

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

RSA No.4213 OF 2013 (O&M)
DATE OF DECISION : 25th AUGUST, 2015

Rajkumar Parashar & others

.... Appellants

Versus

Municipal Corporation Faridabad & others

.... Respondents

RSA No.4260 OF 2013 (O&M)

Shanti Ram Parashar & others

.... Appellants

Versus

Municipal Corporation Faridabad & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Vikram Bali, Advocate
 for the appellants in RSA No.4213 of 2013.
 & for respondents No.2 to 4 in RSA No.4260 of 2013.

Ms. Amrita Nagpal, Advocate for
Mr. Arvind Seth, Advocate
for the appellants in RSA No.4260 of 2013
for the respondents in RSA No.4213 of 2013.

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SURINDER GUPTA, J. (ORAL)

1. Heard.
2. The plaintiffs, now appellants, filed suit seeking the relief of permanent injunction to restrain the respondent-Municipal Corporation, Faridabad from raising any construction over any part of the land in suit which was described in para 1 of the plaint as Khewat No.514 Khata

No.810, Khasra No.1217/2 measuring 0-17 biswa situated within the revenue estate of Faridabad old, Tehsil and District Faridabad as per the entry in the Jamabandi for the year 1989-90. The contention of the plaintiffs-appellants is that rights of the co-sharer in the suit land were purchased vide sale deed dated 14.08.1997, 27.08.1997 and 04.09.1997 (Ex.P-1 to P-3). The defendant (Municipal Corporation) raised construction of water tank over this land without having any right and title to do so. Municipal Corporation, Faridabad contested the claim of plaintiffs inter alia pleading therein that the suit property vest in Municipal Corporation, Faridabad under the provisions of Haryana Municipal Corporation Act, 1994 and the plaintiffs have no right, title or interest in suit land to restrain the Municipal Corporation from raising any construction over it.

3. The suit was dismissed by Civil Judge (Senior Division), Faridabad with the observation that the plaintiffs have not given any description of the suit property over which they have possession; no site plan or demarcation report has been tendered in evidence to show the exclusive possession of the plaintiffs or to identify the suit property. The suit property has been described as bearing khasra No.1217/2 measuring 0-17 biswas and the plaintiffs do not claim possession over the entire land of khasra No.1217/2.

4. Not satisfied, the plaintiffs filed appeal before the first appellate Court which was dismissed by Additional District Judge, Faridabad. It was observed by the first appellate Court that the suit land

vested in the Gram Panchayat of the village under the provisions of Punjab Village Common Land Act and appellants-plaintiffs were required to file a suit under Section 13 of the Punjab Village Common Land Act to claim title over the suit land against the Gram Panchayat.

5. I have heard learned counsel for the parties and perused the paper book with their assistance.

6. Learned counsel for the appellants argues that the suit land was described by khasra number. Both the courts below have recorded the findings that the plaintiffs are co-sharers and being co-sharers and proprietors of the village the plaintiffs have share in the suit land as fully defined in the plaint. Defendant-respondent have no right or concern with the suit land and cannot be allowed to raise any construction over it. Both the courts have erred while declining the relief of injunction as prayed for.

7. On perusal of the judgment of the courts below and the pleadings, copies of which have been supplied during the course of arguments, I find that the real intention behind filing this suit is not to seek the relief of injunction but of declaration of title of the plaintiffs over the suit land. The plaintiffs have not defined the land regarding which this suit has been filed. They have not produced any site plan to depict their specific possession over any part of the suit land which admittedly, as per the revenue record, vests in Gram Panchayat. Appellate Court below on going through revenue record observed in para 13 of judgment as follows:

“As per the entries shown in column No.4 of the revenue record, the suit land is mentioned as Shamlat

Deh Hasab Rasad Kabja Araj Malkiyat Mandraza Misal Hakiyat and in column No.5, it is shown as Makbuja Malkan and the nature of the land is shown as Gair Mumkin. The general entry in column No.5 is shown as Makbuja Malkan upto the year 1994-95 and thereafter it is shown in possession of the proprietors of the village and their vendees, as per their respective share as shown in the Jamabandi for the year 1999-2000.

xxx..... xxx..... xxx.....

Admittedly, neither the share of all the proprietors have been determined on pro-rata basis and no partition has taken place between them and there is no order of any competent authority to release the bachat land of the shamlat deh to the proprietors, if the same is not being used for common purpose. No doubt, learned counsel for the appellants-plaintiffs have referred judgments Ex.P13 to Ex.P15 but learned lower Court while giving detailed findings in this regard, has rightly held that the same are distinguishable on facts. The learned lower court has rightly held that even though the appellants-plaintiffs claim that they have purchased share of certain proprietors of the village vide sale-deeds Ex.P1 to P3, it also does not make them owners of the suit property as if appellants-plaintiffs claim that suit land is not vested

in the respondent-defendant, then the same is owned by Gram Panchayat of the village under Punjab Village Common Land Act and in such a situation, appellants-plaintiffs were required to file a suit under Section 13 of the Punjab Village Common Land Act to claim title in the suit land against the Gram Panchayat.”

8. Even if the title of parties over suit land is ignored, in the absence of defining the disputed property with boundaries for proper identification and alleging specific possession thereon, both the courts below have committed no error of law or fact while declining the relief of injunction as prayed for. Even the witness of appellants namely Sunil PW-2 has stated that the land is lying vacant and in case of vacant land the possession follows title, and title of suit land does not vest in plaintiff/appellants.

9. On perusal of paper book and judgments of courts below, I find no factual or legal infirmity therein calling for any interference. No substantial question of law, requiring determination, arises in these appeals, which have no merit, dismissed.

25th August, 2015
'raj'

(SURINDER GUPTA)
JUDGE