

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

RSA No.4348 of 2013 (O&M).
Date of Decision: 14.12.2015.

Niranjan LalAppellant.

VERSUS

Gram Panchayat KaloliRespondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. J.P. Sharma, Advocate for the appellant.

SNEH PRASHAR, J.

CM-11742-C-2013

There is a delay of nine days in filing the appeal. In view of the grounds mentioned in the application, delay of nine days in filing the appeal is condoned.

Application stands disposed of.

RSA-4348-2013 (O&M)

1. This was Regular Second Appeal filed by plaintiff-appellant Niranjan Lal (hereinafter referred to as the “plaintiff”) impugning the

judgment and decree dated 07.05.2013 passed by learned District Judge, Narnaul whereby the appeal filed by the defendant-respondent Gram Panchayat Kaloli (hereinafter referred to as the “defendant Panchayat”) was accepted and the judgment and decree dated 11.09.2012 passed in Civil Suit No.140 RT of 2007 by learned Civil Judge (Senior Division), Narnaul decreeing the suit for permanent injunction filed by the plaintiff was set aside and the suit of the plaintiff was dismissed.

2. The relevant facts garnered from the record are as under:-

The plaintiff filed a suit for permanent injunction claiming to be owner-in-possession of the house shown with red colour and the boundaries in the site plan annexed with the plaint (hereinafter referred to as the “suit property”) since the time of his forefathers. He pleaded that the house alongwith the surrounding walls was built long time ago. It had come to his share by inheritance and he had been using the same by putting thatched roof (Chappar) thereon and had been residing in the same. The defendant Panchayat had no concern with the suit property but due to election rivalry the Sarpanch is adamant to get him evicted from the same. He has wrongly obtained an eviction order from a revenue Court and the appeal filed by him (plaintiff) against the order had also been illegally dismissed.

3. The suit was contested by the respondent-defendant alleging it to be false and frivolous. The suit property was said to be owned by Gram Panchayat. It was alleged that the plaintiff or his predecessors-in-interest had no concern with the same. The plaintiff had illegally made some

construction but an eviction order has been passed against him and his appeal had also been dismissed by the Court of Commissioner, Gurgaon Division, Gurgaon. Additional pleas with regard to maintainability of the suit and cause of action etc. were raised.

4. On the rival contentions of the parties, following issues were framed:-

- (1) Whether the plaintiff is entitled for a decree for injunction as alleged in the plaint? OPP.
- (2) Whether the plaintiff has no cause of action to file the present suit by his own act and conduct? OPD.
- (3) Whether the present suit is not maintainable in the present form? OPD.
- (4) Whether the Civil Court has got no jurisdiction to try and decide the present suit? OPD.
- (5) Whether the defendant is entitled to special cost under Section 35A of CPC? OPD.
- (6) Relief.

5. Both the parties adduced evidence in support of their rival contentions.

6. Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court decreed the suit of the plaintiff vide judgment and decree dated 11.09.2012 on finding that the defendant Panchayat had admitted possession of the plaintiff on the suit property and in case he is dispossessed illegally and forcibly, he shall suffer irreparable loss. Accordingly, the defendant Panchayat was restrained from dispossessing the plaintiff except in due course of law.

7. Feeling aggrieved by the judgment and decree dated 11.09.2012 passed by learned trial Court, the defendant Panchayat filed an appeal. Considering the fact that an eviction order dated 28.05.2002 had already been passed against the plaintiff in an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, "the Act of 1961") filed by the defendant Panchayat, learned first appellate Court accepted the appeal and dismissed the suit of the plaintiff vide judgment and decree dated 07.05.2013.

8. Feeling aggrieved by the judgment and decree dated 07.05.2013, the plaintiff has filed the instant Regular Second Appeal.

9. The submissions made by Mr. J.P. Sharma, learned counsel representing the plaintiff-appellant have been considered.

10. Learned counsel for the plaintiff argued that the possession of the plaintiff on the suit property was not denied by the defendant Panchayat. The plaintiff claimed to have inherited the suit property from his predecessors-in-interest and is in settled possession of the same. Even if it is accepted for the sake of argument that he is not owner of the suit property, he is entitled to protection of his possession under law and cannot be thrown out illegally and forcibly.

11. Admittedly, no evidence could be produced by the plaintiff to prove that the suit property was his ancestral property which he had inherited from his forefathers. Rather he himself pleaded that on an application filed by the defendant Panchayat an eviction order had been passed against him and the appeal filed by him against the said order had

also been dismissed by the Court of Commissioner. From his own pleadings, it is evident that the defendant Panchayat was not interfering in his possession and was also not trying to evict him illegally and forcibly. A petition under Section 7 of the Act of 1961 was filed by the defendant Panchayat for eviction of the plaintiff from the land on which he had illegally raised construction, which was allowed and an eviction order was passed against him. He preferred an appeal before the Commissioner which was dismissed and the order of the Commissioner was not challenged by him before the competent authority. From that it follows that the order of eviction has since become final. In the light of proceedings conducted under the Act of 1961 it does not lie in the mouth of the plaintiff to say that the defendant Panchayat intended to evict him illegally and forcibly. The defendant Panchayat was proceeding in due process of law. There remains no doubt that when the order of eviction has become final, the Gram Panchayat has a right to take possession by filing an execution petition. The first appellate Court had also ordered that the Panchayat shall take possession in execution of the eviction order dated 28.05.2002 Ex.D1.

Thus, there being no substantial question determinable by this Court and appeal being devoid of merit is hereby dismissed.

(SNEH PRASHAR)
JUDGE

14.12.2015
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