

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

RSA No.2431 of 2011 (O&M)

Date of decision: 9.8.2016

Vijay Singh

... Appellant

Versus

Hari Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Amit Jain, Advocate,
for the appellant.
Mr.Mohit, Advocate, for
Mr.R.A.Sheoran, Advocate,
for respondents No.1 and 5.

AMIT RAWAL, J. (Oral)

The plaintiff-appellant is aggrieved against the judgment and decree rendered by both the courts below whereby mandatory injunction for removing encroachment and restoring the land in the original position for use of the plaintiff and other rightful holders with consequential relief of possession was sought against the defendant.

Mr.Amit Jain learned counsel appearing for the plaintiffs submits that the land in dispute was not Shamlat deh land though vested in the Gram Panchayat, described as “Jumla Mushtarka Malkan” for which the proprietors have the control/right and the appellant is one of the co-sharer sought mandatory injunction but the trial court dismissed the suit by taking the aid of provision of Section 13 of the Punjab Village Common Lands Act, 1961 whereas the lower appellate court held that it was Jumla Mushtarka Malkan but as far as the possession is concerned, gave the same to the Gram

Panchayat. He submits that since the proprietors have right and interest in the property, the Gram Panchayat had no locus standi to file the suit and the possession was sought on behalf of the proprietors by the plaintiffs and, therefore, there was no need even to file the suit in its representative capacity and urges this Court for setting aside the judgment and decree of the courts below.

Mr.Mohit learned counsel appearing on behalf of the defendants submits that the defendants had been found to be owner in the property though no doubt plea of occupancy tenancy much less adverse possession had been taken. The findings rendered by the lower appellate court are perfectly legal and justified. The plaintiff did not have any locus standi to institute the suit in the absence of consent of the other proprietors and thus, urges this Court to confirm the findings recorded by the learned court below.

I have heard the learned counsel for the parties and perused the paper-book.

Both the courts below found that the defendants are in possession of Khasra No.97/1 but the question revolves whether it would be the plaintiff who would be having locus standi to seek the remedy or Gram Panchayat. Once the lower appellate court has held the property to be Jumla Mushtarka Malkan, Gram Panchayat would not have the locus standi to seek possession of the property as it would be only the proprietors and the plaintiff being one of the proprietors espoused their cause. In my view, the findings rendered by the learned appellate court in paragraphs 12 and 14 are contradictory to each other. For the sake of brevity, paragraphs 12 and 14

read thus : -

“12. Now coming to the documents relied upon by the defendants. Ex.D1 is the copy of Resolution dated 23.2.1981 passed by Gram Panchayat, Mau showing the possession of the defendant Sirya on Khasra No.97 and not over Khasra No.97/1, Ex.D2 was the copy of notice given to defendant Sirya, Ex.D4 was the report of Paimaish dated 7.6.1997 showing Khasra nos. 97, 97/1 and 125 exist at the property and the encroachment was only on Khasra No.98, Ex.DW2/A was the jamabandi for the year 1962-63 showing area of Khasra No.97/1 which was in possession of defendant Sirya as gair morusi and land was gair mumkin gait. Similar was the entry in Ex.DW2/B Jamabandi for the year 1996-97, Ex.DW2/C jamabandi for the year 1991-92, EX.DW2/F jamabandi for the year 1996-97 and Ex.DW2/G jamabandi for the year 2001-02. In all these documents Khasra No.97/1 was in possession of Sirya, defendant. Moreover, the Hon'ble Punjab & Haryana High Court had also deleted Khasra No.97/1 vide order dated 12.1.2007 passed in C.M. No.18534 of 2006 in CWP No.16139 of 2003 titled Siri Ram Versus The Commissioner, Gurgaon Division, Gurgaon and others, whereas order has been passed pertaining to land bearing Khasra No.s97 and 125. From all these documents filed by the plaintiff and defendants it is very much clear that no doubt the plaintiff was one of the co-sharer of Jumla Mushtarka Malkaan and defendant Sirya was in possession of Khasra No.97/1 which was the land under the ownership of Jumla Mushtarka Malkaan but in occupation of defendant Sirya as gair morusi. So, there was no question that the disputed land was shamlat-deh but same was Jumla Mushtarka Malkaan and same does not vest in Panchayat and in that eventuality Civil Court had jurisdiction to entertain and try the suit. So, findings of learned Civil Judge (Junior Division) by holding that Civil Court had no jurisdiction were totally erroneous and against the law.

14. Thus, from the above discussion it is very much evident that although the plaintiff/appellant is a co-sharer

but he had no right to dispossess the defendant Sirya, who was in long possession of Khasra No.97/1 and only Gram Panchayat can do it. Moreover, the suit has not been filed by the plaintiff in representative capacity. So, the plaintiff/appellant has no locus standi to file the present suit and he was not entitled for any injunction and issue No.1 is decided partly only to the extent that he was only co-sharer in Jumla Mushtarka Malkaan land. Issues No.2 to 4 are decided against the plaintiff/appellant by holding that plaintiff has failed to establish any encroachment made by the defendants. Findings on issues No.5 to 7 have not been challenged in the appeal. The onus to prove these issues were on defendants but the defendants have not led any cogent and convincing evidence. So, all these issues are decided against the defendants.”

I am of the view that the matter requires to be remanded to the lower appellate court to examine the controversy afresh keeping in view the observations made hereinabove.

In view of the aforementioned observations, the judgment and decree of the lower appellate court are set aside and the matter is remanded back to the lower appellate court to decide the appeal afresh in accordance with law preferably within a period of four (4) months.

Parties through counsel are directed to appear before the District Judge, Gurgaon who shall either keep the case or to entrust the same to any of the Additional District Judge on 29.8.2016.

RSA stands disposed of in the aforementioned term.

(AMIT RAWAL)
JUDGE

August 9, 2016

Paritosh Kumar

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes/No