

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

**R.S.A No.1402 of 2016 (O&M)
Date of decision :08.09.2016**

Rajinder Singh and another

..... Appellants

Versus

Dalel Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Sanjay Vij, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 21.11.2015 passed by the learned Additional District Judge, Gurgaon, whereby the appeal filed by appellants-defendants against the judgment and decree dated 11.08.2014 passed by the learned Civil Judge (Jr. Division), Gurgaon, has been dismissed.

2. Plaintiffs-respondents no.1 to 5 filed the suit for mandatory injunction directing the appellants-defendants to remove the encroachment made by them by raising construction of walls in the red portion which forms part of Khasra no. 2269 situated in village Gurgaon at their own costs. Plaintiffs-respondents also sought a decree of permanent injunction restraining the defendants from interfering in any manner and encroach upon or raising any kind of construction in the suit

property shown with letters 'ABC' in the site plan attached with the plaint.

3. The suit was filed by the plaintiffs who belongs to Nai (Barber) Community in representative capacity for themselves and on behalf of Nai Samaj of village Gurgaon. That the Barber Community was not having any place for organising their functions in village Gurgaon. They requested Gram Panchayat in the year 2003 to allot some area for the construction of the Chobara/Community hall for the Barber Community. The Gram Panchayat allotted an area measuring 500 sq. yards out of Khasra No. 2269 in village Gurgaon. Resolution dated 26.01.2003 was passed in this regard. However, possession of only the area measuring 180 sq. yards could be delivered to the plaintiffs as rest of the area was found to have been encroached upon by the appellants-defendants. Plaintiffs raised construction of rooms in the said land shown in green colour in the site plan. Defendants forcibly raised some construction shown in red colour in the site plan and they are adamant to raise further construction in order to encroach upon the land of the plaintiffs. Hence the suit.

4. Defendants contested the suit on the grounds inter alia that the suit land is not the part and parcel of Khasra No. 2269 as claimed in the plaint. In fact, the land in suit is comprised of Khasra Nos. 10184/2270/2(1-2-2) and No. 1085/2270/3 (0-1-1) situated within the revenue estate of village Gurgaon. It was further pleaded that earlier the suit land was owned by one Kalu Ram, the maternal grandfather of the appellants from whom it was purchased by Suraj Bhan, the father of defendants who entered into the possession of the suit land as owner and

raised the construction of the *Pucca* house in the year 1985. The electricity connection exists in the said house since the year 1987 in the name of appellant Rajinder Singh. The wall was constructed and completed in the year 2007 much before the filing of the suit, appellants denied that Gram Pandchayat had allotted any area measuring 500 sq. yards out of Khasra No. 2269 situated in village Gurgaon to the plaintiffs or Nai Community. They also denied that if any such resolution has been passed by the Gram Panchayat and the alleged delivery of the suit land to the plaintiffs. With these pleas, they pleaded for dismissal of the suit.

5. Plaintiffs filed the replication wherein the pleas raised in the written statement were controverted and those of the plaint were reaffirmed. From the pleadings of the parties, the following issues were framed by the learned trial Court :-

1. Whether the plaintiffs and Nai Community of village Gurgaon was allotted 500 sq. yds. Land out of Khasra No. 2269 by Gram Panchayat?OPPs
2. Whether the defendants have encroached upon the land of Khasra No. 2269?OPP
3. Whether the plaintiffs are entitled to the decree for mandatory injunction as prayed for?OPP
4. Whether the suit land is part and parcel of Khasra No. 1083/270 & 1086/270/1 owned by the defendants?OPD
5. Whether the plaintiff has no locus standi to file the present suit? OPD
6. Whether the plaintiff is stopped by his own act and conduct, latches and acquiescence in the present suit?OPD
7. Relief.

6. On appreciation of the evidence recorded and the contentions raised by the learned counsel for the parties, the learned trial Court decreed the suit filed by the plaintiffs-respondents and decree for mandatory injunction was passed against the appellants directing them to remove the encroachment made by them by raising the construction of the

walls in the portion shown in red ink in the site plan which was part of the land measuring 500 sq. yards comprised of Khasra No. 2269 situated in the revenue estate of village Gurgaon at their own costs. A decree for permanent injunction was also passed restraining the appellants-defendants from interfering in any manner and encroaching upon the suit property by raising any kind of construction in the property shown in green colour denoted by letters 'ABCD' in the site plan, which forms part of Khasra No. 2269.

7. Aggrieved with the aforesaid judgment and decree dated 11.08.2014, appellants-defendants preferred the appeal. The same was also dismissed by the learned Additional District Judge, Gurgaon vide impugned judgment and decree dated 21.11.2015. Hence this Regular Second Appeal.

8. I have heard Mr. Sanjay Vij, Advocate, learned counsel for the appellants and have carefully gone through the file.

9. Initiating the arguments, learned counsel for the appellants contended that plaintiffs-respondents are alleging that the suit land was allotted to them by the Gram Panchayat. He contended that there is no evidence to establish that any approval of the State Government was obtained by the Gram Panchayat to allot the suit land to the plaintiffs as required under Rule 13 of the Punjab Village Common Lands (Regulation) Rules, 1964 (for short 'Rules'). He further contended that even no resolution passed by the Gram Panchayat to this effect has been brought on record. Thus, no title of the suit property was conveyed to the defendants-respondents and their suit for mandatory injunction claiming

them to be the allottee of the land is not maintainable. To support his contentions, he relied upon case **Gram Panchayat Village Dharangwala District Fazilka vs. State of Punjab and others, 2012 (3) Local Acts Reporter 600.**

10. He further contended that in-fact the land in dispute is part of Khasra No. 2270/2 and 2270/3 which was earlier owned by Kalu Ram, the maternal grandfather of appellants and the same was purchased by their father-Suraj Bhan. Since the date of purchase, he entered into possession of land in dispute as owner and raised the construction of the *Pucca* house in the year 1985. Thus, he contended that appellants are in possession of the suit property as owner and it could not be stated that they had encroached upon the suit land.

11. He further contended that the entire conclusion of the learned Courts below is based upon the report of the Local Commissioner Ex.PB. He contended that the said report had no evidentiary value as no notice was given to the appellants before carrying out the demarcation. The demarcation was carried out by the Local Commissioner at the back of appellants and such demarcation report cannot be used against the appellants.

12. He further contended that it is alleged that the land in dispute was owned by the Gram Panchayat and was allotted to the plaintiffs-respondents. But, the Gram Panchayat has not been able made a party to the suit. The suit at the instance of plaintiffs is not maintainable. He further contended that the learned First Appellate Court has categorically held that plaintiffs were not the owners of the land in dispute. But, still

they have been granted a decree of mandatory injunction. Once, it was found that the plaintiffs-respondents were not having any title to the suit property, their suit for mandatory injunction was not maintainable. No valid resolution was passed by the Gram Panchayat in favour of the plaintiffs-respondents. So, they cannot claim themselves to be the beneficiary or having any right, title or interest in the suit land. So, there can be no question of any special injury to them on account of the alleged encroachment.

13. It is the admitted case of the plaintiffs-respondents that the land in dispute was owned by Gram Panchayat. It is alleged that appellants-defendants have made the encroachment upon the suit land owned by the Gram Panchayat. The only remedy available to the plaintiffs was to move the application under Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961 . It is also mentioned in the judgment of the learned First Appellate Court that the area of village Gurgaon was included in the Municipal Area, Gurgaon. So, the plaintiffs should have avail the remedy under the special Acts i.e. The Punjab Village Common Lands (Regulation) Act, 1961 or the Haryana Municipal Corporation Act, 1994 and the Civil Court had no jurisdiction to entertain the suit. He has referred to Section 408 (c) of the Haryana Municipal Corporation Act, 1994. Thus, he contended that the decrees passed by the learned Courts below being against law are liable to be set aside and plaintiffs-respondents are not entitled for any relief of mandatory and permanent injunction.

