

Sr.No.101

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

**RSA No. 3058 of 2011(O&M)
Decided on: 17.11.2017**

Yadwinder Singh

.....Appellant

versus

**Gram Panchayat Village Peeran Bagh through its Sarpanch
.....Respondent**

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Paramjit Rajput, Advocate
for the appellant.

Mr. Arun Abrol, Advocate
for the respondent.

Rajbir Sehrawat, J.(Oral)

This is the second appeal filed by the plaintiff against the judgment of reversal whereby the judgment and decree passed by the Trial Court in favour of the plaintiff; decreeing his suit for permanent injunction is reversed by the lower Appellate Court and the suit filed by the plaintiff was ordered to be dismissed.

For convenience, the parties herein would be referred to as the plaintiff and the defendant; as they were described in the original suit.

The brief facts of this case are that the plaintiff had filed a suit for permanent injunction against the Gram Panchayat saying that he is in possession of the land measuring 1 Kanal 11 Marla, out of the total land measuring 4 Kanals comprised in Khasra No. 29, with the measurements as given in the plaint. This was claimed by the plaintiff that predecessor in interest of the plaintiff, namely, Hazara Singh was a proprietor in the

village. He had become proprietor in the village by virtue of various sale deeds regarding the property within the revenue estate of the village. It was further pleaded that the suit land is recorded as *Panchayat deh* in the column of ownership and is recorded as *Makbuja Malkana* in the column of cultivation. Since the plaintiff is proprietor in the village, therefore, as per the entry in the jamabandi he is in possession of the suit land. Still further it was pleaded by the plaintiff that the Gram Panchayat itself had got the demarcation of the suit land conducted just before filing of the suit by the plaintiff. In that demarcation report also the plaintiff was found to be in possession of the suit land. Therefore, it was claimed by the plaintiff in the suit that he is in possession. Hence, the suit was filed for permanent injunction restraining the defendant Gram Panchayat from interfering in possession of the plaintiff; except in due course of law. The plaintiff, further claimed in the suit that he was being dispossessed from the suit property because one Joga Singh has personal grudge against him. He manipulated the Gram Panchayat and therefore, the Gram Panchayat was bent upon disturbing the possession of the plaintiff by auctioning the land to Joga Singh.

The defendant Gram Panchayat filed reply. Besides taking preliminary objections the defendant had claimed that it was the Gram Panchayat who was in possession and not the plaintiff. It was further pleaded that the suit land is under the ownership and possession of the Gram Panchayat and that the suit land has further been leased out through auction in favour of Joga Singh for ₹ 6,000/-. It was further pleaded that Joga Singh has since been cultivating the suit land. However, the Gram Panchayat further pleaded that the plaintiff or his father is not the proprietor

in the village. Therefore, otherwise also the plaintiff has no right and have no concern qua the suit land.

Parties led their respective evidence.

After hearing the parties, the Trial Court relied upon the demarcation report pleaded by the plaintiff and held that the demarcation report has shown the possession of the plaintiff. It was further held by the Trial Court that the enmity of the plaintiff with the said Joga Singh has been proved by deposition of the plaintiff. Therefore, it was held by the Trial Court that the plaintiff is entitled to injunction.

Aggrieved against the judgment and decree passed by the Trial Court, the defendant filed an appeal before the lower Appellate Court.

Lower Appellate Court reversed the judgment and decree passed by the Trial Court. While reversing the judgment and decree lower Appellate Court recorded a finding that the possession of the plaintiff has not been proved on record as per the requirement of law. It was recorded by the lower Appellate Court that no document showing any kind of possession of the plaintiff has been proved on record by the plaintiff. It was held that the demarcation report can not supersede the revenue record showing the possession of the Gram Panchayat. It was held by the lower Appellate Court that the jamabandi Ex:PW4/A shows that the property is in the ownership of the *Panchayat deh* and it is also in possession of the *Panchayat deh* as *Makbuja Malkana*, as recorded in column 5 of the Jamabandi. Even khasra girdwari shows the possession of owner, who happens to be Gram Panchayat. Therefore, the lower Appellate Court held that even if it is presumed that the plaintiff is proprietor in the village, still he has failed to prove anything on record to show that he is the owner in possession of the

specific area regarding which he claims injunction. Still further it was held by the lower Appellate Court that once it is held that the plaintiff is not the owner of the suit property then he can not be granted any injunction against a true owner. It was further recorded by the lower Appellate Court that since the property is admittedly recorded as *Panchayat deh*, therefore, civil court would not have any jurisdiction to try a dispute regarding the possession thereof. In the end, the lower Appellate Court recorded a finding that it has been established on the record by leading cogent evidence that property in dispute has been auctioned for lease, the resolution in this regard has been passed and auction amount has been deposited with the Gram Panchayat by the auction purchaser Joga Singh, who has been put in possession of the property in dispute by the Gram Panchayat.

