

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 4155 of 2016 (O&M)
Date of Decision: 06.2.2017

Mewa Singh

.....Appellant

Versus

Gram Panchayat

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. R.S.Budhwar, Advocate
for the appellant.

ANITA CHAUDHRY, J

The unsuccessful plaintiff has filed this second appeal against the judgments of both the Courts below.

A suit for permanent injunction was filed by the plaintiff against the Gram Panchayat with respect to the property comprised in khasra No. 594 min. The plaintiff had claimed that though the Gram Panchayat was its owner but he was in peaceful possession of the property since 1975. It was claimed that he had constructed a house over the suit property with his own funds and with the consent of the previous Gram Panchayat.

The Gram Panchayat took the plea that they were in possession and the suit property was part and parcel of a common pond of the village. It was pleaded that the house of the plaintiff was situated across the street adjoining the common pond. It was also pleaded that the Gram Panchayat

near the pond which was used by the Gram Panchayat as a store and the plaintiff had no concern.

On the pleadings of the parties, following issues were framed by the trial Court:-

1. *Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP*
2. *Whether the plaintiff has got no cause of action to file the present suit ? OPD*
3. *Whether the plaintiffs have not approached the Hon'ble court with the clean hands and have suppressed the material facts from the Hon'ble court? OPD*
4. *Relief.*

Both the sides led evidence.

The lower Court recorded the following:-

“Therefrom from the discussion above, it becomes clear that the onus was upon the plaintiff to prove that he is in possession of khasra No. 594 but the defendant is claiming that the suit property is the part and parcel of the common pond of the village and gram panchayat is in possession of the land in dispute and denied that plaintiff has constructed his house in the suit property rather it is the Gram Panchayat who has constructed and boundary wall around the pond. Also plaintiff in his cross examination has corroborated the version of the plaintiff and has admitted in his cross examination that the gram panchayat of village has raised the boundary wall around the pond. Although the defendant witness DW-1

Gurpal Singh in his cross examination has submitted that the photographs Ex. P2 to Ex. P8 are of the suit property but he further deposed that he has no authority from the present Gram Panchayat to depose in the present case. As such his evidence does not carry weight and the defendant has not produced any witness who has been authorized by the Gram Panchayat to depose in the present case as the authorization is necessary because the gram panchayat is the constituted body. Also the jamabandi Ex. D7 reflects that khasra No. 594 is possession of the Nagar Panchayat. As such it was upon the plaintiff to prove its possession over the suit property but the plaintiff failed as he has himself admitted the claim of the defendant that the suit property is a pond by deposing that the gram panchayat of village has constructed the boundary wall around the pond which is on the suit property. Also the jamabandi Ex. D7 reflects the possession of the gram panchayat of village. Hence the plaintiff failed to prove his possession over the suit property. As such this issue is decided against the plaintiff and in favour of defendant.”

An appeal was preferred by the plaintiff. The findings of the trial Court were upheld. A finding was recorded that the land was comprised in khasra No. 594 min which was owned by the Nagar Panchayat and the claim of the plaintiff that he was in possession or that he had constructed a house was found to be false.

Both the Courts below had rightly given a finding that the plaintiff was not in possession nor had constructed any structure and rightly

dismissed the suit.

I find no infirmity in the findings of the Courts below. There is no substantial question of law involved either.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

February 06, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No