

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

RSA No.3407 of 2010(O & M)

Date of Decision:27.01.2015

Kashmir Singh

....appellant

Versus

Gram Panchayat village Chak Pali Wala, Tehsil Jalalabad and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

1.Whether Reporters of local papers may be allowed to see the judgement?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Present: Mr.G.L.Bajaj, Advocate
for the appellant

Mr.B.S.Sidhu, Advocate
for respondent No.1

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was partly decreed by the trial Court vide judgment and decree dated 25.11.2008, as declaration prayed for was declined and only a decree for injunction was granted. Appeal preferred against the said decree failed and was dismissed on 05.03.2010. This is how, plaintiff is before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff, he prayed for a declaration that notwithstanding anything contained to the contrary in the revenue record, the letter dated 28.07.1995, issued by the then Deputy Commissioner, Ferozepur, as well as mutation recorded at

Sr.No.979, attested on 31.10.1995, by the then CRO/AC-II Grade, Jalalabad, was illegal and null and void. And was not binding upon the rights of the plaintiff qua the suit land i.e. measuring 27K-17M, situated in village Chak Pali Wala, as the same was set apart for the use of Jumla Mushtarka Malkan and other proprietors of the village during consolidation proceedings. Resultantly, plaintiff was entitled to get the suit land partitioned being a co-owner. By way of consequential relief, he prayed for a decree for injunction, restraining the defendants from causing interference in the possession of the plaintiff. It was maintained that the plaintiff happened to be a co-sharer/co-owner of a land situated in the area of village Chak Pali Wala and he was one of the right holders, much before the consolidation proceedings took place in the village. And an area measuring 27K-17M was set apart for re-distribution between the proprietors and a separate kurrah was formed. Consequently, the said land was recorded in the ownership of Jumla Mushtarka Malkan in the record of rights. Plaintiff was occupying the suit land for the last 20 years as owner and had built a residential accommodation over a part of the suit property. Besides, installing a hand pump and engine bore for irrigation. It was averred that letter dated 28.07.1995 issued by the then Deputy Commissioner, Ferozepur, was wholly illegal, vide which all the lands recorded in the ownership of Jumla Mushtarka Malkan were transferred in the name of respective gram panchayats. And pursuant to the said letter, mutation No. 979 was sanctioned on 31.10.1995 by the then CRO/AC II Grade, Jalalabad, and the suit property was mutated in the name of defendant (Gram Panchayat).

The said letter dated 28.07.1995 and the mutation No.979 dated 31.10.1995 were purported to be in violation of principles of natural justice and inoperative qua the rights of the plaintiff. Further, proprietary as well as possessory rights of the plaintiff qua the suit land could not be nullified vide letter dated 28.07.1995. Since, the plaintiff was threatened to be dispossessed from the suit property, thus, the suit.

In defence, it was pleaded, inter alia, that plaintiff did not have any land holding in the village in the year 1961-62, when the consolidation proceedings were carried out. He was also not a co-sharer in Jumla Mushtarka Malkan as regards the Bachat land. In fact, the plaintiff had purchased some land in the village only in the year 1973. The suit property was said to be used for common purposes of the village. It was also denied that he was occupying the suit land as owner for the past 20 years. However, it was admitted that the suit property was mutated in the name of the defendant (Gram Panchayat), pursuant to the mutation No. 979, in terms of the letter dated 28.07.1995, issued by the then Deputy Commissioner, Ferozepur. Thus, plaintiff had no concern either with the ownership or possession of the suit property.

Both the Courts below, on a consideration of the matter in issue and the evidence on record, found that the letter dated 28.07.1995 was, in fact, an order passed by the revenue authorities on the revenue side and before filing the present suit, plaintiff ought to have filed an appeal against the said order. Concededly, no such remedy was availed as plaintiff testified in his cross-examination

that he never filed any appeal against the letter/order dated 28.07.1995. That being so, it was observed that the suit filed by the plaintiff was not maintainable. Even otherwise, it was concluded that the plaintiff had miserably failed to lead any evidence to show as to how the letter dated 28.07.1995 was illegal, null and void and inoperative qua his rights. Still further, plaintiff did not lead any evidence to prove that he was a co-owner qua the suit land that was recorded as Jumla Mushtarka Malkan at the time of consolidation. That being so, it was concluded that as the plaintiff failed to prove that he was ever the owner of any piece of land in the village, when the consolidation was carried out, his claim being a co-sharer in the suit land, that was shown as Jumla Mushtarka Malkan, was wholly misconceived. Accordingly, it was observed that the letter dated 28.07.1995 issued by the then Deputy Commissioner, Ferozepur, could not be termed as illegal or void. Further, suit filed by the plaintiff was not maintainable. However, since the plaintiff was found to be in possession of the suit property, a decree for injunction restraining the defendants from interfering in his possession was granted by the trial Court.

As observed even by the first appellate Court, possession of the plaintiff was proved on record as *gair marusi*, but he had no locus standi to institute the present suit, once the suit property stood mutated in the name of Gram Panchayat. In reference to a Gazette Notification (Ex.DA), it was observed that it envisaged notwithstanding anything contained in this Act or any other law for the time being in force, or any judgement, decree, order or

decision of any court, or any authority or any officer, the land reserved for common purposes whether specified in consolidation scheme or not, shall not be partitioned amongst the proprietors of the village, and it shall be utilised and continue to be utilised for common purposes. Further, even if, plaintiff was in possession of the suit land, his possession could only be termed as un-authorized and, thus, he was not even entitled to injunction. Particularly, when Gram Panchayat was recorded to be the owner of the suit property. Resultantly, the appeal was dismissed and the decree preferred by the trial Court was affirmed.

I have heard learned counsel for the parties and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

As opposed to this, learned counsel for respondent No.1 submits that both the Courts have concurrently recorded that the plaintiff did not own any land in the village at the time when the consolidation proceedings were carried out. Thus, he could not claim himself to be the co-owner in the suit land that was recorded as Jumla Mushtarka Malkan at the time of consolidation.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Ex facie, plaintiff failed to lead any evidence to show that he was one of the right holders of the village before or even at the time when consolidation proceedings were carried out in the village. Concededly, consolidation took place in the village in the year 1960-61 and nothing was brought on record to show that plaintiff was a right holder or a member of the village proprietary body at the relevant time. As is made out from the records, plaintiff was never the original proprietor of the village and it was only in the year 1973, he bought some land. Case set out by the plaintiff himself was that during consolidation a land measuring 27K-17M i.e. suit property was set apart by creating a separate 'tak' and the same was recorded as the ownership of Jumla Mushtarka Malkan. And was thus, liable to be re-distributed or re-partitioned amongst the proprietors. One wonders, as to how, plaintiff having failed to show that he was a right holder or a proprietor of the village at the time of consolidation, he even had a locus to claim re-partition of the suit property. It would be apposite to point out further, that nothing was brought on record to show that pursuant to a pro rata cut that was imposed upon the right holders, during consolidation, some land of the plaintiff was also taken for common purposes of the village and therefore, out of the un-utilized land i.e. 'Bachat', he being a co-owner, was entitled to seek re-partition in proportion to his share. In the absence of requisite pleadings and necessary proof in this regard, plaintiff lacked locus to seek the declaration prayed for. Counsel for the appellant (plaintiff) could not controvert this position. As regards possession, post passing of the decree by the trial Court, in proceedings under

Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, an order of eviction of the plaintiff was passed by the Collector on 03.12.2009, meaning thereby, defendant(Gram Panchayat) to retrieve possession of the suit property, had resorted to necessary measures in accordance with law.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

27.01.2015

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(ARUN PALLI)
JUDGE