While arguing, learned counsel for the appellant has submitted that the plaintiff in the present case is not claiming any ownership over the suit property. His claim is limited to the injunction for protecting his possession. His submission is that the possession is duly proved by the demarcation report, which was got conducted by the Gram Panchayat only, before the plaintiff filed the suit. It is his submission that since the demarcation report shows the plaintiff to be in possession of the suit property, therefore, the Gram Panchayat can not resort to the forcible dispossession of the plaintiff. Still further it is submitted by the learned counsel that even during the cross-examination DW-1, Sarpanch Panna Lal and DW-2, Panch, Mahinder Singh have admitted that at the time of demarcation the plaintiff was found to be in possession of the suit property and that they were signatory to the demarcation report. Therefore, the plaintiff is entitled to protection even if his possession happens to be totally

illegal.

On the other hand, learned counsel for the respondent has argued that admittedly the Gram Panchayat is recorded as owner of the suit property. It is his submission that since the revenue record also shows Gram Panchayat to be in possession of the suit property, therefore, the plaintiff has got no right, title or concern with the suit land. Even if he claims to have illegally entered into possession of the suit land, at some point of time; he can not seek protection against true owner who happens to be the defendant Gram Panchayat in this case. For this purpose learned counsel relies upon the judgment of this Court rendered in **2016(3) PLR 800** titled as ***Kashmir Singh and another vs. Balbir Singh and others***. Still further it is submitted by learned counsel for the respondent that no document whatsoever has been proved on record by the plaintiff to show his possession. So far as the alleged demarcation report and admission of the witnesses is concerned; the learned counsel submits that the witnesses have also stated that after the demarcation, the plaintiff was found to be in illegal possession of the suit land but then the Gram Panchayat had asked him to remove his crops to vacate the land. Hence, thereafter, the plaintiff had even vacated that land. Therefore, it is the argument of learned counsel for the respondent, that thereafter, the Gram Panchayat has been leasing out this land in subsequent years, since the year 2004 onwards. All the receipts of auction money are available on the Gram Panchayat record. It is his further submission that even the girdwari from the year 2003 till the year 2007 and thereafter, show the Gram Panchayat to be in possession of the suit property.

In the end, learned counsel submits that the land is admittedly

recorded to be *Panchayat deh*, therefore, the civil court has got no jurisdiction to entertain any dispute regarding the land in question as per the provisions of the Punjab Village Common Lands Act.

Having heard the learned counsel for the parties, this Court is of the considered opinion that the submissions made by learned counsel for the respondent deserve to be upheld. The entire revenue record shows the Gram Panchayat to be the owner of the suit property. Even in the cultivation column the entry is *Makbuja Malkana*, i.e., under the possession of the owner. The reliance of the appellant/plaintiff on demarcation report is not sustainable. This report does not satisfy the test of a valid and proved document for showing the possession of the suit property. Admittedly, this demarcation report has not come on any order of the Trial Court. Therefore, it is not on record whether the demarcation in question was conducted as per the requirement of the High Court Rules and Orders. Hence, *per se* this demarcation report can not be taken as a proof of the possession of the plaintiff. Still further even if it is taken as a proof of possession, it has come on record that after the plaintiff was found to be in unauthorised possession of the suit land during the demarcation proceedings, the Sarpanch had asked the plaintiff to remove the crops sown by the plaintiff and on his asking the crops had been removed by him. There is no evidence led by the plaintiff contrary to this that despite asking of the Sarpanch to vacate the land he continued to be in possession even after the year of the demarcation report. Still further the evidence, as discussed by the lower Appellate Court, also shows that the Gram Panchayat has been leasing out this land to other persons for cultivation. This also excludes the possession of the plaintiff from the suit land.

Otherwise also, the reliance of learned counsel for the respondent upon the judgment of this Court; rendered in the case of ***Kashmir Singh and another(supra)*** is well placed. This judgment has laid down that the injunction can not be granted against a true owner, particularly, if the property happens to be the public property. After discussing the earlier judgments of this Court, the Court has observed that the tendency to encroach upon the public properties, either due to the negligence or collusion of the Panchayat authorities; can not be countenanced by the Court. Hence, no injunction can be granted to a person who has failed to show either to be owner of the property or to be in permissive possession of the property. The Court held that mere proof of a prima facie case qua possession, is not sufficient to grant the injunction in favour of a trespasser plaintiff. This Court finds itself in agreement with the above said judgment of this Court. Therefore, there is no perversity in the judgment and decree passed by the lower Appellate Court.

No other argument was raised by learned counsel for the parties.

In view of the above, the present appeal is dismissed, being devoid of any merits.

17th November, 2017

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*