

RSA No. 609 of 2015 (O&M)

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

RSA No. 609 of 2015 (O&M)

Date of Decision: 19.9.2017

Ved Parkash and others

.....Appellants

Vs.

Gram Panchayat, Bhagal and others

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. H.R. Bhardwaj, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Present regular second appeal, at the hands of plaintiffs, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby their suit for permanent injunction, was dismissed by the learned trial court vide its impugned judgment and decree dated 11.5.2011 and their first appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 31.1.2014, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 4 of the impugned judgment, are that plaintiffs pleaded that they were co-sharers in the suit land along with other co-sharers and were owners in possession of their respective shares being members of Patti Kalan and were cultivating the same since the time of their forefather, i.e. for the last more than 70 years. They were representatives of Patti Kalan and represented all members of Patti Kalan. Sarpanch of village Bhagal/defendant No.2 wanted to

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dispossess them and other co-sharers from the suit land and as such, on 23.2.2007, he/she, along with some other persons armed with deadly weapons, tried to dispossess them from the suit land but their attack was foiled due to timely intervention of some respectable of the village.

It was further pleaded that there were three other Patties in the village namely Patti Duni Chand, Patti Lohari and Patti Mangol. These Patties were also having land and share-holders of the same were in peaceful possession of respective land according to their shares. Sarpanch or Gram Panchayat was not interfering in their possession but Sarpanch or Panchayat was bent upon to interfere in their peaceful possession. Despite repeated requests, defendants did not desist from their illegal act, which necessitated the cause for filing the suit, seeking a decree for permanent injunction restraining the defendants from dispossessing the plaintiffs from the suit land, illegally and forcibly.

Defendants-Gram Panchayat and Sarpanch were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiffs filed their replication. On completion of pleading of the parties, learned trial court framed the following issues:-

1. Whether the plaintiffs are entitled for relief of permanent injunction as prayed for by them?OPP
2. Whether the plaintiffs have no locus standi and cause of action to file the present suit?OPD
3. Relief.

In order to prove their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence

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brought on record, learned trial Court came to the conclusion that the plaintiffs have failed to prove their case for want of cogent and sufficient evidence. Accordingly, suit for permanent injunction, filed by the plaintiffs, was dismissed by the learned trial Court, vide its judgment and decree dated 11.5.2011. Feeling aggrieved, plaintiffs filed their first appeal, which also came to be dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 31.1.2014. Hence this regular second appeal at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

It has gone undisputed before this Court that suit land was reserved as Gau Charand (grazing field) during the consolidation proceedings. It is also a matter of record that plaintiffs did not file any suit for declaration challenging the said entry in the revenue record, wherein the suit land was recorded as Gau Charand. Scheme of consolidation was also not challenged by the plaintiffs at any point of time. It is also not pleaded or argued case on behalf of the appellants that suit land was part of Bachat land, which remained unutilised during the consolidation proceedings. Even if plaintiffs are treated to be proprietors of the village and it is also accepted that pro rata cut was applied on their holdings as per the terms and conditions of *Sharat Wazib-ul-arz*, still they will not be in a position to put any claim either for title or for possession on the land which was kept reserved for Gau Charand during the consolidation proceedings.

It is so said, because the suit land being Gau Charand, came to be utilised out of common pool, which was created after applying *pro rata* cut on the holdings of the proprietors of the village. Had the suit land been part of Bachat land and recorded in the column of ownership as *Jumla Mushtarka*

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Malkan Hasab Rasad Rakba Khewat, position would have been totally different. However, that is not the case in hand. The land of Gau Charand can also not be got partitioned even by the proprietors of the village because this came to be utilised and was kept reserved for Gau Charand during the consolidation proceedings. In support of the view that has been taken by this Court, law laid down by two Full Benches of this Court in **Jai Singh Vs. State of Haryana, 2003(2) R.C.R.(Civil) 578** and **Suraj Bhan and others VS. State of Haryana and another** (CWP No. 314 of 2001, decided on 22.7.2016) can be relied upon. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

Instant one was not a suit under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 ('the Act' for short). If the plaintiffs-appellants were claiming ownership of the suit land, they would have filed a suit under Section 13 of the Act but that is also not their pleaded case. This was the reason that witnesses produced by the plaintiffs-appellants had to admit that entries in the revenue record were not factually incorrect wherein the suit land was recorded as Gau Charand. Learned first appellate court rightly recorded cogent findings that admission was the best evidence against the plaintiffs-appellants.

Further, although plaintiffs were claiming themselves to be representatives of Patti Kalan, yet they did not file the suit in the representative capacity under Order I Rule 8 CPC and that too for no good reasons. Simply because some part of the suit land was recorded under cultivation in the relevant revenue record will neither change nature of the suit land, nor it will amend the Scheme of consolidation. As per the Scheme of Consolidation, land in question

was kept reserved as Gau Charand and any stray contrary entry in the revenue record will be of hardly any consequence. Under these undisputed facts and circumstances of the case, it can be safely concluded that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 22 to 28 of its impugned judgment, which deserve to be noticed here, read as under:-

“The admissions made by the parties are best piece of evidence and is a proof of a fact. They can be relied upon if same are unequivocal and are clear and not withdrawn by party making them. Plaintiffs pleaded that they are representatives of Patti Kalan and represent all members of Patti Kala but did not bring the suit in representative capacity under Order I Rule 8 CPC nor adopted the procedure under Order I Rule 8 CPC. On this account, suit is defective.

Plaintiffs pleaded that they are co-sharers in suit land and are owners in possession of the same, since time of their forefather and defendant-Panchayat through Sarpanch is interfering in their possession and defendants be restrained by way of grant of decree of permanent injunction.

Defendant-Panchayat contra denied the same and pleaded that suit land is ‘charand’ and same was reserved at the time of consolidation that suit land vests in Gram Panchayat and Gram Panchayat itself is in possession of the suit land and the plaintiffs have no right, title or interest in the suit land.

It is well settled that plaintiff, who seeks the relief, must establish his averments by bringing cogent and reliable evidence.

It is no case of the plaintiffs that revenue record recording

suit land 'charand' is wrong. Rather, plaintiff and his witness PW1 in cross-examination made categorical statement that suit land was reserved as 'Gau Charand' during consolidation of holdings and is being used as such. This rather corroborated the revenue entries, as relied by the plaintiffs themselves. In column of cultivation, the land is recorded as 'charand' and in column of ownership, it is shown to be recorded in the name of several co-sharers. Plaintiffs also admitted that eviction proceedings were initiated against one Raghbir by the Gram Panchayat and that were accepted and eviction order was passed against him.

Apart that, plaintiff (PW2) and his witness PW1, could not tell on which khasra number, they are in cultivating possession as claimed by him. Merely that some piece of suit land is recorded cultivation, it would not change the nature of the suit land. Rather admission of PWs, shows that person like Raghbir who came in unauthorized possession of the suit land, had been ordered to be evicted from the suit land. Admission of Pws that land is reserved for charan and is being used as such, has gone to rebut the entries of cultivating possession as recorded in the revenue record. Presumption of correctness attached to revenue record stands rebutted by oral account of plaintiffs themselves. The benefit which plaintiffs want to draw, is not available to them, from their own admissions.

The plaintiffs want relief of permanent injunction on basis of their cultivating possession, which they failed to substantiate by bringing any cogent and reliable evidence. They are not entitled for the relief sought for. The court is not considering issue under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 and thus, has the jurisdiction to entertain the suit. The case law submitted by the appellant thus failed to advance the case of appellant being on different footings."

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any

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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.

19.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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