

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

Civil Revision No.4160 of 2009 (O&M)

Date of decision: 05.04.2016

Karam Singh and others

.....Petitioners

Versus

**Gram Panchayat, Village Assan Khurd, Tehsil & District Panipat and
others**

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Mukul Aggarwal, Advocate,
for the petitioners.

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

Mr. Sandeep Singh Ghangas, Advocate,
for respondent Nos. 2 to 12.

Ritu Bahri, J.

Challenge in this petition is to the orders dated 27.01.2009 and 20.05.2009 (Annexures P-7 & P-8) passed by the Additional Civil Judge (Senior Division), Panipat and Additional District Judge, Panipat respectively, whereby objections filed by JDs-petitioners in execution application No.36 of 2001, titled as 'Amar Singh and others Vs. karan Singh and others', under Order 21 Rule 11 CPC, has been dismissed.

The plaintiffs-respondents had filed a suit challenging the judgment and decree dated 28.02.1983 passed by the Sub Judge, Ist Class, Panipat in civil suit titled as 'Karam Singh and others Vs. Gram Panchayat through its Sarpanch', on the ground that the same was the result of fraud and mis-representation and not binding on the rights of the plaintiffs and

other inhabitants of village Assan Khurd. Plaintiff Nos. 1 and 4, in that suit, were members of Gram Panchayat, Village Assan Khurd, Tehsil and District Panipat and they filed the said suit in representative capacity under Order 1 Rule 8 CPC. The suit land was alleged to be *shamlat deh* vesting in the Gram Panchayat-defendant No.47. Suit land had never been partitioned and defendant Nos. 1 to 46 had never been in possession of the same. However, a collusive decree dated 28.02.1983 was obtained, wherein defendant No.8-Karan Singh was the Sarpanch of Village. The suit was contested with the objections that the Civil Court had no jurisdiction to decide the nature of land being *shamlat deh*. Vide judgment and decree dated 11.05.2000, the said suit was decreed and a direction was given to the defendants-petitioners to hand over the physical possession of the suit land to the Gram Panchayat with consequential relief of permanent injunction restraining defendant Nos. 1 to 46 from alienating the suit land.

Thereafter, the decree-holder/plaintiffs filed execution qua the said judgment, wherein the petitioners filed objections by taking a plea that this Court had no jurisdiction to decide the question of title and under Section 13-A of the Punjab Village Common Lands Act, only the Collector is competent to decide the question of title.

The objections filed by the petitioners have been dismissed by both the Courts below vide impugned orders dated 27.01.2009 and 20.05.2009 (Annexures P-7 & P-8) by taking a consistent view that the judgment and decree dated 11.05.2000 passed in Civil Suit No.57 of 1996, whereby judgment and decree dated 20.02.1983 passed in Civil Suit No.126 of 1983 were set aside, had attained finality. Even RSA No.4712 of 2001 had been dismissed by this Court on 12.09.2002 by observing as under:-

appellants is that the defendants were already in possession of the suit land, at the time of passing of the civil court decree dated 28.02.1983 and that no case was made out for directing the defendant Nos.1 to 46 to hand over the possession of the suit land to defendant No.47, Gram Panchayat, as prayed by the plaintiffs in the suit, which suit was decreed by the Trial Court. However, I find no force in this submission of the learned counsel for the defendants-appellants. If the defendants were already in possession of the suit property, prior to the aforesaid civil court decree dated 28.02.1983, the defendants were to produce cogent evidence on record to prove this fact. However, the defendants failed to produce sufficient evidence on the record to show that they were already in possession of the suit property at the time when the civil Court decree was passed by the trial Court. Under these circumstances, in my opinion, the Courts below were perfectly justified in decreeing the suit of the plaintiffs vide which the civil Court decree dated 28.02.1983 was set aside and defendant Nos. 1 to 46 were directed to hand over possession of the suit property to the Gram Panchayat, defendant No.47, in whom the suit land had vested. There is no illegality in the judgment of the Courts below nor any substantial question of law is involved in this Second Appeal. Hence, present appeal is dismissed.”

Even at the time of dismissal of RSA No.4712 of 2001, the defendants had failed to prove their possession over the suit land. While deciding the said RSA, it has been held that the Gram Panchayat was in possession of the property prior to passing of decree dated 28.02.1983. The defendants-petitioners failed to produce sufficient evidence to show that they were already in possession of the property at the time of passing of aforesaid decree. In the absence of any evidence that they were in possession of the property in dispute, their objections have rightly been dismissed by both the Courts below.

At this stage, reference can be made to the judgment passed by the Hon'ble Supreme Court in **Horil Vs. Keshav and another**, 2012 (2) Law Herald (SC) 1263. In that case before the Hon'ble Supreme Court, a suit had been filed challenging the compromise arrived before the Revenue Authority on the ground that it was fake and that one of the parties had

never signed the said compromise. The Hon'ble Supreme Court held that such a suit was maintainable and the Revenue Courts were neither equipped nor competent to effectively adjudicate on allegations of fraud that has overtones of criminality and the Courts really skilled and experienced to try such issues are the Courts constituted under the Civil Procedure Code. It was further held that Order 23 Rule 3-A does not bar the institution of a suit before the Civil Court even in regard to decrees or orders passed in suits and/or proceedings under different statutes before a Court, Tribunal or authority of limited and restricted jurisdiction. After a gap of 31 years, the Hon'ble Supreme Court set aside the order passed by the High Court and remanded the case back before the *Munsif* to dispose of the same without delay.

The ratio of the above said judgment is directly applicable to the facts of the present case. In this case, the decree dated 20.02.1983 passed in civil suit No.126 of 1983 has been set aside and even RSA No.4712 of 2001 has been dismissed by this Court. It has been held that the Sarpanch acting on behalf of Gram Panchayat had entered into a collusive decree. Once, the Civil Court had returned a finding that the decree was on account of fraud and misrepresentation, the executing Court has rightly dismissed the objections filed by the defendants-petitioners. Under Section 13-A of the Punjab Village Common Land Act,, there was a bar to decide the question of title by the Civil Court. As per the judgment passed by the Hon'ble Supreme Court in **Horil's** case (supra), the trial Court had rightly set aside the judgment and decree dated 20.02.1983 which were obtained on the basis of fraud and misrepresentation in respect of *shamlat deh* land.

In view of the above, after giving thoughtful consideration to the

irregularity has been found therein warranting interference by this Court in exercise of its revisional jurisdiction.

No merits.

Dismissed.

05.04.2016
ajp

(RITU BAHRI)
JUDGE