

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

RSA No.4584 of 2012(O&M)

Date of Decision: 09.10.2015.

Gurdeep Singh

.....Appellant

VERSUS

Gram Panchayat Pakharpura

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Malkeet Singh, Advocate
for the appellant.

SNEH PRASHAR, J.

1. Assailing the judgment and decree dated 05.05.2012 passed by Learned Additional District Judge, Amritsar, dismissing the appeal preferred by Gurdeep Singh-appellant, the instant second regular appeal was filed.

2. The facts that emerge from the record are as under:

Appellant-plaintiff (hereinafter referred to as 'appellant') claiming to be the owner in possession of the land measuring 10 Kanals comprised in Khasra No. 16/1/1(6-18) and 13/2(3-2), situated in village Pakharpura, Tehsil and District Amritsar (hereinafter referred to as the suit land) filed a suit for declaration to the said effect. He pleaded that his great grand father, namely, Nihal Singh and his grand father-Mehar Singh had been cultivating the suit land for the last more than fifty years and after them he is in cultivating possession of the same as owner. He further alleged that the claim of the Gram Panchayat-defendant of village Pakharpura that it

is owner of the suit land as it was purchased from Central Government was wrong. The Gram Panchayat on the basis of some fabricated documents had wrongly got its name entered into column of ownership in the Jamabandi.

3. The defendant-Gram Panchayat contested the suit raising various legal preliminary objections. It alleged that the suit is barred by principle of resjudicata. An ejectment order was passed against the appellant in execution of which he was dispossessed in due course of law but he again entered in possession of the suit land. Again an ejectment order was passed against him on 20.07.1999 and in pursuance of the same the possession was taken from him. Number of other applications initiated by him claiming to be owner in possession were all decided against him.

Replying on merits the defendant-Gram Panchayat reiterated the above facts and pleaded that in compliance of order dated 20.07.1999 passed by DDPO-cum-Collector, Amritsar the appellant already stands dispossessed but he is in the habit of filing false and frivolous suits.

4. On the pleadings of the parties the issues were settled by learned trial Court. Both the parties adduced evidence to substantiate their rival contentions.

5. Considering the ocular and documentary evidence led by the parties, learned trial Court finding that the plaintiff had failed to prove that he is owner of the suit land whereas it stands established that the defendant-Gram Panchayat is the owner in possession of the same and further that the suit filed by the plaintiff is not maintainable, dismissed the suit vide judgment and decree dated 30.08.2010.

6. Feeling aggrieved by the judgment and decree dated 30.08.2010 passed by learned trial Court, the appellant preferred the first

appeal which was dismissed by learned Additional District Judge, Amritsar vide judgment dated 05.05.2012. Aggrieved by the same, the appellant came up with this regular second appeal.

7. Submissions made by Mr. Malkeet Singh, Advocate representing the appellant has been heard.

8. At the very outset learned counsel for the appellant argued that it was pleaded by the defendant-Gram Panchayat itself that after the plaintiff was dispossessed in execution of an ejectment order he had again entered in possession of the suit land. It amounted to admission of possession of the appellant on the suit land. In fact, the appellant is in cultivating possession of the suit land since the time of his great grand father i.e. for the last more than fifty years. He has never been ejected and is still in possession as an owner.

9. Scrutinizing the relevant documents tendered in evidence by the defendant-Gram Panchayat. The objection raised by the defendant-Gram Panchayat that the suit of the appellant is barred by principle of resjudicate was answered by learned trial Court in favour of the appellant and the finding of learned trial Court was that the earlier suit filed by the appellant was dismissed under Order IX Rule 8 of the Code of Civil Procedure (for short 'the Code') vide order dated 08.02.2000 i.e. Ex.D-24 and not on merits. However, the learned First appellate Court analyzing the documents tendered in evidence by defendant Gram Panchayat gave its findings as under:

A perusal of the record has shown that earlier that plaintiff had moved an application before the Collector for obtaining ownership with regard to the suit property

which was dismissed vide order dated 06.01.1999 Ex.D7, as the suit property was under the ownership of gram Panchayat. Even his appeal was dismissed by Commissioner, under the Punjab Village Common Lands (Regulations), Act, 1961, vide order dated 11.02.1999, Ex. D8 on the file. That the writ petition filed before the Hon'ble Punjab and Haryana High Court challenging the transfer of the suit property in the name of gram panchayat was dismissed vide order dated 2.09.1983, Ex.D6 on the file. As the defendant had also moved an application for ejectment of the appellant/plaintiff and possession was delivered to the Panchayat with imposition of fine of Rs. Two lacs vide order dated 20.07.1999 Ex. D9 on the file and ultimately actual possession was delivered to the defendant vide rapat roznamcha Ex.D20 and Ex. D21. Meaning thereby, the appellant had already availed the opportunity of trying his luck at every forum. As shown by the order Ex. D24 one suit filed by the plaintiff was dismissed under order 17 Rule 3 of CPC and other suit was dismissed under 9 Rule 8 CPC, by the Court of Sh. K.C. Gupta, the then learned civil Judge, Junior Division, Asr as is clear from the order Ex. D7 the matter in issue has already been decided by the Collector and the appeal was dismissed by the Commissioner vide order Ex.D8. As per explanation VIII of Section XI of Civil Procedure Code, 1908, an issue heard and finally decided

by a Court of limited jurisdiction, competent to decide such issue, shall operate as res-judicata in a subsequent suit notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised. So, when the issue regarding title of the disputed property has already been decided by the Collector and Commissioner under the Punjab Village Common Lands (Regulations) Act, 1961, then the present suit is barred by the principle of res-judicata. So, the findings of the learned lower Court on issue no.5 are set aside and issue is decided in favour of the defendant and against the plaintiff.

10. Indeed, from the documents discussed above, it is apparent that not one but two suits were filed by the appellant before the Civil Court prior to the filing of the present suit. One was dismissed under Order XVII Rule 3 of the Code and the other was dismissed under Order IX Rule 8 of the Code. In addition to the same, the application filed by the appellant before the Collector for obtaining ownership rights with regard to the suit land was dismissed vide order dated 06.01.1999 Ex. D7. His appeal was dismissed by the Commissioner vide order dated 11.02.1999 Ex.D8 and the writ petition filed by the appellant challenging the transfer of the suit land in the name of Gram Panchayat was also dismissed by this Court vide order dated 02.09.1983 Ex. D6. In that manner the issue of ownership raised by the appellant against Gram Panchayat in the present suit stands determined by a competent Court of jurisdiction. Explanation VIII of Section 11 of the

Code provides that an issue heard and finally decided by a court of limited jurisdiction, competent to decide such issue, shall operate as res-judicata in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

Accordingly, it was rightly held by learned first appellate Court that the issue regarding ownership qua the suit land already stands decided between the appellant and defendant-Gram Panchayat by the Collector and the Commissioner and in the Civil suit filed by the plaintiff having been dismissed under Order XVII Rule 3 of the Code and the said decision renders the present suit as barred by principle of res-judicata.

11. Learned trial Court as well as learned first appellate Court have held consistently that the appellant is not in possession of the suit land since the possession already stands delivered to defendant-Gram Panchayat who is recorded to the owner in possession of the suit land in Jamabandi for the year 2007-2008 Ex. D22.

12. Thus, there is no ground for intervention in the concurrent findings of learned trial Court and of the first appellate Court and also the appeal being devoid of merit is hereby dismissed.

(SNEH PRASHAR)
JUDGE

09.10.2015
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