

In the High Court of Punjab and Haryana at Chandigarh

RSA No.2100 of 2014(O&M)

Date of Decision: 11.2.2016

Krishan Gopal

---Appellant

versus

Gram Panchayat of village Sirsi

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. IPS Mangat, Advocate
for the appellant**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal has been directed against concurrent findings recorded by the courts below whereby suit filed by the appellant was dismissed by the trial court and the judgment and decree passed by the trial court was affirmed in appeal.

The facts, in brief, are that the appellant claimed himself to be owner in possession of land measuring 36 kanals 08 marlas, detailed in para 1 of the plaint with the averments that his possession of the suit land is continuous, without any interruption, peaceful and hostile to the knowledge of all and sundry. The respondent filed application No.

33/AGA/10.12.1987 under Section 7 of the Punjab Village Common Lands Act, 1961 (in short “the Act”) (as applicable to the State of Haryana) claiming that the land was reserved for common purpose i.e. charand at the time of consolidation and sought eviction of the appellant. The application was allowed by order dated 30.9.2004 passed by the Assistant Collector Ist Grade, Karnal. The appellant challenged order dated 30.9.2004 to be illegal, null and void and not sustainable in the eyes of law.

The respondent filed the written statement challenging maintainability of the suit. It is pleaded that the land was reserved as charand during consolidation of holdings as is clear from the scheme of consolidation. The civil court has no jurisdiction to try the suit under Section 13 of the Act and the order passed by the Assistant Collector Ist Grade, Karnal under Section 7 (2) of the Act cannot be challenged in the civil court.

The appellant preferred replication re-asserting his stand taken up in the plaint while controverting legal issues raised by the respondent (gram panchayat).

The learned trial court, on a thoughtful consideration of rival submissions made by counsel for the parties in the light of materials on record, non-suited claim of the appellant. The appeal preferred by the appellant came to be dismissed by the District Judge, Karnal and the findings recorded by the learned trial court were affirmed.

Still feeling dissatisfied, the present appeal has been preferred by the appellant.

Counsel for the appellant would contend that the impugned

judgments and decrees are against admitted facts, law relevant in the context and result of misconstruction of the provisions of the Act. It is further argued that as the appellant is the owner in possession of the suit land, the order passed by the Assistant Collector Ist Grade, Karnal in regard to his eviction cannot be allowed to sustain.

I have heard counsel for the appellant, perused the records and of the view that the appeal sans merit and warrants dismissal.

The appellant claimed himself to be the owner of the suit land on the premise that his possession being continuous, open and adverse has ripened into ownership. A suit claiming ownership on the basis of adverse possession is not maintainable as plea of adverse possession can be used as a shield and not as a sword. In this context, reference can be made to judgment of the Hon'ble Supreme Court of India ***Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and another***” 2013 (4) RCR (C) 703

This brings the Court to examine the case from another angle. Admittedly, the dispute is between the appellant and the respondent-gram panchayat in regard to ownership of the suit land, to say it differently that there is a dispute between the parties as to whether the land vests or does not vest in the panchayat. The jurisdiction of the civil court to entertain or adjudicate upon any such question is barred under Section 13 of the Act. In this view of the matter, no error much less illegality has been committed by the courts below by holding that jurisdiction of the civil court is barred.

The appellant has also challenged order dated 30.9.2004 passed by the Assistant Collector Ist Grade, Karnal in exercise of jurisdiction under Section 7 of the Act. An order passed by a competent authority under

Section 7 of the Act is again not amenable to challenge before the civil court. It is surprising that the appellant earlier challenged the said order by filing a Civil Writ Petition before this Court but still filed the suit before the civil court for the same relief. The appellant, in no circumstances, can avail dual remedy for giving challenge to the same order. Analyzed from any angle, neither any substantial question of law arises for adjudication nor there is any valid reason to interfere in the consistent findings recorded by the courts below.

For the foregoing reasons, the appeal fails and ordered to be dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

11.2.2016
PARAMJIT