

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1191 of 2012 (O&M)

Date of Decision: 20.05.2016

Karmail Singh and Others

... Appellant(s)

Versus

Gram Panchayat, Dhaipai, Tehsil and District Ludhiana

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

- | | | |
|----|---|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. B.S.Dhaliwal, Advocate
for the appellant(s).

Mr. Onkar Rai, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present regular second appeal, filed by the plaintiffs, against concurrent findings of facts having been recorded by both the Courts below, whereby suit of the plaintiffs for permanent injunction was dismissed and the first Appellate Court dismissed the appeal.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

Relevant facts of the case that plaintiffs filed suit for permanent injunction, thereby restraining the gram panchayat from interfering into the

peaceful possession of the plaintiffs forcibly and illegally. As per plaintiffs, the suit property is *garha khad* and the same was in possession of father of the plaintiffs since 1981. He was cultivating the suit land. The name of father of the plaintiffs as cultivator was duly recorded in the jamabandi for the year 1981-82. Father of the plaintiffs died in the year 2004 and after his death, suit property is in the name of the plaintiffs. Otherwise also, plaintiffs have become owner of the suit property by way of adverse possession. Plaintiffs also planted trees but gram panchayat had become greedy and started asserting claim on the suit property and trying to forcibly dispossess the plaintiffs and as such necessity of the suit.

Defendant contested the suit *inter alia* taking the plea that suit of the plaintiffs is not maintainable and jurisdiction of the Civil Court is barred. In fact, land is the common land of *mustarka malkan* reserved for *garha khad*. The control and management is of the defendant-gram panchayat only and trees on the land are of natural growth over the common land. The suit property vests with the gram panchayat and suit of the plaintiffs is liable to be dismissed.

On these facts, the Court of first instance settled the issues and parties were put to trial. The Court of first instance, after recording of the evidence and appreciation thereof, dismissed the suit of the plaintiffs. The first Appellate Court dismissed the appeal and as such present regular appeal before this Court.

Learned counsel for the appellants, while arguing on behalf of the appellants, submitted that the Courts below have not taken correct view of the matter because the suit property is *garha khad*, which is for the use of

residents of the village and the same was in possession of the father of the plaintiffs earlier and after his death, possession of the suit land is of appellant/plaintiffs. That way, plaintiffs are in possession of the suit land. The Courts below recorded findings against the plaintiffs on the point of ownership as well as possession, though there was no dispute regarding possession of the suit land. The said findings are liable to be reversed.

Learned counsel for the respondent submitted that the Courts below have already appreciated the entire evidence and recorded the findings that owner of the suit land is gram panchayat, whereas no document in support of the claim of the plaintiffs that they are owners in possession of the suit property. As regard to taking of plea of ownership by way of adverse possession, that is the matter of defence only and the same cannot be taken as a plea for establishing adverse possession by the plaintiffs. On this point, reliance has been placed upon the judgment rendered by this Court in ***Subhash alias Nanhu v. Surat Singh (dead) through LRs and Others 2014(4) Law Herald 3545.***

Learned counsel for the appellants also submitted that as the matter in controversy involved vesting and non-vesting of the property with the gram panchayat, the jurisdiction of the Civil Court is completely barred under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”). On this point reliance was placed upon the judgments of Hon’ble the Supreme Court in ***Babu Ram v. Gram Sabha Buhavi 1988(1) RRR 440, Dhruv Green Field Ltd. v. Hukam Singh 2002(2) RCR (Civil) 690*** and ***Sarjeet Singh (D) Th. Lrs. v. Hari Singh and Others 2014(4) RCR (Civil) 758*** and view taken by this Court in ***Bhagu v.***

Ram Sarup and Others 1985 RRR 353.

Learned counsel for the respondent submitted that there is no ground to interfere into the findings recorded by the Courts below and present regular second appeal be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of the record of the case and grounds of appeal, this Court is of the considered view that plaintiffs had originally filed suit for permanent injunction and claimed ownership of the property as well and asserted his claim on the plea of adverse possession. The said suit has been filed against the gram panchayat. As per view taken by the Hon'ble Apex Court in cases ***Babu Ram v. Gram Sabha Buhavi (supra)***, ***Dhruv Green Field Ltd. v. Hukam Singh (supra)*** and ***Sarjeet Singh (D) Th. Lrs. v. Hari Singh (supra)*** and view taken by this Court in case ***Bhagu v. Ram Sarup (supra)***, such a suit is legally barred under Section 13 of the Act.

As regard to plea of adverse possession having been taken by the plaintiffs against the gram panchayat and that too in respect of land duly recorded in the name of gram panchayat in the revenue record. The matter was before Hon'ble the Supreme Court in case ***Gurudwara Sahib v. Gram Panchayat Village Sirthala and Another 2013(4) RCR (Civil) 703***, plaintiffs cannot seek declaration of ownership on the plea of adverse possession. More so, as per view taken by this Court in case ***Subhash alias Nanhu v. Surat Singh (dead) through LRs and Others (supra)***, the plea of adverse possession is a plea of defence and declaration cannot be sought on the said ground.

The Courts below have already appreciated the evidence

regarding possession and recorded findings that plaintiffs have failed to lead any documentary evidence to establish their possession over the suit property and the said concurrent findings of facts do not call for any interference by way of present regular second appeal.

As per view taken by Hon'ble the Supreme Court in *Deity Pattabhiramaswami v. S. Hanymayya and Others AIR 1959 SC 57*, the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of finding of fact. As per view taken by Hon'ble the Apex Court in *Commissioner, Hindu Religious & Charitable Endowment v. P. Shanmugama & Others JT 2005(1) SC 201* and *Biswanath Ghosh (Dead) by LRs and Others v. Gobinda Ghosh alias Gobindha Chandra Ghosh & Others AIR 2014 SC 1582*, second appeal cannot be entertained if there is no substantial question of law involved therein.

In view of the above, present appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and the same stands dismissed.

(Shekher Dhawan)
Judge

May 20, 2016
“DK”