

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

RSA No.332 of 2014 (O&M)

Date of Decision: 30.05.2017

Man Singh

....Appellant

Versus

S.S. Khanna and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Mr. Ashok Aggarwal, Sr. Advocate
with Mr. Rajesh Punj, Advocate
for the respondents.

DAYA CHAUDHARY, J.

Appellant-Man Singh, who was plaintiff before the trial Court, has filed the present appeal to challenge the impugned judgment and decree dated 28.09.2011 passed by the Civil Judge (Junior Division), Ambala, whereby, the suit of the plaintiff was dismissed and also the judgment and decree dated 11.07.2013 passed by the Additional District Judge, Ambala, whereby, the appeal filed by the appellant was also dismissed.

Briefly, the facts of the case as made out in the present appeal are that appellant-plaintiff-Man Singh filed a suit for permanent injunction restraining the respondents-defendants from interfering in the lawful and peaceful possession of the plaintiff over the land in dispute measuring 5 kanals 10 marlas bearing *khewat/khatauni No.596 min/653, khasra No.593 min*, situated within the revenue estate of Patti Rangran, H.B. No.40,

Ambala City, Tehsil and District Ambala. As per averments made in the plaint, the plaintiff has been in actual and physical possession of the land in dispute for the last more than 50 years. He had also constructed a *katcha* house over the land, in dispute and the same was being used for tethering his cattle and for storing certain articles. The defendants wanted to encroach upon the land, in dispute without any legal right or authority. However, the suit filed by the plaintiff was dismissed vide judgment and decree dated 28.09.2011 passed by the Civil Judge (Junior Division), Ambala. Said judgment and decree passed by the trial Court was challenged before the Additional District Judge, Ambala which was also dismissed vide judgment and decree dated 11.07.2013.

The appellant-plaintiff, after losing his case before the two Courts below, has filed the present appeal by raising various grounds.

Learned counsel for the appellant submits that both the Courts below have not properly appreciated the evidence available on record. It has not been taken into consideration by both the Courts below that the plaintiff had constructed a *katcha* house on the suit land for tethering his cattle and also for storing certain articles and has been in possession of the same for the last about 35 years. Respondent-defendants wanted to encroach upon the land, without having any legal right or authority as their building is adjoining to the land, in dispute. Learned counsel also submits that the appeal may be allowed and judgments and decrees passed by both the Courts below be set aside.

Learned counsel for the appellant has relied upon the judgments of Hon'ble the Apex Court in cases ***Rame Gowda (D) by LRs vs Mr. Varadappa Naidu (D) by LRs and another 2004(1) RCR (Civil) 519***

and ***Prataprai N. Kothari vs John Braganza 1999(2) RCJ 417***, in support of his contentions.

Learned Sr. counsel for the respondents submits that the judgment and decree passed by both the Courts below are based on proper appreciation of evidence. The property in dispute is owned by State of Haryana and the same has been recorded as *Gair Mumkin Sadak* in possession of '*Makbuja Mehkama PWD*' in the revenue record. Defendant no.3 is owner of land of adjacent Khasra Nos.607, 608/2 and 611, which are approachable through the passage. The plaintiff-appellant has no right to use that land and no house is in existence. Learned Sr. counsel further submits that this land has never been used, possessed or cultivated by the plaintiff. The plaintiff got changed its cultivation entries in his name, somewhere in the year 1987 and prior to that, the suit land was being recorded as *Gair Mumkin Banjar Kadeem*, which shows that it was never used for cultivation purposes. Suit land is owned by the State Government and the plaintiff-appellant cannot claim possession on the public property. At the end, learned senior counsel submits that no evidence has been brought on record to show as to how the plaintiff-appellant came into possession of the suit property as tenant and nowhere, it is mentioned that the plaintiff-appellant is tenant and as such, it has not been proved on record that the plaintiff is tenant over the suit land. Even the possession of 50 years has not been proved on record.

Learned senior counsel for the respondents has relied upon the judgment of Hon'ble the Apex Court in case ***Durga (deceased) and others vs Milkhi Ram and others 1969 PLJ 105***, judgment of this Court in case ***Mohan Lal vs Mohan Singh 1995(3) PLR 564*** as well as judgment of

Himachal Pradesh High Court in case ***Kashi Ram vs Harbhajan Singh Bhajji 2003(2) RCR (Civil) 752***, in support of his contentions.

Heard the arguments of learned counsel for the parties and have also perused the judgments passed by both the Courts below as well as other documents available on the file.

