

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

RSA No.1133 of 2013 (O&M).

Date of Decision: 27.02.2017.

Gram Panchayat Niyamatpur

....Appellant.

VERSUS

Parasnath Chela Ramji Nath Chela Ganeshnath (alleged) Mohatmim Murti
Shivji Maharaj and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Jarnail S. Saneta, Advocate for the appellant.

Mr. J.P. Sharma, Advocate for respondent No.1.

SNEH PRASHAR, J.

CM-3030-C-2013

Allowed, as prayed for.

RSA-1133-2013

This Regular Second Appeal was filed by appellant-defendant No.1 Gram Panchayat Niyamatpur (hereinafter referred to as 'defendant No.1') impugning the judgment and decree dated 17.09.2012 passed by learned District Judge, Narnaul whereby the appeal filed by the said defendant No.1 challenging the judgment and decree dated 05.03.2010 passed in Civil Suit No.227 RT of 2002 by learned Additional Civil Judge (Senior Division), Narnaul decreeing the suit for injunction instituted by respondents No.1-plaintiff Parasnath Chela Ramji Nath Chela Ganesh Nath Mohtmim Murti Shivji (hereinafter referred to as 'plaintiff'), was dismissed.

Plaintiff Paras Nath Chela Ramji Nath filed a suit for permanent injunction seeking to restrain the defendants (appellant and respondent No.2 herein) from interfering in the ownership, possession and use of Mandir, Bhagwan, Bagichi, well and the land comprised in Khewat No.292, Khatoni No.329, Khasra No.131 measuring 118 Kanals 14 Marlas, situated in village Niyamatpur, Tehsil Narnaul (hereinafter referred to as the 'suit property'). The plaintiff pleaded that about 60-65 years ago, a temple was constructed by Mahant Bawalnath and after his death Ramji Nath, his (plaintiff's) Guru, became the Mohtmim of the temple. Ramji Nath got constructed one more temple in Kotputli and left Niyamatpur. After him, he (plaintiff) is performing Pooja Path, Bal Bhog etc. at the Mandir Murti Shivji and Shivala for the last 20 years. The land underneath the temple and Shivala were dedicated orally out of the shamlat land of the village and it was agreed that proceeds earned from the said land would be used for the purpose of Bal Bhog, Dhoop etc. and for the subsistence of the Mahant. It was further alleged that in the dedicated land, some plants were planted and a Bagichi was raised; a well and a watercourse (Khal) for providing drinking water to the animals were constructed and a pumping set for taking electricity connection bearing account No.R271-AP was installed.

It was further the plea of the plaintiff that Ex.Sarpanch Lala Ram lodged a false criminal case against him and also obtained an exparte ejectment order against him by filing a petition under Section 7(2) of the Village Common Lands Act (for short, 'the Act') in respect of 21 Kanals land out of total land comprised in Khasra No.131. After he was released from jail, he filed an appeal, on which the case was remanded back to

order, the Assistant Collector Ist Grade, Narnaul held that the property bearing Khasra No.131 neither vests in the Gram Panchayat nor falls in the definition of 'shamlat deh'. Lastly, alleging that the defendants were bent upon to dispossess him from the said land illegally and forcibly, the plaintiff filed the instant suit.

The defendants contested the suit raising various legal objections. Replying on merits, the defendants denied that there exist any temple namely Mandir Shivji Maharaj in village Niyamatpur or that the plaintiff is the Mohtmim of the said temple. The factum of dedication of land measuring 21 Kanals was also denied and it was alleged that Gram Panchayat Niyamatpur is the owner in possession of the suit property and has a right to auction the same. It was also alleged that in pursuance of the order of ejectment passed by Assistant Collector Ist Grade, Narnaul in the petition filed by Ex.Sarpanch Lala Ram, the Gram Panchayat had taken possession of the suit land on 20.08.1994 and since then the land is being auctioned. Earlier the civil suit No.12691 of 1994 filed by the plaintiff was stated to have been dismissed and the appeal filed by the plaintiff was also dismissed.

On the rival contentions of the parties, following issues were framed:-

1. Whether plaintiff is owner in possession of the suit property? OPP
2. Relief.

Both the parties adduced evidence in support of their rival contentions.

Considering the submissions made on behalf of the parties and

Court decreed the suit of the plaintiff with costs vide judgment and decree dated 05.03.2010 to the extent that the defendants were restrained from interfering in the possession and use of the suit property except in due course of law.

The appeal filed by the appellant-defendant Gram Panchayat Niyamatpur was dismissed by learned first appellate Court vide judgment and decree dated 17.09.2012.

Feeling aggrieved, the appellant-defendant has filed the instant Regular Second Appeal.

The submissions made by Mr. Jarnail S. Saneta, learned counsel representing the appellant-defendant Gram Panchayat and Mr. J.P. Sharma, learned counsel for respondent No.1 have been heard and record perused.

Learned counsel for the defendants argued that the plaintiff claimed that the suit property was dedicated to the temple and Shivala but no document worth in its name could be produced to prove the alleged dedication. In fact, the plaintiff was in illegal possession of the suit land. Defendant No.2-Sarpanch of the village filed a petition under Section 7(2) of the Act and an ex parte decree of ejectment was passed against the plaintiff. During execution proceedings, the possession of the property was taken by the defendant Gram Panchayat and since then the property is in possession of the Gram Panchayat.

There appears to be no force in the argument of learned counsel for the defendant. Admittedly, an appeal was preferred by the plaintiff against the ex parte ejectment order passed against him under Section 7(2) of the Act which was allowed by the Collector and the case was remanded

back to Assistant Collector Ist Grade, Narnaul for deciding the petition on merits. The Assistant Collector Ist Grade, Narnaul then vide order dated 29.06.1999 dismissed the petition filed by the Gram Panchayat Niyamatpur. The Gram Panchayat preferred an appeal to Collector, Mohindergarh, Camp at Narnaul which was dismissed vide judgment dated 23.05.2000 (Ex.P4). Both, Assistant Collector Ist Grade as well as Collector, concurrently held the plaintiff to be in possession of the suit property and not the Gram Panchayat. Further, the order Ex.P7 dated 30.12.2004 passed by Assistant Collector IInd Grade, Nangal Chaudhary shows that an order for correction of Khasra Girdawari to the extent of Khewat No.292, Khatoni No.329, Khasra No.131 min was passed in favour of the plaintiff finding that Mandir Shivji Maharaj and Shivala were in possession of the said land and the Gram Panchayat had nothing to do with the same. As per the electricity bill Ex.P6 the electricity connection bearing account No.R271-AP installed in the suit property is in the name of the plaintiff.

The decree only restrains the defendants from interfering in the possession of the plaintiff except in due course of law since the possession of the plaintiff on the suit property is proved.

There appears no ground for interference in the concurrent findings on facts of learned trial Court and learned first appellate Court and hence the appeal is dismissed.

(SNEH PRASHAR)
JUDGE

27.02.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**