14. I have duly considered the aforesaid contentions.

15. Plaintiffs-respondents have examined PW-2-Sanjay, ex-panch of Gram Panchayat Village Gurgaon. He has fully supported the version of the plaintiffs-respondents. He deposed that at the relevant time, the Gram Panchayat was in existence in village Gurgaon and there was a proposal bearing no. 4 for allotment of the land measuring 500 sq. yards comprised of Khasra No. 2269 in favour of the Barber Community of village for the construction of their Community Centre. He has proved the copy of said proposal Ex.P-4 and identified the signatures of Sukhbir Singh Kataria, the then Sarpanch. PW-3-Ishwar Singh, Assistant, office of Nagar Nigam, Gurgaon have proved the copy of proceedings Ex.P-5, which contains the proposal passed by the Gram Panchayat in favour of Barber Community of the village. The said proposal was accepted by the Gram Panchayat on 21.11.2005. Appellant-Rajinder Singh while stepping into the witness box as DW-1 has admitted in the cross-examination about the existence of the Community Centre of the Barber Community by the side of their land. This admission on the part of appellants shows that the said proposal was acted upon and the Community Centre of Barber Community was constructed in the land handed over to them by the Gram Panchayat.

16. Learned counsel for the appellants has vehemently contended that Gram Panchayat was not competent to gift away the land without the approval of the Government as per Rule 13 of the Rules. There could be no dispute with the aforesaid legal position. In the absence of any approval by the State Government, the resolution passed by the Gram Panchayat for transfer of its land does not convey any title.

But, at the same time it could not be disputed by learned counsel for the appellants that this plea has not been taken by appellants-defendants in the written statement. The granting or non granting of the approval by the State Government is not a pure question of law. Rather, it is a mixed question of law and facts. Appellants-defendants were required to plead and prove this plea.

17. Moreover, this fact cannot be disputed that plaintiffs-respondents have acquired the possessory rights. Plaintiffs-respondents are not seeking any declaration with respect to their title over the suit property. They have filed the suit only for mandatory and permanent injunction directing the appellants-defendants to remove the encroachment made by them on the suit property, which admittedly is a public property. As already mentioned, the Gram Panchayat has conferred the possessory rights to the Barber Community for construction of their Community Centre in the suit property. Appellants-defendants have pleaded that their maternal grandfather-Kalu Ram was originally the owner of the suit property. Their father-Suraj Bhan had purchased the land and after the death of Suraj Bhan, they inherited the land in dispute. But, appellants-defendants have not placed on record any document of their title to the suit property. They have alleged that the land in dispute is part of Khasra No. 2270/2 and 2270/3. Though, this plea raised by them is not proved in view of the report of the Local Commissioner. But, even if for the sake of arguments, we assume that the land in dispute is part of Khasra No. 2270, the appellants-defendants have not placed on file any documentary evidence to show that earlier this land was owned by their

maternal grandfather-Kalu Ram and thereafter their father-Suraj Bhan had purchased the same. The copy of the alleged sale deed has not been brought on record. So, appellants-defendants have not been able to show any title whatsoever to the suit property. Whereas, the Barber Community/plaintiffs have acquired the possessory rights. Though, they may not have become the owner of the suit property for want of necessary approval by the State Government. But, even on the basis of their possessory rights, they certainly have the better title than the appellants-defendants.

18. Appellants-defendants have raised the dispute that land in dispute does not form the part of Khasra No. 2269, rather it is comprised of Khasra No.2270/2 and 2270/3. A Local Commissioner was appointed by the trial court to demarcate the suit property. The report of the Local Commissioner is Ex.PB and the site plan prepared by him is Ex.PC. This report of Local Commissioner has been assailed by learned counsel for the appellants on the ground that no notice was given to appellants-defendants before demarcation. Sushil Kumar, Halqa Girdawar, who has carried out the demarcation has appeared in the witness box as DW-2. In the document Ex.PA, he has mentioned that all the parties concerned were informed. Mere absence of signatures of appellants in the document Ex.PA cannot be a ground to presume that appellants had no notice with respect to the visit of the local Commissioner. DW-1 Rajinder Singh-appellant has admitted that on the date of demarcation, his daughter-in-law and children were present. It shows that appellants had the knowledge and notice of the appointment of Local Commissioner by the

learned trial Court and his visit to the spot. This Court in case **Jasmer Singh and others Vs. Sajjan Singh and others 2004(1) R.C.R (Civil) 562** has laid down as under:-

“The Kanungo demarcated the land in pursuant to the rules and regulations applicable for carrying out demarcation as the measurement was carried out by identifying the pucca Burji and also the land falling in different villages. It is further argued that the lower Appellate Court has fallen into error in setting aside the judgment and decree of the trial Court only on the premises that no notice had been issued to the defendant-respondents. It was not mandatory on the part of the revenue authorities to have issued notice when the matter was absolutely clear from the revenue record prepared in respect of the aforesaid land.”

