

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.2416 of 2014 (O&M)

Date of decision: 29.3.2016

Gulzar Singh

... Appellant

versus

Sukarna Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Vipin Mahajan, Advocate,
for the appellant

...

AMOL RATTAN SINGH, J. (Oral)

This is the second appeal of the plaintiff, in a suit filed by him seeking a declaration, that the compromise between the parties to the suit property, as was claimed to have been entered into by the respondents-defendants (hereinafter to be referred to as the defendants), was illegal, void and unenforceable, being a result of fraud, coercion and undue influence. He had further sought permanent injunction against the defendants, seeking to restrain them from interfering in any manner in the suit property, including restraining them from removing trees and bricks etc. therefrom.

The suit was dismissed by the learned Civil Judge (Junior Division), Pathankot, vide her judgment and decree dated 14.01.2004 and the first appeal filed thereafter, by the plaintiff, was also dismissed by the learned Additional District Judge, Pathankot, vide his judgment and decree dated 11.12.2013.

2. The facts, taken from the judgment of the learned Civil Judge, are that the plaintiff, who is stated to have retired from the Army, claimed to

be owner in possession of the suit property for the last 30 years. He wanted the property repaired on its Southern and Western sides, as it had been partly demolished/had fallen.

In the revenue record, the property was shown to be owned by the 'Panchayat Deh', in possession of Man Singh, father of the plaintiff and was described as "Gair Mumkin Abadi/Haveli".

The plaintiffs' father, Man Singh, is stated to have died on 01.06.1988, though the revenue entries continued in his name; whereas, actually, according to the plaintiff, he himself was in possession for about 30 years.

He made an application for correction of the 'khasra girdawari' before the Circle Revenue Officer, which he contended had not been decided at the time of the filing of the suit, on 09.12.1999.

It was claimed that the defendants had no concern with the suit property but still made a false application before the police authorities, resulting in the plaintiff being summoned and allegedly humiliated and threatened with immediate arrest and detention, by the police. He was allegedly coerced into signing a compromise deed which he had not entered into (the date not having been given).

Thereafter, he came to know that defendant No.1 would remove the bricks from the "kaulas" and walls of the property, as also the non-fruit bearing trees, in accordance with the compromise 'coerced' upon him, with defendant No.2 to be given some part of the plot, on the Western side, leaving the other half, on the Eastern side, with the plaintiff.

3. It was further averred that the police authorities were not

competent to decide the rights of the parties, as the same could be decided only by competent Courts of law and as such, the compromise forced on the plaintiff was to be declared null and void.

4. Upon notice, the defendants filed a joint written statement taking preliminary objections with regard to the suit being bad for non-joinder of necessary parties, as the Gram Panchyat and other sons of Man Singh, i.e. the brothers of the plaintiff, had not been impleaded.

It was further contended that the plaintiff had no concern with the suit property and thus had no locus to file the suit. Still further, it was stated that the suit land being recorded to be in the ownership of the Panchayat Deh, the jurisdiction of the Civil Court to hear the matter, was barred under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred to as the Act of 1961).

On merits, it was denied that the plaintiff had been in possession for the last even 20 years and it was actually because of that fact, (that none was in possession), that the Haveli had fallen down. It was still further contended that the entry in the 'cultivation column' of the revenue record, (showing the plaintiffs' father to be in possession), was factually incorrect because the estate of Man Singh had been mutated in favour of the defendants, as Man Singh "was no stranger to the defendants".

The compromise arrived at between the plaintiff and the defendants was admitted by the defendants, denying that it had been obtained by fraud, coercion and undue influence etc.

5. Upon the plaintiff filing a replication, denying the contents of the written statement, the following issues were framed by the learned Civil

Judge:-

- “1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
2. Whether the plaintiff is entitled to the relief of injunction as prayed for? OPP
3. Whether the suit is bad for non-joinder of necessary parties? OPD
4. Whether the civil court has no jurisdiction to entertain the suit under the Punjab Village Common Lands (Regulation) Act? OPD
5. Relief.”

