107.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-5592-2016 (O&M)
Date of decision: 11.05.2017

Mir Singh (since deceased) through his LR-Joginder Singh

... Appellant

Versus

Gram Panchayat Village Garhi Bala (Abbaspur), Tehsil and District Sonipat, through its Sarpanch, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Ms. Kamlesh Khatri, Advocate,
for the appellant.

HARI PAL VERMA, J.

The appellant-plaintiff has filed the present Regular Second Appeal against the judgment and decree dated 04.08.2016 passed by learned Additional District Judge, Sonipat, whereby his appeal against the judgment and decree dated 08.11.2012 passed by learned Civil Judge (Junior Division), Sonipat, was dismissed.

Briefly stated, the appellant-plaintiff (herein referred as 'plaintiff') had filed a suit for permanent and mandatory injunction seeking direction to the respondents-defendants (herein referred as 'defendants') for reconstructing the demolished portion of the house of the plaintiff with their own expenses and to give compensation/ damages for the demolished portion of the house in dispute and further, to restrain them permanently from interfering into the ownership and

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possession of the plaintiff over the suit property and from changing the nature of suit property and not to make gali in portion of house in dispute. As per the plaint, the father of the plaintiff, namely, Kundan Lal, got a share in the abadi-deh of the Village Garhi Bala (Abbaspur), Tehsil and District Sonipat on the basis of Civil Suit No.384 of 1967 decided on 09.02.1991. Accordingly, plot No.620 measuring 261 square yards, shown by letters ABCD in the site plan, was allotted to the father of the plaintiff. Kundan Lal died and after his death, plaintiff inherited 1/4th share in the said plot. The plaintiff constructed a pucca house over the suit property, but the defendants illegally and forcibly demolished the eastern portion of said suit property without serving any notice to the plaintiff and that too, in his absence. It was done by the Sarpanch of the village out of enmity in collusion with defendants No.2 and 3. When the plaintiff asked the defendants that why they demolished his house, they did not pay any heed to it. Due to this demolition, the plaintiff suffered a loss of approximately ₹2 lakhs and even the remaining portion of the suit property became uninhabitable. There is a possibility that even the remaining portion of the house would also fall and as such, there is a danger to him and his family members. So he had requested to the defendants that the demolished portion of the house be reconstructed and the remaining portion be repaired. He also requested the defendants to provide him compensation for their illegal act, but they denied. Hence, the suit was filed.

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On notice, the defendants contested the suit and stated that the plaintiff-Mir Singh along with his son Joginder Singh has made encroachment over the gram panchayat land and in this respect, proceedings under Section 7 of Punjab Village Common Lands (Regulation) Act (for short, 'the Act') were initiated at the instance of one Sukhbir Singh against plaintiff's son Joginder Singh. In the said proceedings, Joginder Singh, Mehar Lal and others were ordered to vacate the land encroached upon by them vide order dated 07.12.2006 passed by Collector, Sonipat. The said order was confirmed in revision by the Commissioner, Rohtak Division, Rohtak vide his order dated 08.06.2007. In pursuance of aforesaid orders, respondent-defendant No.1 took possession of the encroached land i.e. Rasta Sareaam. As such, the suit filed by the plaintiff was nothing but a counter blast to the said proceedings. Since the respondent-defendant No.1 i.e. Gram Panchayat had taken possession on 23.10.2007 legally and in due course of law, as such, there is no question of any irreparable loss being suffered by the plaintiff.

Though in the suit, the plaintiff had claimed himself to be the owner in possession of the suit property and stated that the house constructed by him over the suit land was illegally and forcibly demolished by the defendants on 23.10.2007, causing loss to the plaintiff and even the remaining portion of the house had been rendered uninhabitable, but the trial Court had noticed that the dispute in the suit is not regarding ownership of the house bearing No.620, rather the

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dispute is whether or not the plaintiff has encroached upon the gali. Undisputedly, the said gali was found in ownership of gram panchayat and, therefore, the proceedings before the revenue court under Section 7 of the Act had rightly been initiated. Even the appeal filed by the plaintiff was dismissed on 08.06.2007 by the Commissioner, Rohtak. On the basis of proceedings under the Act, demarcation of the suit property was done and the plaintiff was found in illegal possession of gali and accordingly, the extended portion in the gali was ordered to be demolished and eviction order was passed against Joginder Singh son of plaintiff-Mir Singh. On the plea of the plaintiff-Mir Singh that he is owner of House No.620 and he ought to have been made a party to the proceedings before the revenue court as his son had no right, title or interest during his lifetime, the trial Court found that it had duly been proved by the witness of the plaintiff himself that Joginder Singh and Mir Singh-duo were in possession of the house and it was only Joginder Singh who used to look after his father-Mir Singh-plaintiff. Since two persons and that too, father and son, residing together, the plea of Mir Singh that he had no knowledge of the proceedings of the revenue court, was not accepted by the trial Court. In fact, Mir Singh had executed a Will and in pursuance of that Will, House No.620 devolved to Joginder and Mahinder. More interestingly, the dispute is not regarding the very house, but the issues are: Whether the gali is encroached by Joginder Singh or not? and demolition made by the defendants on 23.10.2007 was right or not? Since the gali vests within

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the gram panchayat, the further question involved is of its vesting or non-vesting with the gram panchayat. As per Section 13(c) of the Act, the jurisdiction of civil court is barred and such a question on title is required to be adjudicated by the revenue court. The trial Court found that it was on account of the execution of order dated 08.06.2007 passed by the Commissioner, Rohtak, the portion that existed on the gali had already been demolished, no mandate can be issued to the defendants to reconstruct the demolished portion. Therefore, no direction of mandatory injunction or paying any compensation can be given to the defendants. So, once it is proved that the plaintiff had already been evicted from the portion so encroached, no relief of permanent injunction can be granted. Accordingly, the trial Court vide judgment and decree dated 08.11.2012 dismissed the suit of the plaintiff with costs.

