

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 1502 of 2016 (O&M)

Date of decision: 4.8.2016

Miyan Singh and another

.....Appellants

Versus

Gram Panchayat Village Bhongra and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.K.S.Chahal , Advocate,
for the appellants.

Raj Mohan Singh, J.

1. Plaintiffs-appellants are in regular second appeal against the concurrent findings of the Courts below.
2. Plaintiffs filed suit for permanent injunction against the Gram Panchayat and State functionaries restraining them from interfering in their peaceful possession over the land marked with letters 'ABCD' and 'CDEF', shown in red colour in the site plan attached with the plaint. The land is situated within *abadi deh* of village Bhongra. Restraint order was sought to the effect that the defendants may not construct street through the said land forcibly and illegally.
3. Plaintiffs claim that they are owner in possession of the

suit land having constructed their residential houses over it and the land left in front of their houses is lying vacant. The said land is in their possession from the time of their forefathers and the same is being used for tethering cattle and placing cow dung cakes. The plaintiffs have also installed a water tap after filling earth by spending huge expenses. Plaintiffs alleged that the defendants have no right, title or interest in the suit property. At the time of consolidation, 22 feet wide street bearing No.209 was reserved towards western side of the suit property and the same is being used by the inhabitants for ingress and egress purposes. Plaintiffs further alleged that the Gram Panchayat is adamant to construct a pucca street through the land in question which is lying vacant in front of their houses. The possession of the plaintiffs over the suit land is claimed to be hostile, open and without interruption to the very knowledge of the defendants from the time of their forefathers.

4. The suit was contested by the defendants on all counts claiming that no land of the plaintiffs is lying vacant in front of their houses. Rather the property belongs to Gram Panchayat being *shamlat deh*, which is a public street owned by the Gram Panchayat. The property in question is being used by the inhabitants and the plaintiffs have unauthorisedly encroached upon it. The water supply pipelines and telephonic lines have been laid through the land in question which is kuchha in nature and is being made pucca by the Gram Panchayat for the welfare of the public at large as during rainy season, the discharge of rainy water would accumulate in the street, thereby creating hardship to the inhabitants. In order to save their

unauthorised possession, the plaintiffs want to grab the land of the Gram Panchayat under the garb of present suit.

5. From the pleadings of the parties, following issues were framed by the trial Court:-

“1. Whether plaintiffs are entitled for decree of permanent injunction as prayed for on the grounds taken in the plaint ? OPP

2. Whether the suit is not maintainable in the present form ? OPD

3. Whether the plaintiffs have no locus standi to file the present suit ? OPD

4. Whether the suit is bad for non-service of notice under Section 80 CPC? OPD

5. Relief.”

6. Parties led their respective evidence in support of their case on the aforesaid issues.

7. Trial Court dismissed the suit vide judgment and decree dated 21.11.2013 and the same was upheld by the lower Appellate Court vide judgment and decree dated 3.9.2015. Hence, the present appeal by the plaintiffs.

8. I have heard learned counsel for the appellants to some extent.

9. Learned counsel for the appellants contends that 22 feet wide street bearing No.209 has been left during consolidation towards Western side of the suit property and the same is operational. The village community is using the said street for the

purposes of ingress and egress. The property in question is part of their houses and was left in front of the houses for better utility.

10. Learned counsel relies upon following substantial questions of law as framed by him in the grounds of appeal:-

“(i). Whether the suit for permanent injunction against the Gram Panchayat is barred under Section 13 and 13 (b) of the Punjab Village Common Land (Regulation) Act, 1961 ?

(ii) Whether the courts below have not properly appreciated the evidence on record at the time of passing the impugned judgments and decrees ?

(iii) Whether the street can be curved in the site of the appellants instead of existing in Khasra No.209 adjoining to the land of the appellants ?

(iv) Whether without seeking eviction from the street existing in khasra No.209, the street can be curved in the adjoining site of the appellants ?

(v) Whether the fact of demarcation admitted by the defendant that Pawan Kumar and Punjaba has constructed their house on street being khasra No.209 can be considered for curving the street ?

