

212

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

**CR-4472-2014 (O&M)
Date of Decision :21.11.2017**

GRAM PANCHAYAT BAHUI

.....Petitioner

Versus

BALWANT SINGH

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Sukhpreet Kaur, Advocate
for the petitioner.

Mr. Vishal Satija, Advocate for
Mr. Vivek K.Thakur, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (ORAL)

[1]. The petitioner has assailed the Order dated 31.05.2014 passed by the Additional District Judge, Kapurthala vide which application under Order 39 Rules 1 and 2 C.P.C. was allowed at the appellate stage.

[2] The land in dispute was recorded as *Jumla Malkan Va Digar Haqdran Hasab Rasad Khewat*. Earlier the respondent was in unauthorized possession of the land in question. A petition under Sections 4, 5 and 7 of Punjab Public Premises and Land (Eviction and Rent Recovery) Act 1973 was filed by the Gram Panchayat, Bahui which was ultimately decided by the Collector on 13.12.2013. In execution of said order, possession

was duly delivered on 12.02.2014 vide DDR No.275. The respondent was represented by his attorney namely Mohan Singh. Thereafter, the present suit for permanent injunction was filed by the petitioner on the ground that he has become owner by way of adverse possession.

[3] The trial Court declined the injunction, whereas the Lower Appellate Court has accepted the appeal thereby granting injunction in favour of the plaintiff-respondent.

[4] The suit on the basis of adverse possession is not maintainable in view of ratio laid down in ***Gurudwara Sahib vs. Gram Panchayat Village Sirthala and Anr. 2004 RCR (Civil) 703***. The plea of adverse possession can only be used as a weapon of defence. When the suit itself is not maintainable, the question of granting injunction does not arise particularly when the petitioner was lawfully ejected from the suit land in due course of law vide order dated 13.12.2013 passed by the Collector Panchayat Land, Kapurthala and the same was duly executed thereafter on 12.02.2014.

[5] In view of above, this petition is accepted and impugned order dated 31.05.2014 passed by the Additional District Judge, Kapurthala is set aside. Therefore, present revision petition is allowed, dismissing the application under Order 39 Rules 1 and 2 C.P.C.

[6] Nothing expressed hereinabove would be construed
to be a final opinion on the merits of case.

(RAJ MOHAN SINGH)
JUDGE

November 21, 2017
Sunil Devi

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No