

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

**RSA-5131-2011 (O&M)
Date of decision : 20.10.2016**

Gram Panchayat Karni Khera

... Appellant

Versus

Inder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Aneja, Advocate
for the appellant.

Mr. S.K. Arora, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff-Gram Panchayat is aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit having been decreed in part has been dismissed *in toto*.

Mr. S.K. Aneja, learned counsel appearing on behalf of the appellant-plaintiff submits that the appellant-plaintiff had filed the suit seeking following relief:-

“declaration to the effect that the plaintiff is owner in possession of the land measuring 88 kanal 1 marla comprising Rect. No.83, Killa No.11 (7-4), 12 (8-0), 13(8-0), 14/2 (2-9), 17 (8-0), 19(8-0), 20(7-4), 21 (7-4), 22 (8-0), 23 (8-0), 24 (8-0), Khewat No.282, Khatoni No.474, as per jamabandi for the year 1989-90 situated in village Karni Khera, Hadbast No.248, Tehsil Fazilka, Distt. Ferozepur since 5.6.91 notwithstanding anything contained to the contrary in the

revenue record like jamabandi and khasra girdawari etc. and for permanent injunction restraining the defendant from interfering into the possession of the suit land on the basis of oral and documentary evidence of all kinds”

The trial Court decreed the suit while granting the relief of declaration, but did not grant the permanent injunction, whereas the lower Appellate Court has allowed the appeal of the respondent-defendant and dismissed the suit ignoring the fact that in the proceedings initiated under Punjab Public Premises Act, 1973 (for short 'the 1973 Act'), entry in the *Rapat roznamcha* dated 05.06.1991 (Ex.P1) was made regarding taking of the possession. The Courts below have misinterpreted and misread the jamabandi and khasra girdawari showing the possession in the name of the respondent(s)-defendant(s). Ex.P-3 to Ex.P-11 are the proceedings of the auction held in subsequent year 1991 and Ex.P13 to Ex.P23 are the receipts of the auction viz-a-viz the auction money. All these facts have not been considered by both the Courts below. No doubt, the appellant-plaintiff did not assail the finding qua non-grant of the injunction, but the fact remains that the appellant-plaintiff-Gram Panchayat was in possession of the property. The Gram Panchayat always remained in management and control of the property of the proprietor shown as 'Jumla Mushtarka Malkan'. The lower Appellate Court ought not to have dismissed the suit *in toto* by accepting the plea of the respondent-defendant, thus, urges this Court for decreeing the suit.

Per contra, Mr. S.K. Arora, learned counsel appearing on behalf of the respondent-defendant submits that the appellant-plaintiff has miserably failed to prove the ownership of the property as the land belonged

to 'Jumla Mushtarka Malkan' is of the proprietor, but the fact remains that there is an order of eviction passed under the 1973 Act. The appellant-Gram Panchayat has miserably failed to prove the possession, rightly so, the relief has been declined, even cannot claim the declaration in the absence of the documentary evidence on record, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and substance in the submissions of Mr. S.K. Aneja viz-a-viz the relief of granting of the declaration as the respondent-defendant did not deny the ownership of the Gram Panchayat in view of the proceedings initiated under the 1973 Act and as well as the *Rapat roznamcha* dated 05.06.1991 (Ex.P1). The question which is required to be determined by this Court is whether the possession of the suit property is with the Gram Panchayat or the respondent-defendant. Ex.D-1 to Ex.D-3 are the copies of the khasra girdawari and the mutation bearing No.1087 which show the possession is of the respondent-defendant and though, no doubt the ownership is of the appellant-Gram Panchayat, rightly so, the trial Court did not grant the injunction, but I am of the view that the lower Appellate Court has committed illegality and perversity in not appreciating the aforementioned eviction viz-a-viz the declaration and fact that the eviction petition had attained the finality. The eviction petition can only be initiated by a person, who is the owner of the property, therefore, in my view, the appeal should not have been accepted.

As regards the injunction, I am of the view that the appellant-plaintiff-Gram Panchayat has failed to prove on record the Bank Account

regarding the deposit of the receipt of the auction money and as well as the auction purchaser, who had hired the property on lease-hold basis for cultivation, therefore, the appellant-Gram Panchayat has not entitled to injunction.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213”**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **“Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others” 2001(4) SCC 262**, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi 's case** (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj***

***LR 1 (FB)** cannot be sustained and is thus overruled." [at paras 27 - 29] "*

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force."

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the foregoing reasons, the judgment and decree of the lower

Appellate Court is not sustainable and the same is hereby set aside and that of the trial Court is restored.

The appeal stands partly allowed.

20.10.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No