19. This Court in case **Piara Lal Vs. The Liquidator Cooperative Store, Kapurthala 2004(3) R.C.R (Civil) 650** has also laid down that report of the Local Commissioner cannot be discarded merely on the ground that no notice was issued by him before the inspection. Moreover Sushil Kumar, Local Commissioner has stepped into the witness box and has faced the cross-examination by the appellants. Learned trial Court has also discussed in detail that the local Commissioner has carried out the demarcation after affixing three Pucca points. The report of the Local Commissioner shows that the land in dispute is part of Khasra No.2269 and not that of Khasra No. 2270/2 and 2270/3 as alleged by appellants.

20. Plaintiffs-respondents had filed the suit for mandatory injunction for removal of the encroachment made by appellants over the public property. It is also borne out from the evidence on record that the said property was handed over to them by the Gram Panchayat for construction of their Community Centre. So, certainly plaintiffs were the

user of the said property and they certainly can seek the relief of mandatory injunction for removal of the encroachment made by appellants. Reference can be made to case **Shanti Devi Vs. Yashoda Bai 2010(1) PLR 326.**

21. This Court in case **Satnam Singh Vs. Smt. Jondo 2010(4) PLR 543** has laid down as under:-

“8. In the instant case, the plaintiff not only claimed public nuisance by encroachment made on the public street by the defendants and their threatened action to raise further construction, but also pleaded that it is causing hardship to him as his house is also located along the street. Perusal of judgment of trial court reveals that disputed street is the only approach for ingress to and egress from the plaintiff's house. Consequently, R.S. A. No. 4788 of 2009 (O&M) 5 if the disputed street is encroached upon or if any obstruction is caused in the disputed street, it causes hardship to the plaintiff and therefore, special damage is caused to the plaintiff and on account thereof, the plaintiff has locus standi to file the instant suit independently of the provisions of Section 91 Civil Procedure Code and irrespective of the fact that wrongful acts of the defendants are also resulting in public nuisance. The plaintiff in this case has pleaded and proved hardship to him being caused by the wrongful acts of the defendants as the disputed street, which is the only access to the plaintiff's house, has been encroached upon. Consequently, plaintiff had locus standi to file the instant suit and the contention raised by the counsel for the appellants cannot be accepted.”

In view of the aforesaid ratio of law, as the plaintiffs have direct interest in the suit land which was handed over to them for construction of their Community Centre, so on the basis of their possessory title, they certainly can seek the relief of mandatory injunction for the removal of encroachment made by appellants.

22. Learned counsel for the appellants could not show me any statutory provision either under The Punjab Village Common Lands

(Regulation) Act, 1961 or under the Haryana Municipal Corporation Act, 1994 that the suit for mandatory injunction for removal of the encroachment from the public property is not maintainable or that the jurisdiction of the Civil Court is barred in such matters. Learned counsel for the appellants has referred to Section 408C of the Haryana Municipal Corporation Act, 1994, which reads as under:-

“408C Save as otherwise expressly provided in this Act, every order made by the competent authority under section 408A or by the Commissioner under section 408B shall be final and shall not be called in question in any original suit, application or execution proceedings and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under sections 408A and 408B of this Act].”

23. The aforesaid provision of law provides that any order passed by the Competent Authority attaches finality to the orders passed by the Competent Authority under the provisions of the Haryana Municipal Corporation Act, 1994 with respect to the eviction of certain persons from the land of Corporation and the appellate order. This Section nowhere prohibits the aggrieved person to knock the doors of the Civil Court to seek general remedy of mandatory injunction to get the encroachment removed by exercising their independent right. This Court in case **Bani Singh Vs. Rattan Singh 1986 PLJ 577** has laid down that suit for mandatory injunction to remove the obstruction/ encroachment made in the village path shall be maintainable even in the absence of the proof of special damage/injury.

24. When, plaintiffs had independent right to file the suit for removal of the encroachment made by appellants, the Gram Panchayat or

the Municipal Corporation were not the necessary parties to the suit.

25. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

26. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

27. Therefore, the present appeal being devoid of merits, is hereby dismissed with costs.

September 08, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No