

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.2370 of 1990
Date of decision:20.4.2017**

Gram Panchayat through its Sarpanch

...Appellant

Versus

Murti Thakar Ji through Sham Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms.Sukhmani Patwalia, Advocate for
Mr.Vikas Singh, Advocate for the appellant.
Ms.Aparna Singhal, Advocate for
Mr.Avnish Mittal, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful defendant-Gram Panchayat is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit of the plaintiff-respondent for permanent injunction was decreed by the learned trial Court, vide its impugned judgment and decree dated 4.5.1988 and first appeal of the defendant-Gram Panchayat was also dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 18.9.1990.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of the impugned judgment, are that Murti Thakar Ji village Kheri Naga, plaintiff, through Sham Lal filed a suit against the Gram Panchayat of Village Kheri Naga through Jang Singh (defendant), for permanent injunction, restraining the defendant from dispossessing the plaintiff from the suit land and also from raising any construction over the

land bearing Khasra No.409 and 410 measuring 7 Bigha 15 Biswas situated in village Kheri Naga which was disputed land. The plaintiff averred that Thakur Dwara was owner of land which was Banjar Khadim. It was added that Thakur Dwara was owner of the entire revenue estate of village Kheri Naga and as such there had been no consolidation. It was further averred that the defendants illegally planned to raise construction over the suit land and plaintiff requested the defendant not to take forcible possession and not to raise any construction over the suit land but in vain.

Having been put to notice, defendant-Gram Panchayat appeared and filed its contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff is the owner in possession of the suit land? OPP.
2. Whether the defendant has become owner of the suit land as alleged? OPD.
3. Whether the plaintiff is entitled to the possession of the case property?OPP.
4. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has duly proved his case. Accordingly, suit for permanent injunction, filed by the plaintiff, was decreed by the learned trial Court, vide its impugned

judgment and decree dated 4.5.1988. Feeling aggrieved, defendant-Gram Panchayat filed its first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 18.09.1990. Hence this second appeal, at the hands of the defendant.

The appeal was admitted for regular hearing vide order dated 18.2.1991 passed by this Court. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

It is a matter of record and not in dispute that when State of Punjab carried out consolidation proceedings, in the village of the parties to this litigation and the land owned by the plaintiff-respondent was sought to be included in the *shamlat deh* for the appellant-Gram Panchayat, said notification under Section 14 (1) of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 ('the Act' for short) came to be challenged by the plaintiff-respondent before this Court by way of CWP No.1398 of 1964. It is also not in dispute that the said writ petition filed by the plaintiff was allowed by this Court and notification issued by the State Government under the Act was set aside.

When learned counsel for the appellant-Gram Panchayat was confronted with this factual as well as legal aspect of the matter, she had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at its judicious conclusion, the learned first

appellate court rightly examined, considered and appreciated true facts of case as well evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 11 and 12 and of its impugned judgment, which deserve to be noticed here, read as under:-

“I have considered these submissions raised on behalf of both the sides and have gone through the records. The plaintiff-respondent has relied upon one judgment of the Hon'ble High Court dated 8.3.86 passed in Civil Writ Petition No.1398 of 1964 titled Mahant Som Dass Vs. State of Punjab, in a Civil Writ filed by Mahant Som Dass, Mohtimin Thakar Dwara situated at V.Kheri Naba, against the State of Punjab and consolidation of holding department. In that writ petition the petition (plaintiff)challenged the Notification issued by the Government under Section 14 (1) East Punjab Holding (Consolidation & Prevention of Framentation) Act, 1984 (here-in-after called the Act) regarding consolidation holding in the Village Kheri Naga alongwith some other estates. The case of the petitioner was that in the village Kheri Naga the whole of the estate/land belong to the Thakur Dwara of which Mahant Som Dass is the Mohatmin and the land of Khasra No.124 measuring 4 bigha and Khasra No.171 measuring 6 bighas 9 biswas alone are shown to be belonging to persons other than the Thakur dwara in the revenue record of the year 1951-52. That writ petition was accepted by the Hon'ble High Court and the Notification under Section 14 (1) of the Act was struck down being outside the purview of section 14 (1) of the Act. Their Lordships held that the Hon'ble High Court is competent and indeed under a duty, to strike down Notification which seeks to reserve land for common purpose under this section and such a notification would obviously be outside the statute and therefore, ineffective. Meaning thereby

that there was no consolidation of holdings in the village Kheri Naga and no land in question was kept or reserved for common purposes which may come within the purview of the Gram Panchayat and therefore, Gram Panchayat has not been been in possession of any land which can be used for the common purpose as alleged by the defendant-appellant.

Admittedly the Gram Panchayat constructed a room for the running of school in the site in dispute. As per findings of the court the suit land was not in possession of the Gram Panchayat nor it was Shamlat deh meant for common purpose over which the Gram Panchyat could make claim. Admittedly the land belong to Thakar Dwara and even at the time of raising any construction, the land did not belong to the Gram Panchyat and if any construction on the disputed land has been made that has no meaning. Plaintiff filed suit for permanent injunction restraining the defendant appellant from raising any construction but admittedly during the pendency of suit Gram Panchayat constructed school building and in the replication the plaintiff made alternative claim for possession of the disputed land. The replication is part of the pleadings and that can be looked into and therefore, the learned trial court has rightly appreciated the documentary/as well oral evidence led on the file and granted the relief of possession by decreeing the suit of the plaintiff-respondent. Therefore, the findings of the learned trial court are upheld. Consequently the appeal fails and is here dismissed with costs.”

Once the plaintiff was found to be true owner in possession, appellant-Gram Panchayat has nothing to do with the suit land and it had no business to interfere in the peaceful possession of the plaintiff. That is what has been held by both the learned courts below. Despite making her best efforts, learned counsel for the appellant could not improve the case of appellant-Gram Panchayat and she was rightly feeling handicapped as there

was no scope of improvement for want of relevant and sufficient material in this regard. Under these circumstances, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The above-said view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

- 1. *Ram Singh Vs. Gram Panchayat, Mehal Kalan, 1986 (4) SCC 364;***
- 2. *Dalip Singh Vs. State of Haryana, 1985, RRR 424 (P&H);***
- 3. *Amar Singh (Died) through LRs Vs. State of Punjab and others, 2005 (1) RCR (Civil) 399 (P&H);***
- 4. *Bachna (Died) through LRs Vs. Gram Panchayat, Mehmoodpur Jattan and others, 2005(4) RCR (Civil) 789 (P&H);***
- 5. *Bishan Dass Chela Sewa Dass Vs. Gram Panchayat of village Bakhtari and others, 2008(1) LAR 397 (P&H).***

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. She also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down

by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286* and *Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179*.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

20.4.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No