

RSA No. 6350 of 2016(O&M)

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

RSA No. 6350 of 2016(O&M)

Date of Decision: 6.7.2017

Gram Panchayat Dhanauri, Tehsil and District Ambala through its Sarpanch

.....Appellant

Vs.

Kulbir Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Deepak Sharma, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgment of reversal dated 30.4.2016 passed by the learned first appellate court, whereby suit for permanent injunction filed by the plaintiffs-respondents was decreed, defendant-Gram Panchayat has approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by the learned first appellate court in para 3 of its impugned judgment, are that the plaintiffs and other several proprietors of village Dhanauri, Tehsil and District Ambala were the owners and in cultivating possession of the suit land since the time of consolidation of holdings and the suit land was a Bachat land of proprietors which was taken out from their holding at the time of consolidation of holding. The suit land has been shown as Shamlat Hasab Rasad Aarazi

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Khewat which was owned and possessed by proprietors of village Dhanauri according to their khewats but mutation regarding the suit land was wrongly and erroneously sanctioned in the name of defendant-respondent, on the basis of Notification No. LPS/9-1992, without the consent and knowledge of plaintiffs-appellants and other proprietors of the village. In fact, plaintiffs-appellants along with other proprietors of village Dhanauri were owners and in possession of the suit land, according to their shares, without interruption and interference from any quarter and without paying anything to anybody including the defendant except the land revenue.

The Haryana Government had issued Notification No.LPS-9-1992 vide which Haryana Village Common Land Act was amended through Act No.9 of 1992 under which all the land owned and possessed by Mustarka Malkaan Digar Haqdaaran and Shamlat Patti, Hasab Rasad Aarazi Khewat etc. was included in the shamlat deh. Several proprietors of several villages of Haryana challenged the aforesaid amended Act no.9 of 1992 before Hon'ble Punjab and Haryana High Court in Civil Writ Petition No.5877 of 1992 which was set aside vide its order dated 13.3.2003, by holding that the provisions of the aforesaid Act were ultra vires and against the Constitution of India. Thus, the plaintiffs-appellants and other proprietors of village Dhanauri were declared owners of the suit land vide order dated 13.3.2003 by the Hon'ble High Court and the mutation already sanctioned in the name of Gram Panchayat stood cancelled and set aside. Mutation was wrongly entered in the name of defendant-respondent, without the knowledge and consent of plaintiffs-appellants and other proprietors of the village which was challenged by them before Collector, Ambala, by filing a suit for declaration titled as Ajaib Singh etc. Vs.Gram Panchayat,

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Dhanauri, which was pending and now mutation No. 420 has been sanctioned in favour of Mustarka Malkan by A.C.IInd Grade, Ambala on 3.3.2006. The defendant-respondent was over willing regarding the title and interest of the plaintiffs-appellants and other proprietors of village but defendant-respondent, by adopting wrong and illegal procedure, wanted to deprive them and other proprietors of the village of their valuable rights by leasing out the said land. The suit land was never used for the benefit of village community and it was also not reserved for the village community at the time of consolidation. The defendant-respondent was threatening and declaring in the last week of May, 2009, at the instance of higher authorities in the village, on the basis of mutation which was wrongly sanctioned in the name of defendant-respondent, that it would lease out the aforesaid land by auctioning the same for the year 2009-10 onwards to the highest bidder, without having any right or authority to do so. Despite repeated requests to the defendant-respondent not to take the law into its own hands, defendant-respondent was adamant and refused to do the needful on 3.6.2009.

Having been put to notice, defendant-Gram Panchayat put appearance and filed its contesting written statement, raising more than one preliminary objections. Plaintiffs filed their replication reiterating their stand taken in the plaint. On completion of pleadings of the parties, the learned trial court framed the following issues:-

- 1. Whether the plaintiffs are entitled for permanent injunction* restraining the defendant from interfering in the suit land? OPP
2. Whether the plaintiffs and other proprietors are the owners and in possession of the suit land? OPD
3. Whether the suit is not maintainable in the present

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form? OPD

4. Whether the plaintiffs have no locus standi or cause of action to file the present suit? OPD

5. Whether the civil court has got no jurisdiction to entertain and try the present suit? OPD

6. *Relief.*

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiffs have failed to prove their case. Accordingly, suit for permanent injunction was dismissed by the learned trial court vide its judgment and decree dated 25.5.2015. Dissatisfied, plaintiffs filed their first appeal, which came to be allowed by the learned Additional District Judge, vide impugned judgment and decree dated 30.4.2016. Hence this regular second appeal at the hands of defendant-Gram Panchayat.

Heard learned counsel for the appellant.

It is a matter of record that the land in question has been recorded as Shamlat Hasab Rasad Arazi Khewat in the relevant record, i.e. jamabandi. This type of land is the left over land which remained unutilised from the common pool created after applying *pro rata* cut on holdings of the proprietors of the village during consolidation proceedings. Gram Panchayat have no right, whatsoever, either regarding ownership or possession qua such kind of land. It is so said because common pool came to be created for utilisation of land for different common purposes of the village like school, playground, cremation ground and other ancillary purposes.

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After utilisation of the land from common pool, which would be created after applying pro rata cut on the holdings of the proprietors of the village, whatever land remained unutilised would be recorded as Shamlat Hasab Rasad Arazi Khewat. Proprietors of the village on whose holdings pro rata cut would be applied, would be the owners of such type of unutilised land which is also known as 'Bachat land' in common parlance and they would be entitled to seek partition of such land to the extent of their respective shares.

