

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.6669 of 2016

Date of decision:9.5.2017

Gram Panchayat through its Sarpanch

...Appellant

Versus

BD & PO Ganaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sushil Jain, Advocate for the appellant.
Mr.Abhinav Sood, Advocate for
Mr.Vikram Singh, Advocate for the caveators-respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Defendant-Gram Panchayat has approached this Court by way of instant regular second appeal against the impugned judgment of reversal dated 23.8.2016 passed by the learned Additional District Judge, whereby first appeal of plaintiffs-respondents No.3 and 4 was allowed, decreeing their suit for permanent injunction.

Brief facts of the case, as noticed by the learned first appellate court in para 1 of its impugned judgment, are that the plaintiffs filed the suit for permanent injunction, restraining the defendants from auctioning the suit land measuring 2 Kanals 19 Marlas, comprised in Khewat No. 555Min/521, Khata No. 629 Rectangle and Killa No. 13/2/2 (2-9), 48/14/2/1 (0-10) Min north, situated in revenue estate of village Rajpur, Tehsil Ganaur, District Sonapat. The case of the plaintiffs in brief was that they

were owner in possession of the suit property, but the defendants were threatening to auction the suit property illegally.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Replication was filed by the plaintiffs. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the defendants are liable to be restrained from auctioning the property as mentioned in para No. 1 of the plaint, on the grounds mentioned in the plaint? OPP.
2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD.
3. Whether the plaintiffs have no cause of action to file the present suit? OPD.
4. Whether the plaintiffs have no locus standi to file the present suit? OPD.
5. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiffs have failed to prove their case. Accordingly, their suit for permanent injunction was dismissed by the learned trial court, vide its judgment and decree dated 29.9.2014. Dissatisfied, plaintiffs filed their first appeal, which came to be allowed by the learned first appellate court, vide its impugned judgment and decree dated 23.8.2016. Hence, this regular second appeal, at the hands of defendant No.3-Gram Panchayat.

Heard learned counsel for the parties.

It is a matter of record that during the pendency of first appeal of the plaintiffs-respondents, order dated 5.2.2007 was restored in favour of the plaintiffs by the Consolidation Officer, vide his order dated 10.8.2016. It is also not in dispute that vide order dated 5.2.2007, the suit land was given to the plaintiffs by the Consolidation Officer. Under these undisputed material facts, this Court feels no hesitation to conclude that the learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld.

Once the plaintiffs were found in possession over the suit land, they were certainly entitled for a decree of permanent injunction against the defendants, including the present appellant-defendant Gram Panchayat. It is also pertinent to note here that the plaintiffs were recorded as owners in possession in the relevant revenue record including mutation Ex.P2 and jamabandi Ex.P1. As per the provisions contained in Section 44 of the Punjab Land Revenue Act, 1887, presumption of truth is attached to the revenue entries. This presumption of truth was in favour of the plaintiffs, which could not be rebutted or displaced by the defendant/appellant-Gram Panchayat, by leading any contrary evidence.

In such a situation, plaintiffs were entitled for the benefit of Section 109 of the Indian Evidence Act unless the presumption would have been rebutted by the defendants. As noticed hereinabove, defendants including the appellant-Gram Panchayat failed to rebut the presumption in favour of the plaintiffs. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate court committed no error of law, while passing the impugned judgment and

decree and the same deserve to be upheld, for this reason also.

The above-said view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

- 1. Harish Chander and others Vs. Ghisa Ram and another, 1981 (1) SCC 431;***
- 2. Ram Avadh and others Vs. Ram Dass and others, 2008(8) SCC 58;***
- 3. Khiali Ram and another Vs. Sant Lal, 1972 PLJ 118 (P&H);***
- 4. Gunit Sidhu and another Vs. Bhai Shaminder Singh (since deceased), 2009(3) RCR (Civil) 648 (P&H);***
- 5. RSA No.5578 of 2015 (Gurbachan Singh and others Vs. Sarban Singh @ Surat Singh and others), decided on 7.3.2017 (P&H).***

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 10 and 11 of its impugned judgment, which deserve to be noticed here, read as under:-

“The mutation Ex. P2 shows that the appellants were recorded owner in possession of the suit land on the basis of order dated 05.02.2007 passed by the then Consolidation Officer, Rohtak u/s 21 (2) of the Consolidation Act. On the basis of that mutation, plaintiffs were recorded owner in possession of the suit land in Jamabandi Ex. P1 for the year 2010-2011. The judgment Ex. D2 shows that the appellants filed a suit for declaration and permanent injunction on the basis of order dated 05.02.2007 in the year 2009. During pendency of that suit, the order dated 05.02.2007 was set aside by the Commissioner Rohtak vide order dated 20.04.2012.

Therefore, the court of Shri Amit Garg, the then Addl. Civil Judge, Senior Division, Ganaur held that the plaintiffs were owner in possession of the suit property.

Learned counsel for the appellants-plaintiffs has argued that the case was remanded to Tehsildar Ganaur and order dated 05.02.2007 has been restored by Tehsildar/Consolidation Officer, Ganaur. He has also placed on record copy of order dated 10.08.2016 passed by Tehsildar/Consolidation Officer, Ganaur vide which the order dated 05.02.2007 has been restored. Learned counsel for respondent No. 3 has fairly conceded that the order dated 05.02.2007 has been restored by Tehsildar/Consolidation Officer, Ganaur vide order dated 10.08.2016. It is admitted that vide order dated 05.02.2007 passed by the then Consolidation Officer, Rohtak, the suit land was given to the plaintiffs. Therefore, it is concluded that the plaintiffs are entitled to the decree of injunction as prayed for. Hence, finding of trial court on issue No. 1 is reversed and this issue is decided in favour of plaintiffs.

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgment and decree passed by the learned first appellate court, while recording its findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini***

Lakshmy, 2009 (2) RCR (Civil) 286 and Santosh Hazari Versus

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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, the impugned judgment and decree passed by the learned first appellate court are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

9.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE