

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

RSA No.417 of 2013 (O&M)

Date of Decision: 15.11.2016

Ram Narayan and another

... Appellant

Vs.

Dhanak Community and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Rishav Jain, Advocate
for the appellants.

Amol Rattan Singh, J.

Civil Misc.No.10912-C of 2016

By this application, recalling of the order dated 09.08.2016 is prayed for, by which the accompanying appeal, i.e. RSA No.417 of 2013, was dismissed for non-prosecution.

As per the application, which is accompanied by the affidavit of the Clerk to the learned counsel who filed the appeal, it is stated that when the case was initially called, learned counsel for the applicants-appellants could not reach and it was passed over.

Thereafter, the learned counsel had argued the matter at Sr. No.105 on the same date, i.e. 09.08.2016 before this Bench itself and had asked his Clerk to inform him, when the accompanying appeal would be called for hearing again but the Clerk could not inform him on time.

As such on account of such non-appearance of the learned counsel, the appeal was dismissed, as contended.

Though it is seen that on the previous date of the hearing also, none had appeared for the appellants and in fact even before that, four

adjournments had been sought and it was for those reasons, cumulatively, that the appeal was dismissed, however, since learned counsel is also prepared to argue the matter on merits today, the application is allowed and the order dated 09.08.2016 is recalled, with the appeal restored to its original number and stage.

Since, no notice had been issued in the appeal, no notice is required to be issued in the application and the appeal itself is taken up for hearing.

RSA No.417 of 2013

This is the second appeal of the plaintiffs in a case where, despite their suit seeking a decree of permanent injunction having been decreed, they filed an appeal before the learned first appellate Court, which was dismissed.

2. The facts, as taken from the judgments of the learned Courts below, are that as per the plaintiffs, they are in occupation of houses comprised in Rectangle No.160, Killa No.10/1, with the total area under construction being 6 kanals and 9 marlas, situated in Village Dhatrath, Tehsil Safidon, District Jind.

The dispute of the plaintiffs is essentially with the first respondent, which is shown to be the Dhanak Community of the said village, comprising of numerous persons, and since, as contended, all such persons as comprised the community could not be specifically listed as defendants, births and deaths taking place in the course of nature, the whole community was being sued in a representative capacity, for which a separate application under Order 1 Rule 8 CPC was also filed.

The suit land is stated to be within the *Abadi Deh* of Village

Dhatrath and was being used by the plaintiffs and other inhabitants of the village, who had constructed their houses on it since many years.

It was further stated that the physical possession of the suit land had not been taken by the Gram Panchayat (respondent-defendant no.2), even after consolidation of holdings and consequently, the possession of the plaintiffs and other inhabitants had continued for more than 50 years, from the time of their forefathers, though the Gram Panchayat had given 10 marlas of the suit land to the Dhanak Chaupal on “an earlier date”.

On account of the occupation of the suit land by the villagers, thereafter, the Panchayat, vide a resolution dated 18.02.2003, had given some other land to the Dhanak Chaupal, near the Gaushala of the village, which was situated on the metalled road constructed by the Public Works Department, running through Rectangle No.160, Killa No.13/6.

It was further contended that the said resolution was passed to avoid any dispute with regard to the Gair Mumkin land occupied by the plaintiffs and the other villagers.

A large amount of money having been spent by the plaintiffs on the construction of the building and four walls, on the suit land, was also averred in the plaint.

3. The grievance of the appellants-plaintiffs was that despite the above, the first defendant, i.e. Dhanak Community, allegedly in collusion with the second defendant (Gram Panchayat), were trying to evict the plaintiffs without their being any such orders from any Court of law.

Consequently, the defendants allegedly having ignored the request of the plaintiffs to desist from their action, the suit was instituted on 02.01.2006.

4. Upon notice being issued, the first defendant filed a written statement taking preliminary objections regarding cause of action, want of notice under the Haryana Panchayati Raj Act, 1994, on jurisdiction, maintainability, separation of facts, locus etc.

It was further pleaded that in the garb of the suit, the plaintiffs actually wanted to obstruct the defendants from constructing a Dhanak Biradari Community Chaupal on the suit land, despite the fact that the plaintiffs had “made some encroachments over some part of the suit land”.

