

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

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Regular Second Appeal No.4595 of 2015 (O&M)
Date of Decision: February 29, 2016

Balraj Singh and another

...Appellants

Versus

Gram Panchayat village Beholi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.S. Kharb, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 19.11.2013 passed by the Civil Judge (Junior Division), Panipat, whereby the suit preferred by the appellants-plaintiffs for permanent injunction restraining the respondent-Gram Panchayat from dispossessing them from the suit land except in due course of law, has been dismissed, appeal against which preferred by the appellants-plaintiffs has also been dismissed by the Additional District Judge, Panipat, on 24.08.2015.

2. It is the contention of learned counsel for the appellants that the findings recorded by the Courts below cannot sustain in the light of the fact that the revenue records clearly reflect the appellants-plaintiffs in possession of the suit land. He contends that initially there was an exchange of land with the Gram Panchayat in the year 1981 when 9 kanals and 17 marlas of land owned by their predecessor-in-interest was exchanged with 30 kanals and 18 marlas of the Gram Panchayat land vide Resolution No.3 dated 24.03.1981 passed by the Gram Panchayat and accordingly, possession also changed hands. Mutation was sanctioned in the light of the said exchange in favour of father of the appellants-plaintiffs and on the basis of the said mutation, the appellants-plaintiffs are still continuing in possession of this

land. The revenue records also reflect them to be so. It so transpired that the Gram Panchayat proceeded to seek sanction from the Government of Haryana as per the procedure and mandate of the statute for the exchange of the land which was not accepted by the Government and by order dated 24.09.1983, the exchange was cancelled and approval of exchange was withdrawn. This order although was challenged by father of the appellants-plaintiffs by filing *Civil Writ Petition No.4950 of 1983* titled as *Parkash Versus State of Haryana and another* but the same was not accepted and the said writ petition was dismissed by the High Court. He contends that although the resolution of the Gram Panchayat has been annulled by the Government of Haryana, still the possession continues to be with the appellants-plaintiffs and they are only seeking protection from dispossession except in due course of law. His assertion is that a petition under Section 7 (2) of the Punjab Village Common Land Act, 1961, as amended upto date, has been filed against the appellants, where respondent-Gram Panchayat has admitted the possession of the appellants and, therefore, the judgments and decree as passed by the Courts below holding that the appellants-plaintiffs have not been able to show them to be in possession of the land, cannot sustain and deserve to be upseted and the judgments and decree passed by the Courts below set aside and the decree be passed in favour of the appellants-plaintiffs.

3. I have considered the submissions made by learned counsel for the appellants and with his assistance, have gone through the impugned judgments but do not accept his contentions.

4. The fact, as has been asserted by the counsel for the appellants to the extent that the writ petition challenging the order dated 24.09.1983

passed by the Government withdrawing the approval of exchange, is correct. Thereafter, it is apparent as per the pleadings and the evidence brought on record that the predecessor-in-interest and the appellants accepted the said order and proceeded to sell the land which originally belonged to them i.e. 9 kanals and 17 marlas by sale deeds dated 09.07.1985, 16.04.1985, 13.06.1986 and 15.12.1986. These four sale deeds pertain to the same land i.e. 9 kanals 17 marlas which was their initial ownership prior to the exchange. It appears that the predecessor-in-interest and the appellants-plaintiffs having accepted the order, proceeded to sell the said land as the mutation continued to be in their name qua the land which was their own original ownership and, therefore, with a *mala fide* intention are now holding on to the land of the Gram Panchayat on the basis of the exchange of the land which has been annulled by the Government in the year 1983.

5. The findings as recorded by the Courts below that the revenue record only reflects the position of the land and does not confer any title, is a settled preposition of law. The appellants are asserting themselves to be in possession of the land with a *mala fide* intention and, therefore, cannot now turn around and assert the possession over the Gram Panchayat land. The equitable relief of injunction cannot be claimed by a person who has not approached the Court with clean hands but with a *mala fide* intention. It would not be out of way to mention here that the brother of the appellants-plaintiffs Ranbir Singh has earlier filed a suit against the Gram Panchayat claiming the same relief as in the present civil suit i.e. injunction the Gram Panchayat to dispossess them from this very suit land which is admittedly in their possession as a joint holding. The said civil suit was dismissed by the

Civil Judge (Junior Division), Panipat, on 09.09.2009 Exhibit D-1. Appeal against which preferred had also been dismissed by the Additional District Judge, Panipat, by judgment dated 24.11.2009 Exhibit D-5. The said proceedings have attained finality. The appellants-plaintiffs in the said civil suit had appeared as witness and deposed in favour of their brother and now have turned and have filed the present suit for the same relief. The Courts below are, therefore, right in asserting that he being a co-sharer although may not be personally party to the suit, would be bound by the findings, as has been recorded in the earlier civil suit which proceedings have attained finality and claim rejected. The suit, therefore, can be said to be barred by the principle of constructive *res judicata*. Mere pendency of a petition under Section 7(2) of the Punjab Village Common Land Act, 1961 as amended upto date, would not make any difference as far as the claim of the appellants-plaintiffs in the present suit is concerned.

6. No other point has been raised or argued by learned counsel for the appellants.

7. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

8. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

9. In the light of the dismissal of the appeal, the application for stay i.e. CM No.11081-C of 2015, stands disposed of as infructuous.

February 29, 2016

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**