6. The plaintiff examined three witnesses including himself and tendered copies of the 'jamabandi' (record of rights) and 'khasra girdawari' by way of documentary evidence, whereas the defendants also examined three witnesses, including the first defendant (the father of respondents No.1 to 4 in this appeal) and tendered copies of two judgments and a decree sheet in evidence. In addition, another judgment and decree sheet, though not 'formally exhibited', were produced as Marks DA and BD respectively.

7. The learned Civil Judge considered and discussed the evidence led, and eventually held on the issue of the injunction sought, that the plaintiff had not been able to show himself to be either owner of the suit property, or even in possession thereof, as it was not clear from the judgments that had been relied upon, as to what part of the suit property had been willed by his father, Man Singh, to him and to the defendants.

(Though, as per the judgment of the learned Civil Judge, Man Singh had two wives, his exact relationship with the defendants was not discussed in detail).

In any case, with the revenue record showing the Gram Panchayat to be the owner to the suit property, and only Man Singh in possession thereof, with no reference to the plaintiff, the said issue was decided against the plaintiff.

8. Similarly, as regards the compromise between the parties having been reached by fraud and coercion etc., it was held that no evidence had been led to prove the same. That issue was consequently decided against the plaintiff.

However, as regards the issue of non-joinder of necessary parties, it was held in favour of the plaintiff, on the ground that though he was not the owner of the suit property, he had only sought an injunction against the defendants and as such, the Gram Panchayat and the other sons of Man Singh were not necessary parties.

9. Eventually, on the issue of the jurisdiction of the civil court, the learned Civil Judge held that the jurisdiction of the civil Court is expressly barred on deciding any matters relating to land owned by the Panchayat Deh, in terms of Section 13 of the Act of 1961.

Yet, the dismissal of the plaintiffs' suit was based on the findings of the Civil Judge on all issues, particularly the plaintiffs' possession not having been proved.

10. In the first appeal filed by the plaintiff, the learned Additional District Judge held that with the suit property admittedly being in the ownership of the Gram Panchayat, even by showing possession of a public property, injunction cannot be sought by the possessor thereof. The learned first Appellate Court cited a judgment of this Court in **Mohan Lal v. Mohan**

Singh, (1995(3) PLR 564), on the above proposition.

11. Having held as above, the lower Appellate Court upheld the findings of the Civil Judge in all respects and dismissed the appeal of the appellant-plaintiff.

12. Before this Court, Mr. Vipin Mahajan, learned counsel for the appellant, submitted that defendant Lal Singh in his testimony as DW-3, had admitted a will executed by Sumitran Devi, second wife of Man Singh, in favour of himself as also the plaintiff, qua the suit property.

Hence, the learned Courts below completely erred in ignoring that fact and dismissing the suit of the plaintiff, further ignoring that all the witnesses examined in favour of the plaintiff, had all testified that he was in actual possession of the suit property.

Learned counsel further submitted that in any case, even if the will of Sumitran Devi was held to be not proved for any reason, the plaintiff having been in possession of the property even before the death of his father in 1998, i.e. for more than 30 years, he would become owner thereof even by virtue of adverse possession.

Hence, the suit being one also seeking a declaration, even the bar under Section 13 of the Act of 1961 would not apply. Therefore, the learned counsel contended, that with the jurisdiction of the civil Court not being barred, the findings on merits also deserve to be set aside and the appeal allowed.

13. Having considered the aforesaid arguments, I am unable to agree with the learned counsel, firstly in view of the fact that the appellant actually could not prove his possession over the suit property in any manner. The

revenue record itself admittedly continued to show his father, Man Singh, to be in possession, even though Man Singh had died about 11 years prior to the institution of the suit.

Though the appellant-plaintiff had contended that he had filed an application before the Circle Revenue Officer, he did not lead any evidence in that regard. Hence, as to when (and if at all), the application was actually filed, was not proved before the Courts below, so as to even make any presumption that he having been in possession for a long period of 30 years, his application for correction of the revenue record in that regard was not decided for such a long period of time.

14. As regards the will of Sumitran Devi, stated to be admitted by respondent-defendant Lal Singh, the learned Civil Judge found that the said will was subject matter of previous litigation and from that litigation too, led in evidence by way of judgments and decrees, Exs.D-1, D-2 and D-3, it could not be discerned that the suit property involved in the present lis, was actually part of the previous lis also.