Facts relating to filing of suit; dismissal thereof; filing of appeal and its dismissal are not disputed. Plaintiff-appellant filed a suit for permanent injunction restraining the defendant-respondents not to interfere in his peaceful possession over the land. The following issues were framed by the trial Court ;

- “1. Whether the plaintiff is owner in possession of the suit land as mentioned in the plaint? OPP*
- 2. If issue No.1 is proved, whether the plaintiff is entitled to permanent injunction, as prayed for? OPP*
- 3. Whether the suit is not maintainable in the present form? OPD*
- 4. Whether the plaintiff has no locus standi to file the suit? OPD*
- 5. Whether the plaintiff has concealed material facts from the Court? OPD*
- 6. Whether the suit is bad for mis-joinder of necessary parties? OPD*
- 7. Relief.”*

The findings recorded by the trial Court are reproduced as under:-

“ 12. The perusal of jamabandi Ex.D5 to Ex.D8 reflects that nothing has been mentioned in the column of rent and the said column is blank. Moreover, the suit property has been shown in possession of State Government and Mehkama, PWD in the jamabandis Ex.D2 to Ex.D4 for the year 1972-73, 1977-78 and

1982-83. The name of the plaintiff in the column of cultivation as tenant of Will (Gair Marusi) entered first time in the jamabandi in the year 1987-88 Ex.D5 and Khasra Girdawari for the year 1987-88. However, nothing has come on record to show how the plaintiff came into possession of the suit property as tenant at Will (Gair Marusi). No rapat roznamcha vide which the plaintiff has become tenant in the suit property placed on record. Hence, it cannot be assumed or presumed in any manner that the plaintiff is a tenant at Will (Gair Marusi) in the suit land. Meaning thereby, the plaintiff is encroacher/trespasser. The suit property is Government property.

13. The perusal of jamabandis Ex.D2 to Ex.8 and the khasra girdawari Ex.D9 of the suit property clearly shows that the suit property has been described as gair mumkin Sadak, Gir Mumkin Khadan, Banjar Kadim. The plea of the plaintiff that the plaintiff is in possession and, thus entitled to the grant of injunction restraining the defendants from interfering in his possession is not sustainable. The plaintiff in the column of possession, though have been shown in possession but the entries showing the suit land as Gair Mumkin Sadak, Gair Mumkin Khadan and Banjar Kadim indicates that it was never in possession of the plaintiff. In view of the entries in the revenue record showing the land to be Gair Mumkin Sadak, Gair Mumkin Khadan and Banjar Kadim, the plaintiff cannot be held to be in possession and thus not entitled to the injunction prayed for. Reference in this regard can be made to the case law cited as **Faridabad Complex Administration vs Amitabh Adhar and others 1999(1) PLJ 83 and Dev Raj versus Tej Bhan and another 1999(1) PLJ 156 (FC Haryana)**.

14. The suit property is the State Government Property

*as is evident from the revenue record. In Mohan Lal vs Mohan Singh 1996(1) CCC 30 (P&H) our own Hon'ble High Court has observed that Government holds property as a trustee of the people and in cases involving public properties and public interests, the Courts have to bear in mind as to whether the grant of injunction would be conducive or detrimental to public interest. The Courts have to take note of the fact that Government lands belonging to the public at large and the community as a whole is entitled to enjoy the property belonging to the Government and, therefore, where any attempt is made by an individual or a group of individuals to misappropriate/misuse or otherwise interfere with the enjoyment of public property by the people in general, the Courts have to be extremely cautious in granting injunction in favour of such person only on the ground that he is in possession of the property. Possession of public property by such an individual or a group of individuals is no possession in the eyes of law. Such a person cannot claim any right whatsoever on the basis of unlawful occupation of the public property and Courts would be justified in declining any assistance to such a person. In such like case, the plaintiff cannot claim parity with a person who has a dispute with another individual over a private property. Moreover, the Courts have to act as guardian of the public property and should not pass an order of injunction in favour of a person who has made unauthorized encroachment of the public property. Reference in this regard can also be made to the case law cited as **Dungar Dass and others vs Municipal Council, Rewari and others 2008(4) CCC 797 (P&H).***

Similarly, the findings recorded by the lower Appellate Court

are reproduced as under :-

“16. The suit property has been shown in possession of State Government and Mehkama PWD in the Jamabandis Ex.D2 to Ex.D4 for the year 1972-73, 1977-78 and 1982-83. The name of the plaintiff in the column of cultivation as tenant of Will (Gair Marusi) entered first time in the jamabandi in the year 1987-88, Ex.D5 and khasra Girdawari for the year 1987-88 but nothing has been brought on record to show how the plaintiff-appellant came into possession of the suit property as tenant. No rapat roznamcha vide which the plaintiff has become tenant in the suit property placed on record. Nothing has been mentioned in the column of rent and the said column is blank. Therefore, it cannot be assumed or presumed that the plaintiff is a tenant in the suit land.

