

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

**RSA No. 721 of 2015 (O&M)
Decided on : 18.08.2015**

Joseph

...Appellant

Versus

Gram Panchayat Village Kala Bala land another

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Inderjit Sharma, Advocate,
for the appellant.

K. C. PURI, J.

The plaintiff has directed this appeal against the judgment and decree dated 2.9.2014 passed by Sh. Ranjan Kumar Khullar, Additional District Judge (Fast Track Court), Gurdaspur, vide which the appeal preferred by the plaintiff was dismissed and the judgment and decree dated 6.10.2012 passed by Mrs. Girish, PCS, Additional Civil Judge (Senior Division), Gurdaspur was upheld and the suit of the plaintiff remained dismissed.

Brief facts as gathered from the record are that the plaintiff filed a suit for permanent injunction restraining the defendants from interfering in any manner or carving out any passage through plot

marked as ABCD shown in the site plan measuring 5 marlas as detailed in the head note of the plaint. It was pleaded by the plaintiff that he is owner in possession of suit property. His possession is for the last 60 years and he has grown Jamun, Tahli etc. and different varieties of trees and he is using the said plot as his haveli. On 21.8.2000 the Gram Panchayat had passed a Resolution in favour of the plaintiff regarding the plot in dispute marked as ABCD that the plaintiff is in peaceful possession over the suit land since 1956-57 and nobody else has right in the suit property. The defendants have no right, title or interest in the said plot but they are forcibly and illegally making attempts to carve out passage/pacca road marked EFGH shown in the site plan over the plot of the plaintiff. The defendants are trying to construct the proposed passage marked EFGH shown in the site plan through the plot in dispute. The plaintiff requested the defendants not to do so but the defendants were adamant on their stand. Hence, the present suit.

On put to notice, the defendants appeared and filed written statement taking preliminary objections of maintainability, locus standi, suit being bad for non-joinder of necessary parties. On merits, ownership of the plaintiff was denied. It was pleaded that the suit land is Mushtarka Malkan as per Jamabandi produced by the plaintiff. The plaintiff has not been incorporated as owner anywhere in the Jamabandi. The trees grown in the plot are the ownership of proprietors of the village as the suit land is ownership of proprietors of the village. The village Panchayat never passed any resolution in

favour of the plaintiff. The defendant No.1 Gram Panchayat demarcated the suit land and the Market Committee had made pucca road before filing the suit. The other averments made in the plaint were denied.

Replication was not filed. From the pleadings of parties, following issues were framed :-

- 1) Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
- 2) Whether the suit is not maintainable ? OPD
- 3) Whether the plaintiff has no locus standi to file the present suit ? OPD
- 4) Whether the suit is bad for non-joinder of necessary parties ? OPD
- 5) Relief.

Both the parties led their respective evidence. The learned trial court, after appraisal of the evidence, dismissed the suit of the plaintiff vide judgment and decree dated 6.10.2012 passed by Mrs. Girish, PCS, Additional Civil Judge (Senior Division), Gurdaspur .

Feeling dissatisfied with the above said judgment and decree dated 6.10.2012, the plaintiff filed appeal which was dismissed vide judgment and decree dated 2.9.2014 passed by Sh. Ranjan Kumar

Khullar, Additional District Judge (Fast Track Court), Gurdaspur,

Still feeling aggrieved, with the aforesaid judgments and decrees dated 6.10.2012 and 2.9.2014, the plaintiff-appellant has preferred the instant regular second appeal.

Learned counsel for the appellant, in para no.9 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the instant appeal :-

- 1) Whether the Courts below could pass the impugned judgments by mis-appreciating and misreading the material evidence on the file ?
- 2) Whether the Courts below could record the findings regarding possession of the appellant over the suit land merely by observing that name of the appellant does not figure in the revenue record/Jamabandi ?

I have heard learned counsel for the appellant and have gone through the records of the case.

Learned counsel for the appellant has submitted that the plot marked as ABCD shown in site plan was allotted to the plaintiff out of land measuring 1 kanal 2 marlas comprising in khasra No. 86/2/6 situated in the revenue estate of village Kala Bala Tehsil and District Gurdaspur as detailed in the head note of the plaint. Both

the Courts below have dismissed the suit of the plaintiff on the ground that plaintiff has failed to prove his ownership and possession and that PWD road has been constructed. It is submitted that the appellant is not disputing the portion of the road but has laid claim in respect of land allotted to him by the Gram Panchayat. It is further submitted that the judgments of both the Courts are result of misreading and misinterpreting the evidence. Jumla Mushtraka Malkan has been recorded as owner of the property. The suit property was managed by the Gram Panchayat and 5 marla plot has been allotted to the plaintiff and as such suit qua that land should have been decreed.

I have carefully considered the said submission but do not find any force in that submission.

There is a concurrent finding of fact recorded by both the Courts below that the plaintiff has not been able to prove the ownership and possession in respect of suit property. The revenue record does not show the ownership and possession of the plaintiff. It has been proved on the record that PWD road exists at the spot and the plaintiff has not arrayed the PWD department as the defendant respondent. So, in these circumstances, the plaintiff cannot get injunction. There is nothing on the record that judgments of both the Courts below are result of misreading and misinterpreting the evidence on the file. The plaintiff in his cross-examination has admitted that pucca road exists on the spot and he has not pressed for the injunction application. In the revenue record, the plaintiff has neither been shown

owner nor in possession of the suit property. The plaintiff has also admitted that pucca road has already been carved out by PWD department and as such both the Courts below have rightly dismissed the suit of the plaintiff. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal. Consequently, the present appeal stands dismissed.

18.8.2015
SN

(K.C.PURI)
JUDGE