

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

RSA No.3508 of 2010(O & M)

Date of Decision:12.01.2015

Garib Dass

....appellant

Versus

Gram Panchayat Karasan, Tehsil Naraingarh, District Ambala

.....respondent

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.Vineet Chaudhary, Advocate
for the appellant

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was dismissed by the trial Court vide judgement and decree dated 07.08.2009. Appeal preferred against the said decree failed and was dismissed on 06.01.2010. 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–Dhani Ram, he prayed for a decree for injunction restraining the defendants from

interfering in his possession over the suit property measuring 17 marlas comprised in khasra No.113, along with an abadi land as depicted in red colour in the accompanying site plan and marked as ABCDEFG. And from demolishing the construction of the plaintiff thereon. Further, declaration that the order dated 28.03.2002 passed by Assistant Collector, 1st Grade, Naraingarh against one Mohan Singh was illegal and void. It was averred that plaintiff along with other co-owners were recorded to be the owners of the suit property and the same had fallen to his share pursuant to a family settlement between him and his brothers. It was maintained that forefathers of the plaintiff had installed a well in their own property prior to 26.01.1950. And the said property exclusively belonged to plaintiff, post family settlement between the brothers, for the last more than 30 years. Besides that, there was some part of the abadi along with khasra No.113 shown in red colour with letters ABCDEFG in the site plan, which housed a pacca room along with a closed well. The defendants had resorted to a clever device by filing a suit against one Mohan Singh, before the Assistant Collector, 1st Grade, Naraingarh, in order to demolish the construction raised by the plaintiff, despite the fact that Mohan Singh consistently maintained that property in question belonged to the plaintiff. But as defendant intended to demolish the construction in issue, thus, the suit.

In defence, it was pleaded, inter alia, that plaintiff Dhani Ram had no concern with Khasra No.113(0-17). The suit in question was filed by the plaintiff in connivance with Mohan Singh son of Jagat Ram. In fact, suit property comprised in khasra No.113 was owned

by the Gram Panchayat village Karasan, Tehsil Naraingarh, District Ambala and was used for common purposes of the village. As Mohan Singh intended to raise illegal construction thereon, Gram Panchayat moved an application on 28.11.2000 as regards the encroachment he had set up. On a verification of the facts and visit to the spot it transpired that in fact, Mohan Singh was raising construction in khasra No.113. Accordingly, a petition under Section 7 (i) and (ii) of the Punjab Village Common Lands (Regulation) Act, 1961, was filed against Mohan Singh for his ejectment from khasra No.113(0-17). Vide order dated 28.03.2002, the said petition was accepted with a direction to eject Mohan Singh son of Jagat Ram and any other person in khasra No.113. On passing of the ejectment order dated 28.03.2002, plaintiff filed the present suit on 24.05.2002 to encroach upon the land comprised in khasra No.113. It was maintained that neither the plaintiff nor his forefathers had any concern with the suit property. Accordingly, defendants prayed for dismissal of the suit.

Both the Courts below on an analysis of the matter in issue and the evidence on record, observed that the evidence on record showed that the land in question belonged to Gram Panchayat. Further, even the revenue courts held in their judgements that the suit property was owned by Gram Panchayat Karasan. Still further, the position in the record of rights revealed that the land in question was depicted as shamlat deh. Plaintiff failed to lead any cogent evidence to substantiate his plea qua title.

Further, plaintiff staked his claim on the basis of

jamabandi for the year 1994-95(Ex.P2). However, document Ex.P8, placed on record by none other than the plaintiff himself, revealed that the position reflected in the said jamabandi was corrected vide order dated 10.11.2000. Thus, entries in the jamabandi for the year 1994-95 wrongly recorded the name of Jandu, Sarda sons of Albela, in the column of ownership, whereas jamabandi for the year 1989-90 showed that the property recorded therein was shamlat deh Hasab Araji. Just because a stray entry was recorded in the name of the forefathers of the plaintiff in the jamabandi for the year 1994-95 by the revenue patwari, which, in any case, stood corrected vide order dated 10.11.2000, that could hardly advance the case of the plaintiff. As concurrently concluded by both the Courts below that nothing was brought on record by the plaintiff prior to the year 1994-95 to show that either he or his predecessor-in-interest were sought to be shown to be the owners in possession of the suit property. Accordingly, it was rightly observed that there was no forward presumption on the basis of one stray entry in the jamabandi for the year 1994-95. As is discernible from the records, a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, filed by the Gram Panchayat, against Mohan Singh was allowed by the Assistant Collector, 1st Grade, Naraingarh, vide order dated 28.03.2002. Appeal preferred by Mohan Singh against the said order was also dismissed. As observed, immediately on passing of the order by the Assistant Collector on 28.03.2002, plaintiff chose to institute the present suit that was filed on 25.05.2002. Garib Dass (PW4) one of the legal representatives of the plaintiff, testified in his cross

examination that he did not know as to what was contained in his affidavit Ex.PW4/A tendered in his examination-in-chief. He also admitted that he simply signed the same but did not know the contents thereof. Likewise, Paras Ram, PW1 admitted that kanungo and police had visited the spot in question in November 2000 when construction was being carried out. That being so, it was rightly concluded by the first appellate Court that if a construction was being raised in the year 2000 there was no occasion of any construction being raised by the predecessor-in-interest of the plaintiff. So much so, Lajja Ram PW2 admitted in his cross examination that the record of rights showed that the Gram Panchayat indeed was the owner of the suit property. He further admitted that he was asked to appear as a witness at the instance of an advocate. He also testified that he did not know the contents of his affidavit Ex.PW2/A. Needless to assert, for plaintiff to succeed, he was required to substantiate his possession over the suit property. No evidence, least cogent, was led by the plaintiff to substantiate his claim.

I have heard learned counsel for the appellant 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.

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, thus, liable to be dismissed for the reasons that are being

recorded hereinafter.

Needless to assert, for plaintiff to be entitled to a decree for injunction, he was required to prove that he was in actual, physical possession of the suit property. Ex facie, plaintiff failed to adduce any cogent evidence in this regard. Apparently, he had staked his claim on the basis of jamabandi for the year 1994-95, which showed that name of his father i.e. Sarda along with his brother was recorded in the column of ownership. However, pursuant to a formal order passed by the revenue authorities on 10.11.2000 (Ex.P8), the said mistake was corrected. In fact, jamabandi for the year 1989-90 reflected that suit property was mentioned as shamlat deh Hasab Araj. As concurrently recorded by both the Courts, nothing was brought on record by the plaintiff to show that prior to the jamabandi for the year 1994-95, plaintiff or his predecessor-in-interest were ever recorded to be either as owner or in possession of the suit property. Thus, because of a one stray entry, which too was corrected, plaintiff could not claim himself to be the owner in possession of the suit land. In short, plaintiff failed to prove his case.

Learned counsel for the appellant could not show or point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

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.

12.01.2015

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(ARUN PALLI)
JUDGE