

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

**Regular Second Appeal No.4935 of 2016 (O&M)
Date of Decision: 07.10.2016**

Nishan Singh

.....Appellant

Vs

The Gram Panchayat and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Govind Chauhan, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Plaintiff-appellant has filed this Regular Second Appeal against the judgment and decree dated 05.07.2016 passed by Additional District Judge, Karnal whereby judgment and decree dated 11.12.2009 passed by Civil Judge (Jr. Divn.) Karnal was affirmed.

[2]. Brief facts as gathered from the record are that the plaintiff filed a suit for declaration with consequential relief of permanent injunction, alleging that he was in actual and physical possession of agricultural land measuring 23 *Kanals* 16 *Marlas*. The possession of the suit land was given to the plaintiff by defendant Nos.2 and 3 on 12.05.2015 and affidavit dated

03.12.2004 was also executed by defendants No.2 and 3 in favour of the plaintiff. Plaintiff claimed his uninterrupted cultivating possession on the spot. Plaintiff further alleged that Sarpanch of Gram Panchayat, Janesaron by taking advantage of wrong entries in the revenue record wanted to take possession of the suit land. In order to defeat his right, Gram Panchayat showed auction of the suit land on papers for the year 2006-07 in favour of one Satnam Singh and in favour of Gurnam Singh for the year 2007-08. The aforesaid auctions were claimed to be fictitious. According to the plaintiff, aforesaid Satnam Singh and Gurnam Singh i.e. defendant Nos.4 and 5 respectively never cultivated the suit land. The wrong entries remained on papers only and the same were not binding upon the rights of the plaintiff. Name of Gram Panchayat appeared in the name of ownership and the column of possession allegedly was shown in the names of defendant Nos.2 and 3.

[3]. The suit was contested by the defendants. It was claimed that the plaintiff was not in possession of the suit property, rather defendant No.1 Gram Panchayat was in cultivating possession. The ejectment petition was filed in the year 2000 and order of ejectment was passed. The appeal filed by the plaintiff was also dismissed on 16.03.2006. Gram Panchayat fixed the date for auction. The suit was filed only to

create hurdle in the auction proceedings. The entries existed in the name of defendant Nos.2 and 3 were transferred in the name of Gram Panchayat. Defendant Nos.4 and 5 also contested the suit of the plaintiff. They submitted that the land was given to them on lease, but possession could not be delivered to them.

[4]. After completion of the pleadings, following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled to a decree for declaration with consequential relief of permanent injunction as prayed for? OPP*
- 2. Whether the suit of the plaintiff is not maintainable? OPD*
- 3. Whether the plaintiff has no cause of action and locus-standi to file and maintain the present suit? OPD*
- 4. Whether the plaintiff has suppressed the true and material facts from the Court? OPD*
- 5. Whether the suit of the plaintiff is bad for want of notice under Section 124 and 125 of Panchayati Raj Act? OPD*
- 6. Relief.”*

[5]. Plaintiff himself appeared as PW-1 and reiterated his stand as per the plaint. Mukhtiar Singh was examined as PW-2 and after tendering the document, the evidence of the plaintiff

was closed. Defendants in their evidence examined Jai Gopal and after tendering some documents, defendants' evidence was also closed.

[6]. After appraisal of the evidence, trial Court dismissed the suit with costs vide judgment and decree dated 11.12.2009. Plaintiff remained unsuccessful in appeal as the lower Appellate Court vide judgment and decree dated 05.07.2016 affirmed the judgment and decree passed by the trial Court.

[7]. I have heard learned Senior counsel for the appellant.

[8]. Learned Senior counsel for the appellant vehemently contended that plaintiff is in actual and peaceful possession of the suit land, ownership of which stood vested in custodian department. Gram Panchayat was neither owner, nor had any concern with the land. Due to undue advantage of wrong entries in the revenue record, the Gram Panchayat wanted to take possession of the suit land and started showing the land on auction for the year 2006-07 and 2007-08 in favour of Satnam Singh and Gurnam Singh respectively. Those proceedings were fictitious. Plaintiff asserted that defendant Nos.2 and 3 were in possession of the suit land and they delivered the possession to the plaintiff on 12.05.1995.

[9]. Learned Senior counsel further contended that the

Courts below have totally ignored the partition proceedings between Rehabilitation Department and Gram Panchayat which already stood completed pursuant to Government instructions. Total land measuring 842 *Kanals* 4 *Marlas* including the suit land was partitioned by Tehsildar (Sales)-cum-Assistant Collector, 1st Grade vide order dated 10.07.1982 between the custodian Department and the Gram Panchayat. The order was passed with the consent of both the parties and that order became final. The shares of Gram Panchayat and that of Rehabilitation Department stood separated by virtue of aforesaid order. The Rehabilitation Department was given 792 *Kanals* including the suit land. Gram Panchayat was given 50 *Kanals* 4 *Marlas* of land. Mutation No.683 was also sanctioned from the Gram Panchayat in the name of Rehabilitation Department (*Arazi Matraka Billa Allot Shuda*).

[10]. Learned Senior counsel for the appellant further stated that the land in question was in the ownership of Rehabilitation Department. By virtue of Government instructions dated 16.08.1973, the same land was mutated in the name of Rehabilitation Department. Learned Senior counsel also staked the claim for allotment/purchase of the land in question as per Government instructions/Press Note on the basis of old possession vide notification dated 18.01.2011.

[11]. The Haryana Evacuee Properties (management and Disposal) Rules, 2011 were promulgated for transfer of such land in favour of those, who are in old and continuous possession of the property from 01.01.2001. The plaintiff had moved application to the Authority under Rule 8 of the aforesaid Rules claiming himself to be in old possession.

[12]. Perusal of the record shows that the Gram Panchayat/defendant No.1 was owner of the suit land. A petition under Section 7 (2) of the Punjab Village Common Lands (Regulation) Act (for short 'the Act') was filed by the Gram Panchayat against defendant Nos.2 and 3 and they were ordered to be ejected. Defendant Nos.2 and 3 remained unsuccessful in the appeal which was dismissed as withdrawn. The order of ejectment against the defendant Nos.2 and 3 attained finality.

[13]. The case of the plaintiff/appellant was totally dependent upon the fact that possession was allegedly given by defendant Nos.2 and 3 to him in the year 1995. When the defendant Nos.2 and 3 were ordered to be ejected by the Gram Panchayat and they withdrew the appeal before the Appellate Court, they could not have denied the title of the Gram Panchayat being landlord. Plaintiff was never proved to be a lessee of the Gram

Panchayat, nor came in possession of the suit land by way of any recognised mode of agreement. Once defendant Nos.2 and 3 could not have protected their possessory right over the suit land on any lawful ground, the plaintiff cannot protect his possessory right under any lawful mechanism.

[14]. The possession of the plaintiff was that of rank trespasser. The very entry of the plaintiff over the suit land was not on account of any permissible mode, therefore, no injunction can be granted against the true owner. Even as per revenue record viz. *jamabandi* for the year 1993-94, the possession of Ramesh Kumar and Satwanti was against *Billa Lagan Babjah Najayaj Kashat*. Once the possession of the defendant Nos.2 and 3 was not on lawful note and the possible possessory right could have been conferred by defendant Nos.2 and 3 to the plaintiff was a big question mark. It is settled principle of law that the tenant cannot deny the title of the landlord. Defendant Nos.2 and 3 were shown to be *gair marusi* in the column of cultivation as per revenue record and they were ordered to be ejected at the instance of the Gram Panchayat.

[15]. Any alleged delivery of possession by defendant Nos.2 and 3 in favour of plaintiff will not cloth the possession of plaintiff with any lawful protection. Even otherwise, the column No.9 of

jamabandi for the year 1993-94 would show the unauthorised possession without payment of any rent. The possession of the plaintiff was shown to be as *gair marusi* as per *jamabandi* for the year 2013-14. The Gram Panchayat Deh was recorded to be owner. Column No.9 was shown to be vacant. For creating tenancy, rent is one of consequence of tenancy. The position of the plaintiff over the suit land cannot be held to be on account of any lawful entry.

[16]. By filing suit for declaration, a declaration is being sought, which according to this Court is totally mis-directed inasmuch as that the plaintiff has allegedly been indicted by defendant Nos.2 and 3, could not have asked for any declaration of any title much less the correction in the revenue record because he could not claim anything more than the claim of defendant Nos.2 and 3, who were lawfully ejected from the land in question at the instance of the Gram Panchayat.

[17]. Any *lis* involving title in respect of *Shamlat Deh/Panchayat Deh* cannot be entertained by the trial Court in view of bar created under Section 13 of the Act. Whenever dispute is between Panchayat and private individual in respect of vesting of land as *Shamlat Deh*, the jurisdiction of civil Court is barred under Section 13 of the Act. Reference can be made

to the judgment in **Bhagu and others vs. Ram Sarup and Anr, 1985 PLJ 366 (Full Bench)**. The plaintiff cannot contest the suit on the premise of alleged dispute with regard to title between Gram Panchayat and the custodian Department. The custodian Department was never impleaded by the plaintiff in the suit.

[18]. During the pendency of the First Appeal, the plaintiff/appellant sought production of additional evidence. Copy of written statement filed by the custodian Department in CWP No.6621 of 21016 along with stay order dated 01.05.2005 were sought to be adduced in evidence. The stand of the custodian Department was sought to be highlighted wherein they claimed the property to have vested in custodian. On the strength of such evidence, the plaintiff/appellant tried to emphasize that the claim of the Gram Panchayat could not be endorsed. The said petition was dismissed as withdrawn. Any stand taken by the parties was of no consequence. Even, otherwise the plaintiff/appellant cannot be benefitted out of any alleged *lis* between the custodian Department and Gram Panchayat.

[19]. For defendant Nos.2 and 3 the Gram Panchayat was the landlord. Both were ordered to be ejected at the instance of the Gram Panchayat. Plaintiff allegedly got possession from

defendant Nos.2 and 3. There was no relationship of landlord and tenant between plaintiff and the Gram Panchayat. Tenancy by bilateral obligation has to be projected in terms of revenue record. Merely by showing the plaintiff as *gair marusi* will not cloth him with any status of tenant. The column No.9 of the *jamabandi* always remained blank. Rent is one of the necessary consequence of tenancy. The appellant could not demonstrate as to in what capacity, he is holding over the land. The alleged possession of the appellant cannot be categorized and defined by any lawful mechanism. The entry of the appellant over the suit land was not on account of any permissible mechanism, nor any bilateral obligation was created by the custodian or by the Gram Panchayat in favour of the appellant.

[20]. In view of aforesaid, the plaintiff/appellant has no locus standi to challenge the ownership of the Gram Panchayat viz-a-viz. ownership of the custodian Department. The affidavit allegedly executed by defendant No.2 and 3 cannot be read over and above their own entitlement over the suit land. In view of observations made above, Civil Misc. No.12867-C of 2016 under Order 41 Rule 27 CPC is wholly inconsequential and cannot be entertained.

[21]. Having considered the controversy in the light of

material on record, this Court do not subscribe the arguments raised by the learned Counsel for the appellant as no law point worth consideration is involved in the present appeal. Consequently, this appeal is found to be totally bereft of merits and the same is accordingly dismissed.

October 07, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No