

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

**RSA No.4290 of 2010
Date of decision: 08.04.2016**

Dhian Singh

.....Appellant

Versus

Gram Panchayat of Village Paniar

.....Respondent

. . .

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Ms. Alka Sarin, Advocate for the appellant.

Mr. R.K.Arya, Advocate for the respondent.

. . .

DARSHAN SINGH, J (ORAL)

This regular second appeal has been preferred by the appellant/plaintiff against the concurrent findings recorded by the learned Courts below, vide which the suit filed by the appellant/plaintiff for permanent injunction has been dismissed.

2. Learned counsel for the appellant contended that both the learned Courts below have held that the Civil Court had no jurisdiction to try the suit in view of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act"). If that was so, the learned Courts below should not have dismissed the suit rather plaint should have been returned. She relied upon

R.S.D.V.Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass

Works Ltd., AIR 1993 SC 2094.

3. Mr. R.K.Arya, Advocate, learned counsel for the respondent-Gram Panchayat could not dispute the aforesaid legal position.

4. The appellant/plaintiff has filed the suit for injunction claiming himself to be the owner in possession of the land in question. In the written statement, the defendant/respondent-Gram Panchayat has taken the plea that the land in dispute vests in the Gram Panchayat and the appellant/plaintiff has forcibly taken the possession of the suit land few days prior to the institution of the suit. The learned trial Court has returned the finding that the property in dispute is a chowk situated in the village which was used for the public purposes.

5. The learned first appellate Court in the judgment dated 28.05.2010 has laid down as under:-

“.....So this witness has specifically admitted in the cross-examination that there is a dispute with regard to the ownership between him and the gram panchayat and moreover once he is claiming the ownership of the property by stating that he is in possession and the documents of title with regard to the property in dispute which are lying in his residence but he has not produced even a single document with regard to the property in his favour and he only filed the suit on the basis of site plan which could not prove any ownership and keeping in view the law that whenever there is any dispute with regard to any property whose title is in dispute whether it is a property of gram

panchayat or the individual who claims to be so, the civil court has certainly got no jurisdiction.....”

6. Thus, there was a clear dispute between the parties as to whether the land in dispute vests or does not vest in the Gram Panchayat. The plaintiff was claiming himself to be the owner in possession of the site in dispute whereas the respondent-Gram Panchayat was alleging the same to be the public chowk which vests in it. So, certainly the jurisdiction of the Civil Court was barred under Section 13 of the Act. The Hon'ble Supreme Court in the case of **R.S.D.V.Finance Co. Pvt. Ltd.** (supra) has laid down that where the Court arrived at a conclusion that it has no jurisdiction to try the suit, the proper order to be passed is not the dismissal of the suit but return of the plaint for presentation to the proper Court.

7. In the instant case also, the Courts below should have returned the plaint for presentation before the competent authority/Court instead of dismissing the suit.

8. In view of my aforesaid discussion, the present appeal is hereby disposed of with modification of the impugned judgments and decrees directing the learned trial Court to return the plaint to the appellant/plaintiff for presentation before the competent authority/Court as per law.

08.04.2016
Vinay

[**DARSHAN SINGH**]
JUDGE