Hence, whether at all the suit property in the present lis came to be in the possession of the plaintiff-appellant, by virtue of him having been put in possession thereof, on the basis of the will, was not at all proved.

15. I find no reason to disagree with that finding of the learned Civil Judge with regard to the possession of the appellant-plaintiff not having been proved, especially as nothing to the contrary has been shown to this Court either. The reasoning given by the learned Civil Judge, as discussed hereinabove, calls for no interference, in my opinion.

16. Coming to the plea of adverse possession, that in any case is not

available to the appellant, because other than the fact that as per most judgments on the issue, such plea is only available to a defendant and not a plaintiff, the plea itself, even to a defendant, can only be taken by showing such defendant to be in open and hostile possession, claimed against the true owner.

In the present case, the true owner is admittedly the Gram Panchayat of the village, which not being a party to the litigation, the contention of learned counsel, on a presumption to be raised, with regard to the appellants' alleged adverse possession, is wholly unfounded.

Further, adverse possession can only be claimed even against the true owner of a property, contending that such possession has been open and hostile over a particular period of time. That not being the case, the plea of adverse possession in any case was not open to the appellant, even at the stage of the institution of the suit itself, much less at this stage.

17. As regards the bar on the jurisdiction of the Civil Court, though that would be a matter of debate which need not be gone into in the present case, in view of the fact that the appellants' possession of the suit property, that actually belongs to the Gram Panchayat, has not been proved, nevertheless, since the learned Civil Judge while declining to grant injunction on the ground that there is no proof of the possession by the plaintiff, further also held the jurisdiction of the civil Court to be barred, and the learned lower Appellate Court did not really go into that question, except to effectively hold that as a matter of public policy, injunction should not be granted where public land is involved, the provisions of the Section 13 are still being reproduced hereinunder, because at least a reference thereto is felt necessary:-

“13. Bar of Jurisdiction in civil courts.--No civil courts shall have jurisdiction--

a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not *shamilat deh* vested or deemed to have been vested in a Panchayat under this Act; or

b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act; or

c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.”

Thus, though in the present case, the suit property is not to be shown described as 'Shamlat deh', but in the ownership of 'Panchayat Deh', it would still vest in the Panchayat and as such the bar created by Section 13, on the jurisdiction of the Civil Court, would otherwise apply to the suit property. It may also be noticed here that, even a right to title in described as Shamlat Deh, is determinable under the Act of 1961, by filing an application under Section 11 of the said Act.

However, co-ordinate Benches of this Court have held in **Gurnam Singh and others v. Dharampal**, 2015(4) RCR (Civil) 924 and **Udey Singh v. Gram Panchayat Nangal Jat**, 2010 (6) RCR (Civil) 1027, that where the *lis* is not between a private party and a Gram Panchayat, but only between two private parties seeking simply an injunction, the Civil Court jurisdiction, even qua village common lands, would not be barred. A similar view was also held by a division Bench of this Court in **Bhagu v. Ram Sarup and others**, AIR 1985 P&H 257, while dealing with similar provisions in the Act of 1961, as applicable to Haryana.

18. Yet, as already stated earlier, that question is not being gone into in the present proceedings, even though this Court may hold a different view, (therefore, requiring reference to a larger Bench), because of the fact that even on merits, with the plaintiff-appellant unable to prove his possession over the suit property, *de hors* the question of jurisdiction of the Civil Court, injunction in any case could not have been granted against the respondents.

19. Consequently, for all the reasons discussed hereinabove, finding no merit in this appeal, it is dismissed *in limine*, with no order as to costs.

It is however made clear that the property being admittedly in the ownership of the Gram Panchayat, nothing held hereinabove, or by the Courts below, would debar any appropriate proceedings before a competent authority under the Act of 1961, against any person, qua the interest of the Gram Panchayat.

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In view of the fact that the appeal has been dismissed in limine, as held above, the question of condonation of delay in filing the appeal is rendered academic and is not gone into.

29.3.2016
pk/vcgarg

(AMOL RATTAN SINGH)
JUDGE