

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 9
along with outsiders, in connivance with the Gram Panchayat of the village, are bent upon to forcibly possess the land in dispute. Sh. Baljeet Singh, who was posted as Sub Divisional Magistrate, Fatehabad was on the verge of retirement and was to retire on 30.06.2014. He under political pressure, in connivance of the Gram Panchayat of village Dhingsara and in order to please the private persons and the alleged *Gochar Bhumi Bachao Committee*, on the alleged application filed by the alleged *Gochar Bhumi Bachao Committee*, passed an illegal order without any notice to the plaintiffs and other persons, who are party to the proceedings under section 145 of Cr.P.C. and without giving any opportunity of hearing to the plaintiffs and other persons, who are party to the proceedings under section 145 of Cr.P.C., in the anti-date in order to cause wrongful loss to the plaintiffs and other land owners and to wrongful gain to the wrong doers, who are not following the law. By way of the order the Sub Divisional Magistrate, Fatehabad has wrongly and illegally allowed the residents of the village to use the land as described in this order by way of relaxation in the previous order under section 146 (1) of Cr.P.C. The plaintiffs are lawful owners on the land in dispute and are entitled to take possession of the land in dispute from the Tehsildar, Fatehabad (Receiver) who has taken the possession of the land in dispute under the orders passed by the Sub Divisional Magistrate, Fatehabad under section 145/146 (1) of Cr.P.C. Hence, the present suit.

8. Notice of suit was given to the defendants, whereupon

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 10
defendant no.1 appeared and filed his written-statement taking
preliminary objections on the grounds of maintainability, cause of action,
locus standi, clean hands etc.

9. On merits, it has been averred that the suit property has been
purchased by the plaintiffs from the proprietors. Earlier, this land was
shamlat-deh and it has been recorded in the name of the Gram Panchayat.
It has been further submitted that after taking the land in dispute as
shamlat-deh in the revenue record, the mutation was sanctioned in favour
of the Gram Panchayat. Therefore, this land is being used for sitting and
grazing the animals. But, the Court of Assistant Collector Ist Grade,
Fatehabad has taken this land as the ownership of the proprietor. It has
been further submitted that keeping in view the possibility of dispute, the
Sub Divisional Magistrate, Fatehabad has taken the proceedings under
sections 145 and 146 of Cr.P.C. on 18.06.2012. Due to vacant land, on
this land, Goshala for sitting the animals has been constructed, which is of
old construction, whereas the remaining land has been left for animals.
Denying all other averments of the plaint, dismissal of the present suit has
been made.

10. Whereas defendants no.2 to 6 and 8 to 13 filed their separate
joint written-statement taking preliminary objections on the grounds of
maintainability, cause of action, locus standi, mis-joinder and non-joinder
of necessary parties, concealment of true and material facts, estoppel,
jurisdiction etc.

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 11

11. On merits, it has been submitted that the alleged sale-deeds in favour of the plaintiffs are a result of fraud and misrepresentation and active concealment of the facts with the connivance of the officials of the revenue department as well as Sub Registrar and the parties to the alleged sale-deeds and the subsequent mutations are liable to be cancelled or set-aside. The vendors of the alleged sale-deeds were not the owners of the land, nor they have any right to alienate the land in dispute as the land in dispute is a part and parcel of *Uprahan Johar* which was left by the competent authority at the time of consolidation under the scheme as described in *Sharat Wazubal Arz* prepared by consolidation authorities at the time of consolidation, which was passed by the villagers in the *Ijlas Aam*, in which khasra numbers of the land has been mentioned therein.

12. It has further been averred that as per the *Wazubal Arz* the land in dispute is not the property of the vendors or the plaintiffs. Hence, the plaintiffs have no concern with the land in dispute. The defendants being residents of village Dhingsara are legally entitled to use the land in dispute for common purpose. The land in dispute is not in possession of the plaintiffs. Hence, the suit is not maintainable and liable to be dismissed and the alleged sale-deeds are illegal and void, hence, liable to be set-aside.

13. It has been further submitted that the Gram Panchayat Dhingsara defendant no.1 has already collided with the plaintiffs as the Sarpanch of the Gram Panchayat Jawahar Singh in the name of his wife

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 12 has already filed the proceedings of injunction suit against the defendants. Sarpanch Gram Panchayat Jawahar Singh is a very cunning and clever person. The plaintiffs and the Sarpanch want to grab the property of village Dhingsara, which has been left in consolidation proceedings for the welfare of general public at large. Hence, the answering defendants being inhabitants of village Dhingsara have the interest in the property in dispute and they are duty bound to protect the rights of the village community.

14. It has been further submitted that the previous litigation is not binding upon the rights of the answering defendants as they were not the party to that litigation. The property in dispute is "SHAMLAT DEH" and is used by all the village community for the welfare of the village. Once the property has been kept reserve for a particular work i.e. mentioned in the *Wazubal Arz* then the purpose of the use of that property cannot be changed. Hence, the land in suit is "SHAMLAT DEH" and most of the property has been utilized for common purposes just like "MANDIR, SCHOOL, ROADS and GAUSHALA etc. The land being *banjar kadim, uprahan, johar*, which does not vest with the plaintiffs and any other persons who claimed to be owners. The land in dispute and others is the land left in consolidation proceedings as mentioned in *Wazubal Arz* for common purposes and is being utilized by all the villagers of village Dhingsara. None can be obstructed to get tethering their animals and to get drink the water to animals. Hence, the land is used for common

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 13 purposes and defendants being residents of village Dhingsara are legally entitled to use the land as per *Wazubal Arz*. The plaintiffs have no concern with the land in dispute. The SLP filed before the Hon'ble Supreme Court has been withdrawn by Jawahar Singh Sarpanch of village Dhingsara and Jawahar Singh has got manipulated a resolution dated 20.10.2010 in his favour to pursue the matter before the Hon'ble Supreme Court, but instead of pursuing the matter before the Hon'ble Supreme Court, Jawahar Singh has withdrawn the SLP which is clear from the order of the Hon'ble Supreme Court dated 30.11.2010. Hence, Jawahar Singh in conspiracy with other persons in order to cause wrong loss to the gram panchayat and wrongful gain for himself or their near and dear, has withdrawn the proceedings pending before the Hon'ble Supreme Court. Hence, the defendants reserve their right to initiate criminal proceedings as well as departmental proceedings against Jawahar Singh.

15. It has been further submitted that the Kalendra under section 145 of Cr.P.C. was initiated by the police. The revision was filed against the order under sections 145/146 of Cr.P.C. before the Court of the learned Additional Sessions Judge, Fatehabad, by the plaintiffs and their near and dear but the same has been withdrawn. The plaintiffs are not in possession of the suit land. The allegations against "BABA GOPAL DASS" are totally wrong. The answering defendants neither constructed the GAUSHALA. The proceedings before the Collector, Fatehabad has already been instituted by the answering defendants for declaration in the

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 14
suit titled – Subhash versus Agam Kaur etc., which is pending in the
Court of Collector, Fatehabad and fixed for dated 11.12.2014. Hence, the
present suit is liable to be stayed under section 10 of CPC.

16. It has been further submitted that it has not been mentioned,
who are the private persons. Hence, the suit is liable to be dismissed for
want of mis-joinder and non-joinder of necessary party. Defendant no.1 is
collided with the plaintiffs. The entire allegations have been found false
under enquiry. The plaintiffs have levelled the false allegations. Nothing
is against the defendants. The plaintiffs are not in possession of the land in
dispute. Neither the said SDM has been impleaded as party nor the State
has impleaded as party, nor the proceedings under section 145 of Cr.P.C.
as alleged in the plaint has been challenged by filing appeal or revision.
Hence, how it can be said that the said order of SDM, Fatehabad was
illegal. The demarcation has been got conducted and in demarcation the
certain properties have come under the possession of the particular
“MANDIR, SCHOOL, PONDS and ROADS etc.” which has been not in
possession of receiver or any other person were claiming themselves the
owners i.e. plaintiffs. The remedy is available under Cr.P.C. The
possession under the receiver as alleged by the plaintiffs themselves
cannot be delivered to the plaintiffs nor can the plaintiffs claim the
possession under the present suit. It is matter between the SDM and the
plaintiffs.

17. Whereas the defendants no.7, 14 and 15 failed to appear in

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 15
the Court, despite service of summons. Hence, defendants no.7, 14 and 15
were proceeded against ex parte vide orders dated 25.11.2014, 17.10.2014
and 30.08.2014, respectively.

18. Replication was not filed. From the respective pleadings of
the parties, the following issues were framed:-

1. Whether the plaintiffs are co-sharers in the suit land, by
virtue of of the sale-deeds no. 4825 dated 07.09.2011, 6051
and 6052, both dt. 15.11.2011 and the sale-deed no. 6193 dt.
21.11.2011?OPP
2. If issue no.1 is proved, whether the plaintiffs are entitled for
decree for possession of the suit land?OPP
3. Whether the suit of the plaintiffs is not maintainable in the
present form?OPD
4. Whether the plaintiffs have no locus-standi or cause of action
to file the present suit?OPD
5. Relief.

19. Thereafter, both the parties examined witnesses in support of
their respective contentions.

20. In order to prove their case, the plaintiffs have examined Brij
Bhushan plaintiff no.1 himself, as PW1, who tendered his affidavit
Ex.PW1/A. Thereafter, learned counsel for the plaintiffs closed the
evidence of the plaintiffs, after tendering documents Ex.P5 to Ex.P22,
Mark-PA & Mark-PB, vide his statement dated 23.12.2015.

21. On the other hand, defendants have examined Satyapal as
DW1, who tendered his affidavit Ex.DW1/A, Subhash as DW2, who
tendered his affidavit Ex.DW2/A and Ashok Kumar as DW3, who
tendered his affidavit Ex.DW3/A. Thereafter, learned counsel for

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 16 defendants no. 2 to 6 and 8 to 13 closed the evidence of defendants no. 2 to 6 and 8 to 13, after tendering documents Ex.D1 and Ex.D9, Mark-D1/A, Mark-D2/A and Mark-D1 to Mark-D10, vide his statement dated 05.07.2016.

22. Whereas the defendant no.1 failed to conclude his entire evidence despite availing sufficient number of effective opportunities. Hence, evidence of defendant no.1 was closed by the order of Court on dated 19.07.2016.

23. I have heard the ld counsel for the parties.

24. The ld counsel for the plaintiffs argued that the plaintiffs have purchased the suit land from the proprietors. He further stated that suit land has already been declared as land of owners and that it is not uprahan johar. He further stated that proceedings under section 145//146 Cr.P.C has been wrongly done. Therefore, he argued that the suit of the plaintiffs may be decreed with costs.

25. Whereas learned counsel for defendant no.1 argued that since the land in dispute is shamlat deh .Therefore, he argued that the suit of the plaintiffs may be dismissed with costs.

26. On the other hand, learned counsel for defendants no. 2 to 6 and 8 to 13 has argued that since there is dispute regarding title. Therefore, he argued that Civil Court has no jurisdiction. He further stated that since in earlier judgments, the defendants no 2 to 15 were not parties, therefore, he argued that these were not binding on them. He also argued

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 17 that sale deeds of the plaintiffs not proved on record. He further stated that defendant no1 is in collusion with the plaintiffs. He also argued that Tehsildar, Mahender, Baba Gopal Dass has not been made parties. Therefore, he argued that the suit of the plaintiffs may be dismissed with costs. In support of his contentions, he placed reliance upon Gram Panchayat of village Karna and others versus Mam Chand (through his LRs) and another 2014 (1) Latest Judicial Reports 244, Pawan Kumar versus Pardeep Kumar 2016 (2) Latest Judicial Reports 409, City Municipal Council Bhalki by its Chief Officer versus Gurappa (D) by LRs. and another 2016 (2) Latest Judicial Reports 203, Boggavarapu Narasimhulu versus Sriram Ramanaiah and others 2014 (3) Latest Judicial Reports 832, Rakesh Mohindra versus Anita Beri and others 2016 (2) Latest Judicial Reports 180, Gurdev Singh versus Gram Panchayat, Marwa 1999 (3) Latest Judicial Reports 762, Gurmeet Kaur and others versus Director Rural Development and Panchayats, Punjab and others 2014 (4) Latest Judicial Reports 105, Gurbachan Singh and another versus Gram Panchayat and others 2001 (1) PLJ 470, Anguri Devi versus Moti Ram and others 2003 (1) Civil Court Cases 85, Iqbal Singh versus Director, Rural Development and Panchayat and others 2014 (4) Latest Judicial Reports 121, Mangli and others versus The Finance

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 18
Commissioner and Principal Secretary to Government of
Haryana and others 2014 (2) Latest Judicial Reports 375,
Jati and others versus Gram Panchayat, Bichhpari 1979 P.L.J.
595, Ram Kanwar versus Gram Panchayat Bidhal and others
2011 (SUPPL.) Civil Court Cases 383 (P&H), Arjun Singh
versus The Commissioner, Ambala Division, Ambala and
others 2014 (5) RCR (Civil) 974, Mahabir Singh and others
versus Financial Commissioner, Haryana and others 2012 (1)
Latest Judicial Reports 474, Meharwan Singh and others
versus The District Judge, Pauri Garhwal and others 2012 (3)
Civil Court Cases 206 (Uttarakhand), Gram Panchayat,
Kalinjar, Tehsil Nuh, District Mewat versus Commissioner,
Gurgaon Division, Gurgaon 2014 (4) Latest Judicial Reports
87, Budha and another versus State of Haryana and others
2014 (4) Latest Judicial Reports 125, Babu Singh (since
deceased) through his legal representatives versus State of
Punjab and others 2014 (2) Latest Judicial Reports 739,
Rattan Singh and another versus Commissioner, Ambala
Division, Ambala and others 1994 (1) Latest Judicial Reports
75, Yalala Swapna versus Hindustan Petroleum Corporation
Ltd., Mumbai and another 2011 (1) Latest Judicial Reports
822, Gram Panchayat versus Joint Development
Commissioner, Punjab and others 2015 (1) Latest Judicial

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 19
Reports 535, Kallattar Singh (since deceased) through L.Rs.
and others versus The Commissioner, Ambala Division,
Ambala and others 2011 (SUPPL.) Civil Court Cases 145
(P&H) and Union of India and others versus Vasavi Co-op.
Housing Society Ltd. and others 2014 (2) RCR (Civil) 76.

27. After hearing the ld counsel for the plaintiffs, ld counsel for defendant no.1 and learned counsel for defendants no. 2 to 6 and 8 to 13 and after examine the case file very carefully, my issue-wise findings as under:-

Issues no 1 and 2

28. The onus to prove these issues was placed upon the plaintiffs. For the sake of brevity, these issues are taken together.

29. Now the question arises whether the plaintiffs are co-sharers in the suit land by virtue of sale deeds 4825 dated 07.09.2011 Ex.P1, sale deeds 6051, 6052 dated 15.11.2011 Ex.P2 and Ex.P3 and sale deed no 6193 dated 21.11.2011 Ex.P4?

30. The plaintiff Brij Bhushan in his affidavit Ex.PW1/A stated that he and the plaintiffs no 2 and 3 have purchased the suit land vide sale deeds Ex.P1 to Ex.P4. In this way, the plaintiffs are owner in possession as co-sharers in the suit land measuring 1573 kanal 06 marla. In his cross-examination, he stated that it is correct that his possession is not there on the spot on any specific numbers. He further stated that in the presence of Tehsildar, entire amount as mentioned in registry has

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 20
been paid to sellers and he again stated that amount @ of Rs 10 Lakh per
killa has been paid.

31. Furthermore, DW1 Satyapal in his cross-examination stated that it is correct that names of owners of land has been written in all jamabandis from 1960-61 till date. It is correct that in these jamabandis, in the column of ownership, name of Gram Panchayat has not been written. It is correct that in cultivation column of these jamabandis, self cultivation has been written.. There is no name of Gram Panchayat.

32. Moreover, DW2 Subash in his cross-examination stated that it is correct that he has seen the jamabandi for the year 1960-61 and 2010-2011 regarding land in dispute in which in the column of ownership, name of Gram Panchayat Dhingsra has not been mentioned.

33. Furthermore, DW3 Ashok Kumar in his affidavit Ex.DW3/A stated that ***the suit land has been purchased by the plaintiffs from Proprietors.*** In his cross-examination, he stated that he has told on the basis of papers of Gram Panchayat that the land in dispute is Shamlat deh. Except it, he has not seen any record. The papers of cases which he told to have seen are two cases- one Raj Kumar v. Gram Panchayat and other is Brij Bhushan v. Gram Panchayat. These papers have been seen. Except it, no other papers have been seen.

34. Furthermore, from the perusal of copy of sale deed bearing no 4825 Ex.P1, it is clear that the plaintiff no.1 has purchased 62/15733 share i.e 06 kanal 04 marla land and its mutation no 4365 Ex.P22 has

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 21
been sanctioned. Whereas from the perusal of copy of sale deed bearing
no 6051 Ex.P2, it is clear that the plaintiff no.1 has purchased 960/34596
share i.e 05 kanal 06 marla 06 sarsai land. Whereas from the perusal of
copy of sale deed Ex.P3, it is clear that the plaintiff no.1 has also
purchased 794/62932 share i.e 19 kanals 17 marlas land. Moreover, from
the perusal of sale deed no 6193 Ex.P4, it is clear that plaintiffs no 2 and 3
have purchased 131 kanal 02 marla land.

35. Thus, from the above entire discussion, it is clear that the
plaintiffs are co-sharers in the suit land by virtue of sale deeds 4825 dated
07.09.2011 Ex.P1, sale deeds 6051, 6052 dated 15.11.2011 Ex.P2 and
Ex.P3 and sale deed no 6193 dated 21.11.2011 Ex.P4.

36. Now the argument of the ld counsel for the defendants no 2
to 6 and 8 to 13 that since copies of sale deeds Ex.P1 to Ex.P4 have been
placed on record. Therefore, he argued that no reliance can be placed on
them. But this argument of the ld counsel for the defendants no 2 to 6 and
8 to 13 can not be accepted because copies of sale deeds Ex.P1 to Ex.P4
have been tendered in evidence of PW1 Brij Bhushan on 04.09.2015 and
no objection has been raised at that time by the ld counsels for the
defendants no 1 and defendants no 2 to 6 and 8 to 13 although documents
have been objected to by the ld counsel for the defendants no 2 to 6 and 8
to 13 on 13.10.2015. Moreover, DW3 in his affidavit Ex.DW3/A clearly
stated that ***the suit land has been purchased by the plaintiffs
from Proprietors.*** For this, I placed reliance upon **R.V.E**

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 22

Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P.

Temple and others, 2004 (1) PLR 612 SC in which the Hon'ble

Apex Court has held that photocopy of a document is admissible in evidence if no objection was taken at the time when it was tendered in evidence and marked as exhibit by Court.”

37. For this, I also placed reliance upon *S.R. Srinivasa v. S.*

Padmavathamma, 2010 (2) SCC (Civil) 365 SC in which the

Hon'ble Apex Court has held that an admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter unless successfully withdrawn or proved erroneous.

38. Now the question arises whether the plaintiffs are entitled for decree for possession of the suit land?

39. The plaintiff no 1 Brij Bhushan in his affidavit Ex.PW1/A stated that from the Court of Asstt. Collector Ist Grade to Hon'ble Apex Court, suit land has been declared to be land of owners and it has been decided that this land is not Shamlat and does not vest in Gram Panchayat. He further stated that the plaintiffs are owners in possession of the suit land as per law and the land has been taken from their possession by Tehsildar as receiver. The order under section 146 of Cr.P.C is wrong and illegal and the plaintiffs are entitled to take back possession on the basis of title. In his cross-examination, he stated that it is correct that regarding the land in dispute, one calendera under sections 145 and 146 of Cr.P.C has been filed.

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 23

40. Furthermore, DW1 Satya pal in his cross-examination stated that he has read the decisions by Courts Ex.P5 to Ex.P11 produced by the plaintiffs. It is correct that in these decisions, the Courts have not taken the land in dispute as land of Gram Panchayat.

41. Moreover, DW2 Subash in his cross-examination stated that regarding these lands, cases have been continued in Courts earlier. Regarding which he knew and he again stated that cases are continuing since 1975.

42. Furthermore, even DW3 Ashok Kumar in his cross-examination stated that he has told on the basis of papers of Gram Panchayat that the land in dispute is Shamlat deh. Except it, he has not seen any record. The papers of cases which he told to have seen are two cases- one Raj Kumar v. Gram Panchayat and other is Brij Bhushan v. Gram Panchayat. These papers have been seen. Except it, no other papers have been seen.

43. Furthermore, even in judgment dated 16.04.1986 in case titled G.P. Dhigsra v. Rai Singh and others Ex.P5, it has clearly been mentioned that.” this area does not come within purview of section 2(g) of Village Common Land Act. This is within ownership of owners. This area can not be declared as Shamlat deh. This can not be vested. The application is dismissed.”

44. Furthermore, from the perusal of copy of judgment dated 21.05.1994 Ex.P7, it is clear that appeal against the order judgment dated

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 24
16.04.1986 has been decided by Collector, Hissar. The relevant portion of
which reads as follows:-

“*This land is of individual owners.* Therefore, this is
not Shamlat deh within definition of section 2(g) (5). Therefore, this does
not vest in Gram Panchayat.”

45. Furthermore, from the perusal of judgment dated 24.03.2009
Ex.P11, it is clear that Gram Panchayat, Dhingsra has approached the
Hon'ble High Court in CWP no 11488 of 1994 for quashing order dated
16.04.1986 passed by Asstt. Collector Ist Grade, Fatehabad and order
dated 21.05.1994 passed by Collector, Hissar. But, the said writ petition
has been dismissed by the Hon'ble High Court. The relevant portion of
said order reads as follows:-

“Having heard learned counsel, we are of the considered
view that such land which have been contributed by the proprietors on
pro-rata cut on their holdings imposed during the consolidation
proceedings which had not been earmarked for any common purpose in
the consolidation scheme prepared under section 14 read with Rules 5 and
7 and /or entered in the colum of ownership as Jumla Mustarka Malkans
Wa Digar Hazdaran Hasab Rasad Arazi Khewant and the possession is
with the proprietors, would not vest with the Gram Panchyat or the State
Government as per Section 2(g) (6) and the explanation appended thereto
or any other provision of the Punjab Village Common Lands (Regulation)
Act, 1961 of the East Punjab Holdings (Consolidation and Prevention of

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 25
 Fragmentation) Act, 1948. It is only that land which as per the
 consolidation scheme have been reserved for common purposes whether
 utilized or not, is to vest with the State Government or the Gram
 Panchayat. Even though in the column of ownership, the entries may be
 Jumla Mustrarka Malkans Wa Digar Haqdaran Hasab Rasad Arazi
 Khewat. ***There are categorical findings in the present case
 showing that the land in question is a Uprahan Pond and the
 name of the private respondents have been recorded as
 owners in possession. The land has not been reserved for
 common purposes of the village*** and therefore, according to the Full
 Bench judgment in Jai Singh's case (supra), it would not be covered by
 Section 2(g)(6) of the Act. Moreover, there are various acts highlighting
 the private respondents to be owner of the land. Therefore, the writ
 petition is liable to be dismissed.”

46. Furthermore, from the perusal of order dated 30.11.2011
 Ex.P12 by the Hon'ble Apex Court, it is clear that petition for Special
 Leave to appeal filed in the Hon'ble Apex Court against the order dated
 24.03.2009 by Hon'ble High Court has been dismissed as withdrawn and
 in letter Ex.P13 by Sh Bankey Bihari Sharma Adv to G.P. Dhingsra, it
 has clearly been mentioned that ***during the course of argument of
 the case, the Hon'ble Court was of the view that as the matter
 had been lost in all the courts below, the Court was not
 inclined to interfere. That in the situation, he considered it in***

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 26
the interest of the petitioner that it would be proper to withdraw the petition than to have it dismissed so that the petitioner could avail any other remedy, if available in law.

47. Thus, from the above entire discussion, it is clear that since the plaintiffs are co-sharers in the suit land by virtue of sale deeds 4825 dated 07.09.2011 Ex.P1, sale deeds 6051, 6052 dated 15.11.2011 Ex.P2 and Ex.P3 and sale deed no.6193 dated 21.11.2011 Ex.P4 and the land in dispute has been declared to be *of individual owners and that* this is not Shamlat deh within definition of section 2(g) (5) and that this does not vest in Gram Panchayat. Therefore, the plaintiffs are entitled for decree for possession of the suit land in accordance with law. For this, I placed reliance upon *Shanti Kumar Panda v. Shakuntala Devi, 2004 (2) RCR (Criminal) 881 SC* in which the Hon'ble Apex Court has held that- Dispute over possession of property- Magistrate attaching the property under section 146(1) Cr.P.C- Magistrate can not decide whether that party had title to land or had right to possession- These matters are to be decided by Civil Court.

48. Now the argument of the 1d counsel for the defendants no 2 to 6 and 8 to 13 that since in the earlier cases, the defendants no 2 to 15 have not been made parties. Therefore, he argued that earlier decisions are not binding on the defendants no 2 to 15. But this argument of the 1d counsel for the defendants no 2 to 6 & 8 to 13 can not be accepted because in the written statement, the defendants no 2 to 6 and 8 to 13 clearly stated

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 27
that the land is used for common purposes and *defendants being residents of village Dhingsara are legally entitled to use the land as per Wazubal Arz. Hence, the defendants are claiming as residents of village Dhingsara.* Furthermore, from the perusal of judgment dated 16.04.1986 in case titled G.P. Dhingsra v. Rai Singh and others Ex.P5, appeal copy of judgment dated 21.05.1994 Ex.P7, judgment dated 24.03.2009 Ex.P11 by Hon'ble High Court and order dated 30.11.2011 Ex.P12 by the Hon'ble Apex Court, it is clear that Gram Panchayat, Dhingsara is a party to these litigations. Moreover, from the perusal of plaint, it is clear that the defendants no 2 to 15 are resident of village, Dhingsara and Gram Panchayat is representative of the entire village.

49. Furthermore, the argument of the ld counsel for the defendants no 2 to 6 and 8 to 13 that since DW1 and DW2 in their respective affidavits Ex.DW1/A and Ex.DW2/A clearly stated that Sarpanch Jawahar Singh for his benefit got decided cases in lower Courts and he has also withdrawn SLP for the Hon'ble Apex Court. But this argument of the ld counsel for the defendants no 2 to 6 and 8 to 13 can not be accepted because DW1 in his cross-examination clearly stated that in his presence, Jawahar Singh has not done any proceedings after collusion. He further stated that he has not got lodged any FIR against Jawahar Singh that he in collusion has done any proceedings and he again stated that he has made complaint to D.C. which was dismissed by D.C.

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 28

Moreover, DW2 Subash in his cross-examination also stated that Sarpanch Jawahar Singh was parties in all the cases from the Court of Collector Ist Grade to Hon'ble Apex Court against Gram Panchayat, Dhingsara. Furthermore, in letter Ex.P13 by Sh Bankey Bihari Sharma Adv to G.P. Dhingsra, it has clearly been mentioned that *during the course of argument of the case, the Hon'ble Court was of the view that as the matter had been lost in all the courts below, the Court was not inclined to interfere.* Furthermore, in Joseph John Peter Sandyv. Veronica Thomas Rajkumar and another, 2013 (2) RCR (Civil) 461 SC in which the Hon'ble Apex Court has held that when fraud, mis-representation, undue influence is alleged by a party in suit, normally, the burden is on him to prove such fraud, mis-representation, undue influence. The authorities cited by the Id counsel for the defendants no 2 to 6 and 8 to 13 are not applicable to the facts and circumstances of this case.

50. Moreover, the argument of the Id counsel for the defendants no 2 to 6 and 8 to 13 that since the receiver i.e Tehsildar and that all the proprietors of the village and Baba Gopal Dass and Mahender Singh have not been joined as parties. Therefore, he argued that suit of the plaintiff is not maintainable. But this argument of the Id counsel for the defendants no 2 to 6 and 8 to 13 can not be accepted because from the perusal of plaint, it is clear that no relief has been claimed against them. For this, I placed reliance upon Ranbir Singh and others v. Ran Singh and

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 29 *others, 2006 (2) RCR (Civil) 278 P&H* in which the Hon'ble Punjab and Haryana High Court has held that- a party who is stranger to the controversy can not be permitted to become party in a suit as no relief claimed against him.

51. For this, I also placed reliance upon *M/S Vishnu Construction Co Patiala v. Secretary Department of Public Health, Govt of Punjab, 1993 (3) PLR 391 P&H* in which the Hon'ble Punjab and Haryana High Court has held that – no relief having been sought against the petitioner- they were not necessary parties to the case. The authorities cited by the ld counsel for the defendants no 2 to 6 and 8 to 13 are not applicable to the facts and circumstances of this case.

52. Hence, in view of the above entire discussion, issues no 1 and 2 are decided in favor of the plaintiffs and against the defendants.

Issue no 3

53. The onus to prove this issue was placed upon the defendants. The ld counsel for the defendants no. 2 to 6 and 8 to 13 argued that since there is dispute between the parties that the suit land is Shamlat or not. Therefore, he argued that Civil Court has no jurisdiction to try this suit. But this argument of the ld counsel for the defendants no 2 to 6 and 8 to 13 can not be accepted because from the above entire discussion, it is clear that the land in dispute has been declared to be ***of individual owners and that*** this is not Shamlat deh within definition of section 2(g) (5) and that this does not vest in Gram Panchayat. Therefore,

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 30 jurisdiction of the Civil Court is not barred. For this, I placed reliance upon *Jhagru Ram v. Jagan and others, 2010 (4) PLR 605 P&H* in which the Hon'ble Punjab and Haryana High Court has held that- Jurisdiction of Civil Court is only barred in case there is legitimate dispute with regard to question of title of Shamlat deh and not otherwise. The authorities cited by the ld counsel for the defendants no 2 to 6 and 8 to 13 are not applicable to the facts and circumstances of this case.

54. Hence, issue no 3 is decided against the defendants and in favor of the plaintiffs.

Issue no 4

55. The onus to prove this issue was placed upon the defendants. But from my findings on issues no 1 and 2, it is clear that the plaintiffs have locus standi and cause of action to file the suit. Hence, issue no 4 is decided against the defendants and in favor of the plaintiffs.

Relief:-

56. In view of my findings on the above discussed issues, the suit of the plaintiffs succeeds and the same is decreed with costs. It is ordered that the plaintiffs are lawful owners as co-sharers of the land comprised in khewat no. 119 kitat 17 measuring 192 kanals 04 marlas and khewat no. 120 kitat 198 measuring 1381 kanals 02 marlas, situated at village Dhingsara, Tehsil and District Fatehabad, previously comprised in khewat no. 83, khatoni no. 458 to 461 kitat 214 total land measuring 1573 kanals 06 marlas, as per copy of jamabandi for the year 2005-2006, on the basis

Brij Bhushan etc.V. G.Panchayat Dhingsra etc. CS-3763 of 2014 31
of sale deed no. 4825 dated 07.09.2011 Ex.P1 and resultant mutation no.
4365 sanctioned on 01.10.2011 Ex.P22, sale deed no. 6051 dated
15.11.2011 Ex.P2 and sale deed no. 6052 dated 15.11.2011 Ex.P3 in
favour of the plaintiff no.1 and sale deed no. 6193 dated 21.11.2011 Ex.P4
in favour of plaintiffs no. 2 and 3 and on the basis of their lawful title, the
plaintiffs are entitled to the possession of the suit land from the Tehsildar,
Fatehabad, who has been appointed as receiver by the orders of the Sub
Divisional Magistrate, Fatehabad by exercising his powers under sections
145/146 (1) of Cr.P.C in accordance with law. Decree-sheet be prepared
accordingly. Thereafter, file be consigned to record room after due
compliance.

Pronounced:
Dated : 30.01.2017

(Vikas Gupta),
Addl. Civil Judge(Sr. Divn.),
Fatehabad.

Note:- All thirty one (31) pages of this judgment have
been duly checked and signed by me.

Typed by
Dharam Veer,
Stenographer-II.

(Vikas Gupta),
Addl. Civil Judge(Sr. Divn.),
Fatehabad. 30.01.2017
(UID no. HR-0224)



// TRUE COPY //

ANNEXURE R/2

CNR No. HRFT03-002894 of 2017
 CHI-466 of 2017 State versus Ashok
 1

**In the court of Dr. Savita Kumari, Addl. Chief Judicial Magistrate,
 Fatehabad (UID No. HR-0260).**

CNR No. HRFT03-002894 of 2017
 CIS no. CHI-466 of 2017
 Crl. Case No. 319-I of 2017
 Date of Instt:- 02.05.2017
 Date of Decision:- 23.03.2023

State versus

Ashok Kumar Sarpanch son of Chhotu
 Ram Jakhar resident of Dhingsara,
 Fatehabad

..... Accused

FIR No. 257 dated 07.09.2016
 U/s:- 188, 447 IPC
 Police Station:- Bhattu Kalan

Present: Sh. J.S. Brar, APP for the State assisted by Sh. Mohit,
 Advocate for complainant
 Accused Ashok Kumar on bail on bail represented by Sh.
 Pankaj Bansal, Advocate

Judgment:-

The above named accused have been sent up to face trial for
 commission of offences punishable under Sections 188, 447 of IPC by
 the police of Police Station Bhattu Kalan.

2. Brief facts of the prosecution case are that present case has
 been registered on the written complaint received through office of

CNR No. HRFT03-002894 of 2017
CHI-466 of 2017 State versus Ashok

2

Tehsildar, Fatehabad. It is stated therein that on 27.08.2016 Halqa Patwari/Kanungo has reported that in village Dhingsara Sarpanch Ashok Jakhar was permitted to clean/cut the small bushes on the passage near School, Health Centre, Veterinary Hospital, Water works and Cremation ground on the land attached under section 145/146 Cr.P.C. but said Sarpanch Ashok Jakhar has cut down the trees in huge quantity beyond the permission with the help of JCB machine. On inspection of the spot, he was found liable as he has violated the provisions of section 145 Cr. P.C. It is, therefore, requested that necessary action be taken against the accused person after spot inspection.

3. On the basis of above complaint, formal FIR was registered after making endorsement thereupon. Investigation began. Site-plan of the place of occurrence was prepared. Accused was arrested. Statements of the witnesses were recorded and after completion of necessary investigation, cancellation report was prepared and submitted in the Court for trial.

4. However, cancellation was opposed by complainant and court vide order dated 12.07.2021 summoned accused under section 188, 427, 447 IPC.

5. Accused appeared and was charge-sheeted for commission of offences punishable under Sections 188, 427, 447 of IPC vide order dated 15.11.2021 to which he pleaded not guilty and claimed trial.

CNR No. HRFT03-002894 of 2017
CHI-466 of 2017 State versus Ashok

3

6. In order to prove its case, prosecution has examined total seven witnesses i.e. Ms. Navjot Kaur Brar, Tehsildar as PW1, ASI Suresh Kumar as PW2, Subhash Chander Patwari as PW3, Bhaga Ram a PW4, Radhey Shyam as PW5, Satyapal as PW6, Shankar Lal, Numberdar as PW7. Thereafter, prosecution evidence has been closed by court order dated 16.02.2023.

The details of the evidence led by prosecution is as under:

PW1 Ms. Navjot Kaur Brar, Tehsildar deposed that on 16.08.2016, she was posted as Tehsildar, Fatehabad. On that day complaint Ex PW1/A was marked to her for further proceeding by SDM. On which she has marked the same to Halqa Patwari. On 19.08.2016, concerned Halqa Patwari submitted report Ex PW1/C which bears her signature. She further proved report EX PW1/B, Applicaton Ex PW1/D, Ex PW1/E and Ex PW1/F.

PW2 ASI Suresh Kumar on 08.09.2016 he was remained associated with IO ASI Surender in the investigation of the present case. He further proved memo Ex PW2/A vide which copy of application moved to SDM by villagers was taken into police possession.

PW3 Subhash Chander Patwari deposed that on 16.08.2016 application Ex PW1/A was marked to him by Tehsildar and he prepared report EX PW1/B, Site plan Ex PW3/A. He prepared report Ex PW3/B as per version of Nambardar. He further proved memo Ex PW2/A, Site Plan

CNR No. HRFT03-002894 of 2017
CHI-466 of 2017 State versus Ashok
4

Ex PW3/C.

PW4 Bhaga Ram deposed that in August 2016 disputed land which is attached under section 145/146 Cr. P.C. same is falling near Ramdev Mandir, Animal Hospital, Water works etc. On that land Ashok Sarpanch started uprooting Kikar trees. All the villagers stopped him but he did not hear anyone. Thereafter, several villagers moved a complaint Ex PW1/A to SDM, Fatehabad. Thereafter SDM, Fatehabad asked them to meet Tehsildar, Fatehabad. Thereafter they made request to Forest Department and Forest Department inspected the lying trees.

PW5 Radhey Shyam corroborated the version of PW4 Bhaga Ram in all material aspects and proved complaint Ex PW1/A. He further deposed that more than 100 trees were cut down at spot and photographs were also taken.

PW6 Satyapal also corroborated the version of PW4 Bhaga Ram and PW5 Radhey Shyam in all material aspects and proved complaint Ex PW1/A and photograph Ex PW6/A (four pages). He further deposed that team of Forest Department reached at the spot and they counted the trees, measurement was also made. Total 115 trees were cut down. Ashok Sarpanch and Shankar Nambardar also signed on the report.

PW7 Shankar Lal Nambardar deposed that in August 2016 Sarpanch Ashok has cut down the trees with the help of JCB on the land which is attached under section 145/146 Cr. P.C. Several persons of the

CNR No. HRFT03-002894 of 2017
 CHI-466 of 2017 State versus Ashok

5

village have raised objection for the same. Thereafter, 40-50 persons gathered in Guashala and moved a complaint Ex PW1/A to SDM, Fatehabad. Thereafter, Tehsildar, Kanungo visited the spot and after that Tehsildar asked the chowkidar to give report after orally counting the trees and he also counted the trees. Total 115 trees were cut down. He further proved the list of measurement of trees Ex PW7/A, Report Ex PW7/B.

7. Statements of the accused persons under section 313 of Cr.P.C. was recorded, in which the accused denied all the allegations levelled against him and he opted to adduce evidence in his defence. However, no witness has been examined in defence. Following documentary evidence has been produced in defence evidence:

Ex D1	-	Copy of application dated 11.08.2016
Ex D2	-	Letter no. 504 dated 29.07.2016
Ex D3	-	Letter dated 15.10.2013
Ex D4	-	Letter dated 16.04.2014
Ex D5	-	Report of Tehsildar dated 16.06.2014
Ex D6	-	Letter dated 16.04.2014
Ex D7	-	Letter dated 16.04.2014
Ex D8	-	FIR No. 233 dated 22.07.2014
Ex D9	-	Copy of final report of FIR No. 233 dated

CNR No. HRFT03-002894 of 2017
CHI-466 of 2017 State versus Ashok

6

22.07.2014

- Ex D10 - Copy of application under section 321 Cr.
P.C.
- Ex D11 - Copy of order dated 21.09.2019
- Ex D12 - Copy of judgment dated 30.01.2017
- Ex D13 - Copy of decree sheet dated 30.01.2017

8. I have heard the ld. APP for the State and the ld. defence counsel and have gone through the case file very carefully.

ARGUMENTS

9. In the present case, it is argued by complainant that accused in the capacity of Sarpanch of village Dhingsara has cut down the 115 trees of Kikar, Neem etc. whereas the above said land was attached under section 145 of Cr. P.C. It is further argued that he has caused loss to the Forest Department and State also and committed criminal trespass by entering into the land which was attached under section 145/146 of Cr. P.C. by the order of Government. Complaint Ex PW1/E moved by Tehsildar Fatehabad has been duly proved by PW1 Navjot Kaur Brar, Tehsildar and she has categorically proved the version of complaint. Said land was having dispute between the parties of said village and therefore permission was granted to accused in the capacity of Sarpanch only to

CNR No. HRFT03-002894 of 2017
CHI-466 of 2017 State versus Ashok
7

clean the bushes etc. nearby the public road, however, he has cut down trees illegally there. PW4 Bhaga Ram, PW5 Radhey Shyam and PW6 Satyapal have proved the above said offence committed by accused in the capacity of Sarpanch of village. There was no permission to uproot the trees as done by the accused. It is prayed that the accused is liable to be convicted under section 188, 427, 447 IPC as the case of the prosecution stands duly proved.

10. On the other hand it has been contended by learned counsel for accused that accused being the Sarpanch of village Dhingsara has not done any wrongful act and he was having permission to clean the Kikar trees etc. in the side of the road, where water works and school for girls were situated at one side and other public place were situated on other side. Said cleaning was done after taking permission from concerned revenue authorities. It is alleged that above said case is the result of the enmity of the villagers against the then Sarpanch of the village under some unknown grudge. All the witnesses examined on record are the members of the Gaushala Committee which is having a dispute with regard to the property in question which was attached under section 145/146 Cr. P.C. It is not proved on record that the above said trees/bushes etc. were belonging to Forest Department as no witness has been examined from Forest Department. It is further stated that previously a FIR No. 233 dated 22.07.2014 under section 147/149/188/447 IPC (Ex

CNR No. HRFT03-002894 of 2017
CHI-466 of 2017 State versus Ashok

8

D8) was lodged against the villagers and they forcibly wanted to construct Gaushala in the disputed property. However, prosecution case was withdrawn under section 321 of Cr. P.C. vide order dated 21.09.2019 (Ex D11). It is also stated that a Civil Suit was filed by owners of the land in question against PW Shankar Lal and others which was decreed vide order dated 30.01.2017. Sarpanch of village/accused had not taken side of members of Gaushala, therefore, they were not happy from him. Therefore, present case has been got lodged out of the grudge of the said persons against Sarpanch of the village and there are so many discrepancies in the case of the prosecution and in such circumstances prosecution has not been successful to prove its case beyond all reasonable shadows of doubt and accused is liable to be acquitted.

CONCLUSION DRAWN BY COURT

11. The deposition of PW1 Navjot Kaur Brar has revealed that on moving application by villagers Ex PW1/A enquiry was made regarding the cutting down of the trees etc. from the property in question. It was stated that property was attached under section 145/146 Cr. P.C. However, the deposition of PW1 Ms. Navjot Kaur Brar, who is material witness being complainant has revealed that no demarcation of the property was got conducted and she has only received photographs with the complaint. She does not know at what time she has visited the place of

CNR No. HRFT03-002894 of 2017
CHI-466 of 2017 State versus Ashok

9

occurrence. She is unable to tell how many bushes are cut down and she has stated that only Forest Department can tell the same. She has admitted that accused being Sarpanch at that time has taken permission to clean the bushes etc. in the property in question. It is nowhere mentioned how many bushes and trees were to be cut down as per the permission granted to Sarpanch. She has moved complaint to Forest Department, however, no witness from Forest Department has been examined on record to prove the same. It is also not deposed by PW1 that any of the trees cut down was belonging to Forest Department as there is no identification mark of Forest Department on any of the tree.

12. PW3 Subhash Chander Patwari is also one of the material witness but he deposed that he has not seen any one cutting the trees which were lying on the spot. During his presence no Sarpanch and Nambardar was called at the spot, he has not mentioned in his report Ex PW11/B how many trees were cut down. He does not know what was the width of bushes cut down. He has not specifically mentioned the khasra number of the property after demarcating the same. He has admitted that in the disputed property even after attachment under section 145/146 Cr.P.C. Gaushala was being constructed earlier and dispute arisen in this regard. FIR was also referred in this case. Trees which have been mentioned in report Ex PW3/A were not seen by him. He is not the witness of the occurrence. He has prepared his report on asking of

CNR No. HRFT03-002894 of 2017
CHI-466 of 2017 State versus Ashok
10

Tehsildar. He has not taken any photograph while preparing his report. He has not visited the spot with police and site plan was prepared by police sitting in the office. Therefore, above said two witnesses (PW1 and PW3) have only prepared the complaint and report as per the version of the villagers who moved complaint to Tehsildar. Out of said villagers prosecution has examined PW4 Bhaga Ram who has revealed in his cross-examination that he is the member of the committee against whom the owners of the property in question pursued the litigation. Therefore, he is the interested witness. There was a dispute regarding the property in question for constructing Gaushala thereupon and a case was registered against him in this regard. It is revealed that some persons/villagers including PW4 are in favour of constructing Gaushala over the land in question, therefore, they are having much concern about that land inspite of being not owners of that land. PW4 has stated that at the time of the cutting of the above said trees being done, video was prepared but he has not produced any video. He has stated that Kikar trees were uprooted by JCB, however, there is no number of JCB Machine, name of the driver of JCB mentioned in this case. It is also revealed that Kikar trees were cut down nearby the roads upto 10-15 feet. Therefore, it is revealed that said cleaning of trees was made near the places adjoining to road.

13. PW5 Radhey Shyam is also the interested witness and FIR was also registered against him regarding the property in question for

CNR No. HRFT03-002894 of 2017
CHI-466 of 2017 State versus Ashok

11

constructing Gaushala forcibly thereupon. Said case was also lodged by Tehsildar, Fatehabad as the land was attached under section 145/146 of Cr. P.C. He has also admitted that the Kikar trees were cut down near Bodiwali road back side of Animal Hospital. It is revealed that said cleaning of trees was made near the both side of the road. It is not the case of the complainant that any other benefit was availed by the accused except the cleaning of the road. PW6 Satyapal is also an interested witness as against him FIR qua forcibly constructing Gaushala at the property in question was lodged. Though, prosecution of said FIR case has been withdrawn by State. He has categorically stated that the property in question upon which attachment under section 145/146 Cr. P.C. was made was not belonging to Gram Panchayat. The land is belonging to private owners. Since, land was lying attached, accused has taken permission from the authorities to cut down the bushes and clean the trees. It is stated that permission was to cut down the trees etc. within the area of 10-10 feet near the road. It is stated by PW4 that cleaning of trees was made within the said area of 10-15 feet only. He has stated that Forest Department Officer also visited the spot but said official has not been examined on record. Photographs placed on record qua cutting of trees etc. Mark A and Mark B were put to PW6 Satyapal and he has admitted that in the said photographs only bushes are being shown to be cut down. He stated that there was three trees of Kikar and one tree of Neem,

CNR No. HRFT03-002894 of 2017
CHI-466 of 2017 State versus Ashok
12

however, other witnesses have not corroborated his deposition to that effect. PW7 Shankar Lal Nambardar has revealed that the land in question was belonging to private owners who are residing in Sirsa. No such owner of the property in question has been examined on record to prove the alleged truth of causing loss to the private property. He has admitted his signature on complaint Ex PW1/A but he does not know who has written the said complaint in his presence. No such complaint was written in his presence. After 16.08.2016 i.e. the date of occurrence, he has not met with the Team of Tehsildar at the spot. He denied to know that the land in question is the same land which was shown in the disputed photographs Mark A and Mark B. He stated that when he has asked the accused why he is cutting down the trees, he has shown the order to cut down the trees.

14. From the above said deposition of the witnesses, it is revealed that there is no witness and proof to prove any loss caused to the Forest Department/public property. None of the persons from owners of the property have been examined on record to prove the loss to private person. No independent witness has been examined on record. No plausible explanation have been produced qua non-examination of other witnesses, therefore, prosecution has failed to corroborate the material evidence. There is no evidence on record to prove that any of the Kikar or Neem tree was sold by Sarpanch for his benefit. Prosecution has also been failed to prove any personal benefit by cutting the trees to Sarpanch.

CNR No. HRFT03-002894 of 2017
CHI-466 of 2017 State versus Ashok
13

Since, no witness was examined from the Forest Department, it transpired that there was no loss to Forest Department. There was no identification mark on the trees of the Forest Department. Therefore, it appears that none of the trees was belonging to Forest Department. It is also revealed that cleaning of the trees was made adjoining to the road only. Defence has produced the permission letter Ex D2 dated 29.07.2016 given by Tehsildar in which it is revealed that on the application of Gram Panchayat Dhingsara spot was inspected and it was found that the road going from Dhingsara to Kukrawali, Sarwarpur, Bodiwali, Khairati Khera and road to Sai Baba Mandir and adjoining areas is filled with Kikar and bushes etc and people were facing hurdle due to that. Therefore, recommendation was made to clean down the said area so that RCC pipe of village may be installed there to ensure the water supply to the villagers. It was the duty of the prosecution to prove against accused that he has cut down trees and bushes etc. without having any authority to do the same with dishonest intention, however, no such case has been found on record.

15. Therefore, conclusively prosecution has not been successful to prove its case beyond all reasonable shadows of doubt. In these circumstances, accused is hereby acquitted of the charges levelled against him by giving benefit of doubt. Accused is on bail. His bail bonds and surety bonds stands discharged. The original documents, if any, be

CNR No. HRFT03-002894 of 2017
CHI-466 of 2017 State versus Ashok
14

returned as per rules after expiry of period of appeal or revision. File be
consigned to record room after due compliance.

Pronounced.
Dated:-23.03.2023

(Dr. Savita Kumari),
Addl. Chief Judicial Magistrate
Fatehabad, UID NO.HR-0260

(Tanu, S.G.II)

Note: This judgment contains fourteen (14) pages and each page has been
checked and signed by me.

(Dr. Savita Kumari),
Addl. Chief Judicial Magistrate
Fatehabad, UID NO.HR-0260



// TRUE COPY //