

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.3079 of 2012 (O&M)

.....

Date of decision:22.4.2015

Kehar Singh and another

.....Appellants

v.

Gram Panchayat, Village Sada Raian and another

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. I.S. Bajwa, Advocate for the appellants.

Mr. S.S. Hira, Advocate for respondent No.1.

Mr. N.K. Verma, Senior Deputy Advocate General,Punjab
for respondent No.2.

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Inderjit Singh, J.

Kehar Singh and Gurdip Singh-appellants/plaintiffs have filed this regular second appeal against Gram Panchayat Village Sada Raian and B.D.P.O., Block-1, Hoshiarpur-respondents/defendants challenging the impugned judgment and decree dated 10.9.2009 passed by the learned Additional Civil Judge (Senior Division), Hoshiarpur, vide which the suit filed by the plaintiffs has been dismissed and against the impugned judgment and decree dated 14.10.2011 passed by the learned Additional District Judge, Hoshiarpur dismissing the appeal filed against the above judgment and decree passed by the learned Additional Civil Judge (Senior

Division), Hoshiarpur.

Notice of motion has been issued in this case. Mr. S.S. Hira, learned Advocate has put in appearance on behalf of respondent No.1 and Mr. N.K. Verma, learned Senior Deputy Advocate General, Punjab, has appeared on behalf of respondent No.2 and contested this appeal.

I have learned counsel for the parties and have gone through the record.

The brief facts of the case are that plaintiffs-Kehar Singh and Gurdip Singh filed a suit for permanent injunction restraining the defendants from interfering in their peaceful possession over the property measuring 10 Marlas, marked ABCDEF, being Khasra No.36, Khewat No.43, shown in red colour in site plan as fully described in the head note of the plaint. The case of the plaintiffs in the plaint is that the property measuring 5 Marlas each was allotted in the year 1972 by Gram Panchayat to the plaintiffs as they were homeless and entry to this effect was made in Khasra Girdawri for the year 1988-89. On 21.6.1983, Gram Panchayat, Dhugga had passed resolution, by virtue of which, they had exchanged property of plaintiffs from Khasra No.24 to Khasra No.36. So, the plaintiffs are in possession of property in dispute for the last more than 30 years and their possession was continuous. Then on 19.9.2002, the defendants demolished forcibly houses of the plaintiffs without any notice and authority. Khasra No.36 is owned by Gram Panchayat and the defendants are having no right, title or interest in property in dispute.

On the other hand, the case of the defendants is mainly that the

plaintiffs have well constructed houses and they are residing in the same, so the question of homeless of plaintiffs does not arise. The Government neither allotted any plots to plaintiffs nor gave possession to them. Gram Panchayat has no right to allot the Gram Panchayat property to any body without prior permission of Director, Rural Development and Panchayat Department, Punjab, Chandigarh, so in the eyes of law, the resolution passed by the then Gram Panchayat, in the year 1983, has no value. The resolution was executed in connivance with Sarpanch Fauja Singh (now deceased). At the time of passing of the resolution, the then Gram Panchayat had not got any permission from the Government and the resolution is null and void. Any property which belongs to Gram Panchayat can not be exchanged without permission of Director, as stated above. Gram Panchayat continuously gave this property on 'Chakota' in every year, to different persons including Kehar Singh. So, the question of possession of thirty years does not arise. Malkiat Singh resident of Sade Raian moved an application in the office of Deputy Commissioner in the open house (Khulla Darbar). On this, Deputy Commissioner gave direction to D.D.P.O. and D.D.P.O. marked the application to B.D.P.O. (I), Hoshiarpur, regarding further investigation and report. On this, in the presence of respectable persons of Panchayat Officer Jagdish Ram, Patwari Sadhu Singh measured Khasra No.36 measuring it as two Kanlas. In his report, he found that Kehar Singh, Gurdeep Singh and Sade Ram have encroached upon Gram Panchayat property illegally and forcibly without consent of Gram Panchayat and other higher authorities. At that time, both the plaintiffs were

also present and they also signed the presence sheet. Brother of the plaintiffs, namely, Sade Ram also handed over vacant possession of land to Gram Panchayat after receiving notice issued by B.D.P.O., Hoshiarpur, but the plaintiffs flatly refused to hand over vacant possession to Gram Panchayat even on receipt of notice. After that both the defendants with help of Punjab Police removed illegal encroachment of the plaintiffs in the presence of complainant Malkiat Ram and other respectable of Village Sade Raian and vacant possession was handed over to Gram Panchayat. As per the report of Patwari, there was no residential houses of the plaintiffs.

The learned Additional Civil Judge, (Senior Division), Hoshiarpur, vide impugned judgment and decree dated 10.9.2009 dismissed the suit of the plaintiffs. The appeal filed by the plaintiffs was also dismissed by the learned Additional District Judge, Hoshiarpur, vide judgment and decree dated 10.9.2009. Aggrieved against the impugned judgments and decrees passed by the Courts below, this regular second appeal has been filed.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that first of all the findings recorded by both the Courts below are concurrent and the same are correct and as per law. Secondly, no substantial question of law arises in this appeal. The Courts have correctly appreciated the evidence produced by the parties. As per the revenue record, Khasra No.36 is owned and possessed by Gram Panchayat. There is no document produced by the plaintiffs on record to

show that this property of Khasra No.36 has been allotted to them or they are in possession for the last 30 years. Rather, the learned Additional District Judge has discussed the documents produced by the defendant-Gram Panchayat showing that this property of Khasra No.36 has been given on 'Chakota' and the payment of the lease money etc. DW-1 has produced on the file, proceedings of lease register Ex.D.2 of 1988-89, Ex.D.3 of 1993-94, Ex.D.4 of 1994-95 and Ex.D.5 of 1990-91, along with the receipt relating to payment made by lessee of the land. When the Gram Panchayat is leasing out the property on 'Chakota' every year, then the question of plaintiffs being in possession of suit property for the last more than 30 years, does not arise at all. Even the case of the Gram Panchayat is that lease was also taken by Kehar Singh one of the plaintiffs. Both the Courts below have correctly appreciated the evidence on record. The encroachment made by the plaintiffs have already been removed.

Learned counsel for the respondents have relied upon the law laid down by Hon'ble Supreme Court in Jagpal Singh and others v. State of Punjab and others, 2011 (1) R.C.R. (Civil) 912, wherein the directions have been given to the State Governments to prepare schemes for eviction of illegal/unauthorized occupations of Gram Panchayat land and these must be restored to Gram Panchayat for common use of the villagers of the village. It is held as under:-

“22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram

Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”

The law laid down in this judgment fully applies to the facts of the present case.

Keeping in view the above discussion, I find that the judgments and decrees passed by the Courts below are correct and as per evidence and law, which do not require any interference from this Court and the same are upheld. Otherwise also, no substantial question of law arises in this regular second appeal.

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Finding no merit in the regular second appeal, the same is dismissed.

April 22, 2015.

(Inderjit Singh)
Judge

hsp