17. As discussed above, there is no proof of kacha house etc. at present or since 50 years. There is no positive evidence on record how he is in possession of the suit property. The nature of property do not prove his possession. Moreover, it is not a case of the appellant that he is cultivating the land. In the present facts situated he cannot be held in possession of the property in question. He had failed to prove his lawful possession. Moreover, State Government/owner has not been impleaded as party and the status of one Rajesh s/o Om Parkash, shown in the jamabandi for the year 1987-88 has not been explained by the plaintiff. A person out of possession cannot seek relief of injunction. The courts have to be extremely cautious in granting injunction in favour of such person, who has no legitimate right in his favour.”

A perusal of findings recorded by both the Courts below shows that the averments/claim of the plaintiff that he is in possession of the land,

in dispute, for the last 50 years has not been proved on record. It has also not been proved on record as to how he came into possession of the suit property as tenant at Will (Gair Marusi). Any rapat roznamcha was also not brought before the Court to show that the plaintiff became tenant of the property, in dispute. In absence of any evidence on record, it is apparent that the plaintiff-appellant has encroached upon the land, in dispute, which belongs to State Government. Even in the revenue record, the property, in dispute, has been described as *Gair Mumkin Sadak, Khaddan and Banjar Kadeem*. Although, the plaintiff-appellant is claiming to be in possession for the last 50 years but the entries recorded in the revenue record reflects that the appellant-plaintiff was never in possession of the land, in dispute. By considering the entries in the revenue record, the plaintiff cannot be held to be in possession and resultantly he is not entitled for any injunction. The ownership of the State Government has been proved on the basis of revenue record. Moreover, it has been observed in various judgments that the State Government holds property as a trustee of the people and in case of involvement of public properties, the Courts have to bear in mind as to whether grant of injunction would be conducive or detrimental to public interest when the same is being used by the public at large and community as a whole. It has also been held in various judgments that possession of public property by any individual or group of individuals cannot be said to be in possession of any individual in the eyes of law.

It has not been proved on record that as on today any house is there except two walls which are also in bad condition. The plaintiff-appellant has also failed to prove by way of any site plan of the property, in dispute, or by photographs or any positive evidence regarding the existence

of structure. The burden of proving that he is in possession of the suit property is on the plaintiff-appellant but it has not been proved on record that he is in continuous possession for the last 50 years.

Similar issue was there before the Hon'ble Apex Court in case ***Jagpal Singh and others vs State of Punjab and others 2011(1) RCR (Civil) 912***. In that case also, the suit property was community land. Attempt was made by some unscrupulous elements to grab common land in villages. It was observed in para No.5 of the said judgment as under:-

“5. What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with its original character, for personal aggrandizement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.”

The Hon'ble Apex Court had observed that the trespasser who illegally encroached upon the Gram Panchayat land by using muscle power, money power and in collusion with State officials and even Gram Panchayat, are not entitled to any relief and the Courts have not to condone, such type of blatant illegalities. In that case, appellants had raised construction of house over the common land and they were ordered to remove their construction and vacate the same. While appreciating the

efforts of our ancestors, who reserved some land for ponds and other public purposes, the Apex Court observed in para 17 to 19 as follows :-

“17. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bath in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

18. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.

19. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these mal-practices must stop.”

However, it is also relevant to mention here that the land, in dispute, belongs to State Government and the same has been proved on record on the basis of revenue entries. The plaintiff-appellant has not impleaded the State Government as party. It appears that the land, in dispute, is being used by the plaintiff without having any right, title and without proving his rightful possession. Similarly, it appears that the land in dispute is being used by the respondents as a common place and moreover there is a passage also. Being the vacant place, the respondents might be using the same land without being any right over the land, in dispute.

Since, the State Government is not a party and as such, no directions can be issued. However, keeping in view the nature of land, in dispute, only the State Government is lawful owner and can use the same for the public at large, in case, the passage is there or for any other function.

While departing with the judgment, it is directed that a copy of this judgment be sent to the Chief Secretary of State of Haryana for taking necessary action in this regard and to utilize the land for any purposes as it may deem fit.

Accordingly, the findings recorded by both the Courts below are well reasoned and are based on proper appreciation of evidence. The plaintiff-appellant has miserably failed to prove his right over the suit property and his possession thereupon.

Finding no merit in the contentions raised by learned counsel for the appellant, the present appeal, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

30.05.2017
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes