

CWP No.12453 of 2015

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

**CWP No.12453 of 2015
Date of decision:17.06.2015**

Sukhraj Kaur	...	Petitioner
Versus		
State of Punjab and others	...	Respondents

**CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain
Hon'ble Mr. Justice Ramendra Jain**

Present: Mr. Navdeep Monga, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

Bakhtaur Singh S/o Ishar Singh (since deceased) was the Sarpanch of Gram Panchayat Mansa Khurd in the year 1986. His wife Sukhraj Kaur filed a suit for declaration in respect of a plot without giving its number but the boundaries i.e. East-Pond/21 Karam; West-Sukhraj Kaur, complainant herself/38 Karam; North-Public Street/15 Karam; and South-Pipe for discharge of water/40 Karam, situated in the abadi of village Mansa Khurd, Tehsil Mansa, claiming that she is in possession thereof and has become the owner by way of adverse possession. Bakhtaur Singh, who was the Sarpanch of the Gram Panchayat at that time and arrayed as defendant no.1 in the suit, did not appear despite service and the Gram Panchayat was proceeded against *ex-parte*. Sukhminder Singh S/o Kirpal Singh, who was

arrayed as defendant no.2, rather appeared as PW2 on behalf of the plaintiff and an *ex-parte* decree was passed by the Sub Judge 1st Class, Mansa on 09.01.1987, declaring Sukhraj Kaur wife of Bakhtaur Singh as the owner of the said plot by way of adverse possession.

The Gram Panchayat of village Mansa Khurd filed an application under Sections 4, 5 & 7 of the Punjab Public Premises and Land (Eviction & Rent Recovery) Act, 1973 (hereinafter referred to as the “Act”), against Bakhtaur Singh in respect of the land measuring 3 Kanal 16 Marlas, comprised in Khewat/Khatauni No.338/684, Rectangle & Killa No.179, situated in the revenue estate of village Mansa Khurd, Tehsil and District Mansa, as per jamabandi for the year 2004-2005, alleging that it was owned by *Jumla Mushtarka Malkan* and vests in the Gram Panchayat.

In reply, it is averred by Bakhtaur Singh that the land is owned by his wife Sukhraj Kaur as she inherited it from her forefathers and also got a decree in her favour dated 09.01.1987 passed in Civil Suit No.346 of 06.06.1986.

The Collector/DDPO, Mansa, after affording opportunity to produce evidence to both the parties, allowed the application on the ground that the land in question was left for common purposes and is recorded as “*Jumla Mushtarka Malkan Va Digar Haqdaran Hasab Rasad Araji Khewat*” in the revenue record. The appeal filed by Bakhtaur Singh against the order of the Collector was also dismissed by the Commissioner.

Counsel for the petitioner has argued that the provisions of the Act would apply if the land in question is leased out, whereas it is owned by

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the petitioner Sukhraj Kaur wife of Bakhtaur Singh. In this regard, he has referred to the decree dated 09.01.1987.

After hearing learned counsel for the petitioner and examining the available record, we are of the considered opinion that the *ex-parte* decree dated 09.01.1987 was an act of calculated fraud perpetuated by the petitioner in connivance with her husband Bakhtaur Singh and defendant no.2 Sukhminder Singh, which is evident from the judgment and decree dated 09.01.1987 itself because the suit was filed by Sukhraj Kaur wife of Bakhtaur Singh when Bakhtaur Singh was the Sarpanch of the Gram Panchayat, who did not appear in the suit despite service and allowed it to be proceeded *ex-parte* against the Gram Panchayat and the another defendant Sukhminder Singh, who though was arrayed as defendant no.2 in the suit, yet appeared for the plaintiff as PW2. Interestingly, Sukhraj Kaur, who was the plaintiff in the suit, did not claim her ownership over the property in question on the basis of inheritance rather she had claimed a declaration that she has become the owner of the suit property by way of adverse possession, whereas the law has been settled by the Supreme Court in the case of **Gurudwara Sahib vs. Gram Panchayat Village sirthala and another**, 2014(1) SCC 669 that the plea of adverse possession is not available to the plaintiff as it does not act as a sword but as a shield. Moreover, the description given in the suit of the land is of a plot having the dimensions of 21x38x15x40 Karams, whereas the land involved in the present litigation is much more than that as it bears Khewat/Khatauni No.338/684, Rectangle & Killa No.179 and admittedly recorded in the

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column of ownership as “*Jumla Mushtarka Malkan Va Digar Haqdaran Hasab Rasad Araj Khewat*”.

In view of the aforesaid facts and circumstances, we do not find any merit in the present writ petition for the purpose of interference in the well considered order of the authorities below.

Dismissed.

(Rakesh Kumar Jain)
Judge

June 17, 2015
vinod*

(Ramendra Jain)
Judge