Thus, it was contended that the plaintiffs had no right, title and interest over the suit land, which was actually *Shamlat* land owned by the *Panchayat*.

It was further pleaded that neither had the plaintiffs impleaded the members of the Dhanak community, nor had they even complied with the provisions of Order 1 Rule 8 CPC.

Yet further, it was contended that the Gram Panchayat vide Resolution no.3 of 19.11.2001 and Resolution no.2 of 21.12.2004, had given land measuring 10 marlas out of the suit land to the Dhanak community for construction of the chaupal and when the Gram Panchayat was attempting to remove the encroachment, with the Government of Haryana already seized of the matter, the plaintiffs, despite knowing that the proceedings for the removal of the encroachments were pending before the Block Development and Panchayat Officer, Pollukhera, the suit had been filed, even though the plaintiffs and other inhabitants of the village were not owners “nor in possession” of the suit land.

Consequently, it was contended that the plaintiffs had no right to obstruct the Government from evicting anybody from the suit land when they

were not the owners thereof, nor had they any right to seek any injunction from the Court.

5. The Gram Panchayat, defendant no.2, also filed its separate written statement, taking the same preliminary objections and on merits also contending that the plaintiffs and other inhabitants of the village had occupied the suit land and “made encroachment thereupon”.

Thus, it was contended that the possession of the plaintiffs and other inhabitants of the village over the suit land, was illegal and unauthorized and therefore, the Gram Panchayat reserved its right to evict them in due course of law.

The Gram Panchayat having passed a resolution for giving land to the Dhanak Chaupal, was also stated by the Panchayat in its written statement, further stating that due to the occupation of the land by the plaintiffs and others, the earlier resolution had been withdrawn on 18.02.2003 and a fresh resolution had been passed to avoid any dispute.

Thus, the Dhanak community having been given other land for construction of its Chaupal by the Gram Panchayat, was also admitted in the Panchayats' written statement, further denying any collusion between the two defendants.

6. No replication having been filed to the written statements, the following issues were framed by the learned Additional Civil Judge (Sr. Divn.), Saffidon, Jind:-

1. Whether the plaintiffs are also entitled for injunction as prayed for?OPP
2. Whether the suit of the plaintiffs is not maintainable in the present from?OPD

3. Whether the plaintiffs have got no cause of action and locus standi to file the present suit?OPD
4. Whether the suit is bad for want of legal notice under the provisions of Haryana Panchayati Raj Act ? OPD
5. Whether the civil Court has no jurisdiction?OPD
6. Whether the plaintiffs have not come in the Court with clean hands?OPD
7. Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD
8. Relief.

The plaintiffs examined three witnesses including the first plaintiff, one Karta Ram and a draftsman, Jaibir Saini. They also relied upon various documents including 'jamabandis' for the years 1984-85, 1999-2000 and 2004-05.

The defendants, on the other hand, examined the Gram Secretary, Partap Singh, Raj Kumari, ex-Sarpanch, one Mangat Ram and Gopi Ram, Sarpanch.

They also tendered various documents in evidence, including a site plan, Akas-shajra, a jamabandi, khasra-girdawari etc.

7. Upon considering the pleadings, arguments raised before him, as also upon appraisal of the evidence, the learned Civil Judge found that PW-2 Karta Ram, in his cross-examination had admitted that upon notice of removal of encroachments having been given to the plaintiffs, the suit had been filed.

It was further found that as per the testimony of the Gram Secretary, DW-1, in cross-examination, it had been stated that the plaintiffs

and others had taken possession of the land illegally and forcibly, which had been given to the Dhanak Samaj, which testimony was also corroborated by Raj Kumari, ex-Sarpanch.