Still aggrieved against the aforesaid judgment and decree dated 08.11.2012 passed by the trial Court, the plaintiff filed an appeal, which was also dismissed by the Lower Appellate Court vide judgment and decree dated 04.08.2016 by observing as under:-

> "The appellant-plaintiff has failed to lead any cogent, liable or convicting evidence regarding damages caused to his house due to demolition proceedings taken up by the respondents-defendants. It is also pertinent to mention here that now the appellant-plaintiff Mir Singh (since deceased) has also been died and his estate is represented by his legal heirs Joginder and Mahender regarding the house No.620

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by virtue of Will executed by Mir Singh. The Court is the guardian of the public property when the lis is regarding an encroacher of public property, he cannot be treated at par with a person who has a lis with some private individual regarding encroachment upon his property. The appellant- plaintiff Mir Singh (since deceased) through his LRs is nothing but a trespasser on the public land and Gram Panchayat is true owner. It is also a settled proposition of law that injunction cannot be granted to a trespasser against a true owner."

Aggrieved against the aforesaid judgment and decree dated 04.08.2016, the plaintiff (since deceased) through his LR-Joginder Singh has filed the present Regular Second Appeal.

Learned counsel for the appellant-plaintiff has argued that the findings of the Lower Appellate Court are based on surmises and conjectures. Regarding jurisdiction i.e. Issue No.5, the courts below have held that the civil court has no jurisdiction to decide the suit in view of Section 13 of the Act, but still courts below have decided the case on merits. Therefore, the impugned orders are liable to be set aside. If the court below were of the opinion that the civil court has no jurisdiction to decide the suit, the court was bound to adopt the procedure as provided under Order 7 Rule 10 CPC i.e. to return the plaint for presentation to the proper court and to intimate the plaintiff in writing about the return of the plaint. The courts below have ignored the important fact that the plaintiffs were seeking injunction as regard to house and land underneath plot No.620 which was admittedly

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allotted to Mir Singh at the time of partition of abadi-deh by the Civil Court and the trial Court also held the same, then why and how, the trial Court decided not to grant even perpetual injunction in regard to land underneath plot No.620.

I have heard learned counsel for the appellant.

The plea as raised by learned counsel for the appellant that once the courts below have found the jurisdiction of the civil court as barred, the only option left out to the lower court was to return the plaint under Order 7 Rule 10 CPC, cannot be accepted for the reason that it is on the basis of procedure laid down under Section 7 of Act, the revenue court initiated the proceedings at the instance of one Sukhbir Singh and the plaintiff was ordered to be evicted from the encroached land vide order dated 07.12.2006 passed by the Collector, Sonipat. The said order was further confirmed in revision by the Commissioner, Rohtak Division, vide his order dated 08.06.2007. It is only in pursuance of the orders passed by the Collector, Sonipat and Commissioner, Rohtak, respondent-defendant No.1-Gram Panchayat had taken possession of land in dispute i.e. Rasta Sareaam which was encroached upon by the plaintiff and his son Joginder. The possession was taken in accordance with law and as such, the suit filed by the plaintiff was nothing but a counter blast to the proceedings initiated under Section 7 of the Act. Since the possession was taken in pursuance to the proceedings initiated under Section 7 of the Act, the plea of the plaintiff that the suit was not maintainable, cannot be

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accepted. There is no dispute regarding the ownership of House No.620, which was allotted to Kundan Lal-father of the plaintiff in the partition of abadi deh of the village and 1/4th share fell to the share of the plaintiff. But the precise issue involved in the case is, as to whether the plaintiff has encroached upon the gali or not. Both the courts below have found that the gali is undisputedly in ownership of gram panchayat and the gram panchayat has rightly taken up the proceedings under Section 7 of the Act, where ejectment order had already been passed against Joginder Singh son of Mir Singh. So once it is established that the portion of the house of the plaintiff was found to be on the gali and which was demolished after taking legal recourse, it cannot be said the respondents-defendants have proceeded against law in any manner. Mir Singh was not the owner in possession of the portion which was extended in gali and, therefore, he was not required to be made as a party in the proceedings before the revenue court, though his son was a party to it. It is only in pursuance of the orders passed by the Collector, Sonipat and Commissioner, Rohtak, the portion existed on the gali was demolished and the encroachment made by the plaintiff was removed. Therefore, no mandate can be issued against the respondents-defendants to reconstruct the demolished portion.

No other point is argued.

No substantial question of law arises in the present regular second appeal.

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Once it is found that the plaintiff's son Joginder Singh has encroached upon the gali which was otherwise in ownership of gram panchayat and the gram panchayat has taken legal recourse for demolition of encroached portion on the gali, this Court does not find any reason to interfere with the findings of the courts below which are also based on concurrent findings of facts. Accordingly, the present Regular Second Appeal is dismissed.

(HARI PAL VERMA)
JUDGE

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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No

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