It is pertinent to note here that State of Haryana sought to amend the Punjab Village Common Lands (Regulations) Act, 1961 ('Act of 1961' for short), with a view to change the ownership of this type of land in favour of the Gram Panchayats. Amendment was brought in the Act of 1961 in the year 1992 by way of Haryana Amendment Act No.9 of 1992.. Said amendment came to be challenged before this Court by way of numerous writ petitions and finally, Hon'ble Full Bench of this Court in **Jai Singh Vs. State of Haryana, 2003(2) R.C.R.(Civil) 578**, declared said amendment in the Act of 1961 as unconstitutional.

Thereafter, nothing was left to be doubted in this regard. Since the abovesaid aspect goes to the root of the cause which could not be properly appreciated by the learned trial court, a manifest injustice was caused to the plaintiffs by dismissal of their suit. In such a situation, it can be safely concluded that the learned Additional District Judge was well within its jurisdiction to allow the first appeal of the plaintiffs-respondents, by passing the impugned judgment and decree and the same deserve to be upheld.

Neither ownership of the land in question ever remained with

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the appellant-Gram Panchayat, nor it could have taken a plea of adverse possession. Learned counsel for the appellant-Gram Panchayat, despite making his best efforts, could not make any improvement in the case of the appellant-Gram Panchayat and rightly so, it being a matter of record.

Revenue entry in the column of ownership, as contained in the jamabandi for the year 2011-12 placed before this Court by learned counsel for the appellant, would leave no room for doubt that appellant-Gram Panchayat had nothing to do with the land in question which is the absolute ownership of proprietors of the village, including the plaintiffs-respondents, of course, to the extent of their respective shares in the land in question. It also goes without saying that possession goes with the title. Even if under a bonafide wrong impression, appellant-Gram Panchayat had been leasing out this land for some time, during this interregnum, that will not confer any kind of right either of ownership or possession on the appellant-Gram Panchayat. Having said that, this Court feels no hesitation to conclude that neither law nor equity is in favour of the appellant-Gram Panchayat and the impugned judgment and decree passed by the learned first appellate court deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in para 14 of its impugned judgment, which deserve to be noticed here, read as under:-

*“Having due regards to the contentions raised by
learned counsel for the parties, the contentions raised by
learned counsel for the respondent cannot be accepted*

because in the present case, the appellants/plaintiffs have examined themselves as PW1 and PW2 and they have specifically stated that they along with other proprietors of the village are in possession of the suit land measuring 125K-12M. It is well settled that in case permanent injunction has been sought, the Court need not to examine the question of title, even on the basis of possession, the question of permanent injunction can be decided. In the present case, it is a specific case of the appellants that they were in possession of the suit land along with other proprietors before the Notification of the year 1992 issued by Government of Haryana. After the said Notification, the land was mutated in favour of Gram Panchayat but in the year 2003 after challenging the said Notification in the Hon'ble High Court by other persons similar situated in State of Haryana, the said Notification was declared unconstitutional and as such, after declaration of the said Notification as unconstitutional in CWP No.5877 of 1992 titled as Jai Singh Vs. State of Haryana, the revenue authority has sanctioned the mutation from Gram Panchayat Deh to Mustarka Malkan Wa Digar Haqdaran Hasab Rasab Rakba Khewat on 25.2.2006, as is evident from Ex.P2. A perusal of Ex.P1 i.e. jamabandi for the year 2006-07 also goes to show that in the column of ownership, Shamlat Hasab Rasad Aarazi Khewat has been shown. Further more, mere leasing out the suit land by Gram Panchayat on the basis of previous Notification, which has been set aside, does not mean that they are in

*possession of the suit land. In this regard, the respondent-defendant has not placed on record any document to show that it is in possession of the suit property. Further more, perusal of Ex.P4 i.e. jamabandi for the year 1986-87 also goes to show that the land has been shown as Shamlat Hasab Rasad Aarazi Khewat and as such, there was no entry before 1992 in the name of Gram Panchayat and again there is no entry after the year 2006 i.e. after setting aside the Notification of 1992. Moreover, the question with regards to the ownership is already pending before the revenue authority as it has come on record that a petition under Section 13 of Punjab Village Common Land Act is already pending. Therefore, while deciding the question of Notification, the possession has to be seen in the present case. No evidence has come on the file that the suit property had ever been used for common purposes. Therefore, there is no document in favour of respondent that on the day of filing of the present suit, the Gram Panchayat was in possession of the suit property. Reliance in this regard can be placed on case titled as **Udey Singh Versus Gram Panchayat Nangal Jat, 2010(1) PLR 206, Gurdev Singh Versus Gram Panchayat of village Poabala and others, 2007(1) PLR 286, Dalip Singh Vs. Hoshiara, 2000(1) PLR 371, Gram Panchayat village Bhedpura Versus The Additional Director, Consolidation and others, 1997(1) PLJ 535.**”*

Further, in its celebrated judgment rendered recently in CWP No. 314 of 2001 (Suraj Bhan and others VS. State of Haryana and another) decided on 22.7.2016, which is a very exhaustive, detailed and informative one, Hon’ble Full Bench of five judges of this Court, has made it crystal clear by authoritative pronouncement of law that such kind of land would not vest in the Gram Panchayat and its ownership will remain with the

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proprietors of the village.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the abovesaid findings recorded by the learned first appellate court. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a 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 regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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 present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

6.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No