(vi) Whether the impugned judgments and decrees passed by both the learned Courts below are illegal, null and void and are not sustainable in the eyes of law ?”

11. Question No.1 relates to jurisdiction of the Civil Court vis-

a-vis Section 13 of the Punjab Village Common Land (Regulation) Act, 1961 (for short 'the Act'). The land in question marked by letters 'ABCD' and 'CDEF' is the land situated in front of the houses of the plaintiffs qua which claim has been made by the Gram Panchayat that the same is *shamlat deh*. Apparently, lis is with regard to vesting of land in Panchayat as *shamlat deh*. Section 13 of the Act clearly stipulates that when lis is between Gram Panchayat and the private individual in respect of vesting of land in Panchayat as *shamlat deh*, then jurisdiction of Civil Court is barred. Reference can be made to Division Bench judgment of this Court in **Bhagu & Ors. vs. Ram Sarup & Anr., 1985 PLJ 366**. Even the type of possession as projected by the plaintiffs cannot be appreciated as the same would fall under illegal encroachment and cannot be termed as lawful possession in view of decision rendered in **Shangara Singh and another vs. Sham Singh and others 1992 (1) SLJ 1087**.

12. The title issue between Gram Panchayat and the individual can be redressed by resorting to appropriate forum under Section 11 of the Act. The claim made by the plaintiffs in the present suit is on the basis of title that they are owners in possession of the suit land and have constructed their houses over it and part of their land is lying vacant in front of their houses. Since the claim is arising out of plea of ownership, therefore, the same is patently barred in view of Section 13 of the Act.

13. In **Umrao Singh and others vs. Gram Panchayat 2006 (1) PLJ 368**, the applicability of Section 13 and 13 (b) of the Act was

considered vis-a-vis the jurisdiction of Civil Court. The question as

posed before the Court was whether the land in dispute is *shamlat deh* or not. Since the issue was inter se between the individual and the Gram Panchayat, the jurisdiction of Civil Court was expressly held to be barred. When the action detrimental to the interest of the Panchayat is being exposed, the same is required to be raised before the competent authority, that in considered view of this Court is the Court of Collector in Punjab in terms of Section 11 of the Act and Assistant Collector, 1st Grade, in Haryana as per Section 13-B of the Act.

14. In the light of proved facts on record, question No.1 has to be answered against the appellants. Questions No.2 and 3 are to be decided on the basis of evidence that there was a proper appreciation of evidence by the Courts below and the street left during consolidation in the form of Khasra No.209 situated towards Western side of the suit property is a street which has nothing to do with the suit land as the suit land was also sought to be made *pucca* as street. Question No.4 cannot be appreciated inasmuch as that the Gram Panchayat does not endorse the possession of the plaintiffs over the site in question as the same is a public street and vest in the Gram Panchayat. The possession in the form of *betora* and placing of cow dung cakes and putting rubbish cannot be construed to be legal possession over the site in question, therefore, issue No.4 has to be answered accordingly against the appellants. Question No.5 does not arise at all as the same does not relate to the site in question. Question No.6 is totally based upon the findings recorded by the Courts below and the same cannot be held to be illegal, null

and void.

15. The basic issue involved in the appeal is with regard to jurisdiction of the Civil Court vis-a-vis nature of land being *shamlat deh*, therefore, application under Order 41 Rule 27 CPC is wholly inconsequential and would not be essential in very nature of controversy. CM No.4163-C of 2016 is, therefore, dismissed.

16. In my view the Courts below have considered the controversy in their lawful perspective and there is no need to disturb the findings of fact recorded by them. Resultantly, this appeal is found to be totally bereft of merit and the same is accordingly dismissed.

17. Since the appeal has been dismissed on merits, therefore, there is no necessity of passing any order in CM No. 4161-C of 2016 for condonation of delay in filing the appeal.

(RAJ MOHAN SINGH)
JUDGE

August 04, 2016

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Whether speaking/reasoned Yes / No

Whether reportable Yes / No