

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

**RSA No.4042 of 2008 (O&M)
Date of Decision-11.01.2016**

Sardara Ram

... Appellant

Versus

Gurnam Singh and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Mamli, Advocate for the appellant.

Mr. B.B. Sharma, Advocate for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. This appeal has been filed by defendant No.1 against the concurrent judgments and decrees passed by the Courts below, wherein, trial Court decreed the suit of the plaintiffs for permanent injunction and the defendants remained unsuccessful in first appeal before the Lower Appellate Court.

[2]. Plaintiffs filed a suit for permanent injunction restraining defendant No.1 from interfering in the peaceful possession of the plaintiff over the suit property and further restraining them from raising any construction over the suit land illegally and forcibly.

[3]. Plaintiffs alleged that defendant No2-Gram Panchayat is the recorded owner of land measuring 0 kanal 4 marlas comprised in Khewat No.334, Katauni No.732 min, khasra No.249 (0-4) Gair Mumkin Khaal

Devi Wala, situated at village Bhadson, Tehsil Indri, District Karnal. At the time of consolidation said land was reserved for the benefit of the village community for taking the water from the common well. Father of plaintiff No.2 is recorded co-sharer in the said common well which is comprised in khasra No.201 (0-12). He has expired about 15-20 years. Aforesaid common well was closed and the land was being used as Rasta in order to reach in the Phirni. Defendant No.1 has no right in the suit land. He in collusion with Gram Panchayat-defendant No.2 filed suit for permanent injunction titled as Sardara Ram Vs. Gram Panchayat. Trial Court held in said suit that the plaintiffs and other inhabitants are owners in possession of land comprised in khasra No.201 (0-12) which is reserved as *Gair Mumkin Chan* and land comprising in khasra No.249 (0-4) is owned by Gram Panchayat and had restrained the Gram Panchayat from interfering in the land comprising in khasra No.201 (0-12). Defendant No.1 in collusion with Sarpanch under the garb of judgment dated 31.05.2001 (which is not in his favour, so far as the suit land is concerned) is bent upon to raise the construction on the suit land, thereby restraining the plaintiffs and other inhabitants of the village from using the same as Rasta which is in existence since more than 20 years on the spot after closing of common well.

[4]. The suit has been contested by the defendant on all counts. Defendant No.1 alleged that he is owner in possession of khasra No.249 as admitted by the Gram Panchayat and is using the same for the purpose of tethering cattle and also constructed the boundary walls. He denied that there is any Rasta as alleged and he is in exclusive possession of the same for the last more than 20 years.

[5]. Defendant No.2 has also contested the suit claiming that Gram Panchayat is owner of *Gair Mumkin Khal* comprised in khasra No.249. The suit filed by defendant No.1 was contested by the Gram Panchayat and the same was decided in favour of Gram Panchayat and in the Civil Suit a mistake has occurred that instead of khasra No.249, khasra No.201 has been recorded. Defendant No.1 is trying to take undue benefit of said wrong.

[6]. Plaintiff filed replication denying the contents of the written statement and reiterated the stand taken in the plaint. From the pleadings of the parties, following issues were framed by the trial Court:-

“1. Whether the plaintiff entitled to get a decree for permanent injunction to restrain defendant No.1 from interfering in the peaceful use of the land? OPP

2. Whether the defendants be also restrained from raising any sort of construction over the land? OPP

3. Whether the suit of the plaintiffs is barred by principal of res judicata under Section 11 CPC? OPD

4. Whether the plaintiffs have no locus standi to file and maintain the present suit? OPD

5. Whether the plaintiffs have concealed the true and material facts from this Hon’ble Court? OPD

6. Whether the suit of the plaintiff is not maintainable? OPD

7. Relief.”

[7]. Parties led their respective evidence to prove their case. Trial Court considered issues No.1 and 2 jointly and held the same in favour of plaintiff and against the defendants. Issue No.3 was decided against the defendants. Issues No.4 and 6 were decided in favour of plaintiff and

against the defendants. After deciding issue No.5 in favour of the plaintiff, suit of the plaintiff was decreed vide judgment and decree dated 31.01.2006. Defendant remained unsuccessful in first appeal before the Lower Appellate Court which was dismissed on 31.10.2008. Hence, the present appeal came to be filed in this Court.

[8]. I have heard learned counsel for the parties and perused the record.