Upon considering the aforesaid testimonies, as also on appraisal of the documentary evidence in the form of the jamabandis, the learned Court found that the suit land was actually recorded to be in the ownership of the “Jumla Mushtarka Malkan Hasab Rasad Rakba Khewat” and in the column of cultivation, in the jamabandi for the year 1984-85, it was also shown to be in possession of the owners. The 'khasra-girdawari' for the period from 10.10.2000 to 28.03.2002, Ex.D-4, showed the Gram Panchayat to be in possession of the suit land, of which 10 marlas had been resolved to be given to the Dhanak community for construction of a chaupal, vide Resolution no.3 dated 19.11.2001. However, thereafter, vide a resolution dated 18.02.2003, Ex.PX, it was resolved that the land be given to the said community (defendant no.1) out of a different khasra number but thereafter, yet again, vide Resolution no.2 dated 21.12.2004, Ex.DW-1/B, a 10 marla piece of land was resolved to be allotted to the community from the suit land itself.

8. On the aforesaid findings, the learned Additional Civil Judge held that the plaintiffs were actually in unauthorized possession of some part of the suit land and that the Gram Panchayat (defendant no.2) had already initiated proceedings for their eviction under Section 7(2) of the Punjab Village Common Lands (Regulation) Act, 1961, but such proceedings had been adjourned sine die till the decision of the suit (in the present lis).

After recording the aforesaid findings, the learned Additional Civil Judge yet decreed the suit of the plaintiffs, injunction the defendants from dispossessing them except in due course of law.

The other issues having been recorded to be not pressed by the learned counsel for the defendants, they were also decided in favour of the plaintiffs and their suit accordingly decreed in their favour as above.

9. Even though the suit had been decreed in their favour, however, seemingly (and obviously) aggrieved of that part of the decree by which the respondents had been permitted to evict the plaintiffs in due course of law, the plaintiffs filed an appeal before the learned first appellate Court.

The learned Additional District Judge, in that appeal, after noticing the facts, the issues framed, the evidence led by the parties and considering the judgment of the lower Court as also the arguments addressed before him, first noticed the contention on behalf of the appellants-plaintiffs, that they being proprietors of the village also had a share in the suit land, which was shown in the jamabandi for the year 1984-85 to be in the ownership of the Jumla Mushtarka Malkan (as already noticed).

In respect of that contention, the jamabandi for the year 2004-05, Ex.P-4, was also relied upon on behalf of the plaintiffs, showing the first plaintiff and his brother Karta Ram (PW-2) to be owners of agricultural land, which was later mutated in favour of the Gram Panchayat but with that mutation entry having been set aside by this Court in “Jai Singhs” case. [(Presumably Jai Singh Vs. State of Haryana, 2003(2) PLR 658 (FB)].

10. The contention on behalf of the respondents-defendants, to the effect that the land actually being in the ownership of the Gram Panchayat, and therefore, Jai Singhs' case not being applicable, was also noticed by the learned first appellate Court, as was the fact that proceedings for eviction under the Act of 1961 had also been initiated.

Regarding the aforesaid contentions, the learned lower appellate

Court held that the ownership of the appellants-plaintiffs had not been proved in any manner, with the jamabandi for the year 1984-85 showing the land to be in the ownership of the Jumla Mushtarka Malkan. Subsequently, the land was found to have been mutated in favour of the Gram Panchayat but despite the contention of the appellants that such mutation had been set aside, no such order had been led by way of evidence.

Further holding that even if it was to be accepted, that there was any such order setting aside the mutation, the specific possession of the appellants-plaintiffs over the suit property had not been shown anywhere.

It was further noticed that though the earlier resolution allotting 10 marlas of land to the Dhanak Sabha was withdrawn and fresh land had been earmarked for the purpose, however, that resolution was again overruled by a subsequent resolution of 2004, with the previous resolution (allotting 10 marlas out of the suit land to defendant no.1), having been again passed.

Finally, holding that proceedings for eviction having already been initiated by the Gram Panchayat and that the plaintiffs-appellants were not entitled to any injunction, the appeal was dismissed.

11. Before this Court, Mr. Rishav Jain, learned counsel for the appellants-plaintiffs, after reiterating the contentions raised before the Courts below, further submitted that the land being in the ownership of the Jumla Mushtarka Malkan and the plaintiffs admittedly being in possession thereof, the learned Additional Civil Judge erred in allowing their eviction even in due course of law and the learned lower appellate Court further erred in making an observation that they were not entitled to any injunction, thereby dismissing the appeal.

12. Having considered the argument of learned counsel for the

appellants, I find no ground to interfere with the decrees issued by the Courts below, firstly, in view of the fact that the suit filed by the appellants-plaintiffs was only one seeking permanent injunction and no declaration with regard to ownership had been sought.

This is other than the fact that when the suit land, as per the revenue record, is shown to be vesting in the Gram Panchayat, the civil Court proceedings in any case are barred with regard to any interest in the land, in terms of Section 13 of the Act of 1961.

Still further, the fact is that the plaintiffs could not prove their ownership, or even actual lawful possession of the land in any manner. Hence, the learned Additional Civil Judge actually decreed the suit in their favour correctly, by holding that they would not be dispossessed except in due course of law, such due course having already been initiated under Section 7 of the Act of 1961.

Though, undoubtedly, the learned lower appellate Court held that the plaintiffs were not entitled to any injunction, even so, the decree passed by the lower Court was not reversed, thereby upholding it to the effect that dispossession of the appellants-plaintiffs would not be made/undertaken except by due process.

13. However, before proceeding further to finally dispose of this appeal, Sections 13 and 7 of the Act of 1961 need to be referred to and are reproduced hereunder:-

“[13. **Bar of Jurisdiction.**-No civil court shall have jurisdiction---- (a) to entertain or adjudicate upon any question whether---- (i) any land or other immovable property is or not shamilat deh; (ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a panchayat under this Act; (b) in respect of any matter which any revenue court, officer or

authority is empowered by or under this Act to determine; or (c) to question the legality of any action taken or matter decided by any revenue court, officer or authority empowered to do so under this Act.]

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Section 7. Power to put Panchayat in possession of certain lands.--

[(1) An Assistant Collector of the first grade having jurisdiction in the village may, either suo motu or on an application made to him by panchayat or an inhabitant of the village or the Block Development and Panchayat Officer of Social Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in the panchayat under this Act and Put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887 :

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.

(2) The Assistant Collector of the first grade shall by an order, in writing, require any person to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or unauthorised possession, at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum, having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as arrears of land revenue.

(3) The procedure for deciding the question of title under provision to subsection (1), shall be the same as laid down in the Code of Civil Procedure, 1908.

(4) If any person refuses or fails to comply with the order of eviction passed under sub-section (1), within ten days of such order, the Assistant Collector of the first grade may use such force, including police force, as may be necessary for putting the panchayat in possession.

(5) Any person who is found in wrongful possession of the

land or other immovable property in shamilat deh and is ordered to be ejected under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years.”

14. A perusal of the aforesaid Section 13, thus, shows that it bars jurisdiction of the civil Court, with regard to entertaining any question as to whether any land or other immoveable property, vests in the Panchayat or not.

Further, Section 7 empowers the Assistant Collector to eject any person in wrongful or unauthorized possession of land or other immoveable property included in the Shamilat Deh of the village, either by taking suo moto notice of any encroachment of such land, or on an application made to him.

Secondly, as regards the issue of whether or not the land vested in the Panchayat, the appellants-plaintiffs were debarred from invoking the jurisdiction of the civil Court, which in fact they also did not do, the suit being only one seeking permanent injunction against the defendants-respondents, including the Gram Panchayat, whose title to which was never questioned, and in fact resolutions passed by it were relied upon.

15. Hence, in the opinion of this Court, the Courts below having found that the appellants not even prima facie having shown that they were owners of the suit land, which was also not claimed in the first place, the best decree that could have been passed on their prayer for permanent injunction, was passed in their favour, injuncting the defendants from evicting the plaintiffs except in due course of law.

I find absolutely no ground to interfere in such a decree passed by the Courts below. If the appellants can prove in the ongoing proceedings

initiated under Section 7 of the Act of 1961, that they had even any right or title to the suit land, by way of any resolution(s) validly passed and approved, due procedure as is provided in Section 7 would be followed by the Assistant Collector and accordingly, eventually on the basis of evidence led before that Court, appropriate orders would be passed, with the parties thereafter too having their remedies as provided.

Consequently, finding no merit in this appeal, it is dismissed in limine but with no order as to costs.

November 15, 2016
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No.