[9]. A Civil Suit No.138/1 of 1996 was decided on 15.03.1996. Perusal of said suit shows that khasra No.201 is 0 kanal 12 marlas which is *Gair Mumkin Chan* reserved for irrigation and is situated within *abadi* of the village. Defendant No.1 has claimed that he is in possession of the land measuring 12 marlas and is using the same for tethering cattle etc. He has claimed possession of khasra No.249 (0-4). The findings recorded in the earlier suit revealed that defendant No.1 could not show as to how he became owner of the suit property. The suit property bears khasra No.201 measuring 12 marlas is found to have been reserved for *Gair Mumkin Chan* in 10 marlas of land and *Gair Mumkin tubewell* in 2 marlas of land. Khasra No.249 is measuring 4 marlas and the same is *Rafai-aam* vested in the Gram Panchayat. No other documents could be produced on record to show ownership and possession of defendant No.1 except the *jamabandi* for the year 1990-91 showing khasra No.249 to be *Rafai-aam* vested in the Gram Panchayat. In the said suit, it was held that present defendant No.1 has no concern with khasra No.249 measuring 4 marlas and so far as khasra No.201 measuring 12 marlas is concerned, the same was held to be in possession of the plaintiff for

which defendant cannot forcibly dispossessed him except in due course of law.

[10]. The suit was decreed accordingly. A typographical error crept in the judgment and instead of mentioning khasra No.201 measuring 12 kanals in the restraint order, khasra No.249 measuring 12 marlas was mentioned. Present defendant claimed his possession over the suit land by relying upon the said decree. The prayer for amendment was declined but ultimately error was corrected vide order dated 04.04.2008 and amended decree was passed as per Exs.P5 and P6 on record whereas Panchayat has been restrained from forcibly dispossessing the plaintiff from khasra No.201 measuring in marlas.

[11]. Perusal of the decree would show that khasra No.201 was held to be in possession of defendant No.1 whereas khasra No.249 was held to be Rasta Rafai-aam vested in the Gram Panchayat. These findings have not been assailed by defendant No.1, therefore, these are binding upon defendant. Possibly defendant No.1 cannot claim his possession and ownership over khasra No.249 by denying the ownership of the Gram Panchayat.

[12]. The contention of learned counsel for the appellant is that Civil Court has no jurisdiction to decide the suit once the title of the Gram Panchayat is involved therein. Secondly, if the suit land is situated within *abadi*, khasra numbers have no such relevance. Apparently, defendant No.1 himself was the person who initiated the earlier litigation viz-a-viz khasra number and now he cannot turn around to claim that Civil Court has no jurisdiction, so the khasra number has no relevance. Dishonest litigation fought at the front cannot be subdued at the instance of person

who has derived some benefit out of it. Title and possession of the suit land was decided in the previous litigation and the property has been held to be under the ownership and possession of the Panchayat and now it does not lie in the mouth of the defendant to take plea and claim himself to be owner of the Panchayat land. The jurisdiction of the Civil Court is not barred in a suit for permanent injunction, rather it is defendant No.1 who is proved to have been not approached the Court with clean hands, therefore, he does not deserve equitable relief at the hands of the Court. Defendant No.1 has tried to mislead the Court by way of falsehood by relying upon typographical error in the judgment and decree passed on earlier occasion. A person who has not come to the Court with clean hands can be thrown at any stage of litigation. Frauds vitiates all solemn acts.

[13]. The substantial question No.1 as formulated in the grounds of appeal is not a question of law much less substantial question of law. The nature of litigation cannot be decided at the threshold of any report of Local Commissioner even, if, no objections have been filed, rather, the case has to be decided on the threshold of earlier litigation which were initiated by defendant No.1 against the Gram Panchayat and findings recorded viz-a-viz the khasra Nos.201 and 249 on correction have necessary relevance in the present context and the same has been rightly appreciated by the Courts below while decreeing the suit of the plaintiff. Question No.2 does not arise inasmuch as that there is no misreading of any document on record and judgments and decrees passed by the Courts below are the result of correct appreciation of evidence and in this way question No.3 has to be answered. Question

No.4 cannot be answered as has been claimed by defendant No.1-

appellant. In case of permanent injunction and in view of findings recorded in earlier litigation, jurisdiction of Civil Court is not barred as the *lis* is not in respect of title of the property which stands fully recorded in view of earlier litigation. In a suit for permanent injunction, Court is not precluded from deciding the factum of possession inter se between the parties, therefore, Civil Court has got all the jurisdiction to entertain such type of controversy under Section 9 of Code of Civil Procedure.

[14]. In view of aforesaid, I find no ambiguity in the judgments and decrees passed by the Courts below. Resultantly, this appeal is found to be totally devoid of merits and the same is accordingly dismissed.

11.01.2016
Prince

(RAJ MOHAN SINGH)
JUDGE