

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

RSA No. 1368 of 2017 (O&M)

DATE OF DECISION : 21.12.2017

Baldev Singh and others

.... APPELLANTS

Versus

Krishan Pal and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Aman Bansal, Advocate,
for the appellants.

* * *

AVNEESH JHINGAN, J.

The present appeal is at the behest of the plaintiffs being aggrieved of the concurrent judgments and decrees passed by the learned courts below, dismissing their suit for declaration and permanent injunction.

For the sake of convenience, the parties are being referred to as per their original position in the civil suit.

The plaintiffs filed a suit seeking declaration to the effect that they are absolute owners in possession of the plot marked by letters ADEFCB in the site plan attached with the plaint. The said land was within the abadi deh of vilage Barwala Tehsil and District Panchkula. Further, decree of declaration was sought to the effect that the judgment and decree dated 29.05.2013 passed by the court of learned Civil Judge (Junior

Division), Panchkula, in Civil Suit No. 148 of 2010, titled as Krishan Pal Vs. Gram Panchayat Barwala, is illegal, null and void. Consequential relief of permanent injunction was prayed for restraining the defendants from interfering in the peaceful possession of the plaintiffs over the suit property.

The factual matrix of the case, as pleaded in the plaint, are that the predecessors-in-interest of the plaintiffs, namely Maan Singh and Shamsher Singh sons of Bija Singh, purchased a plot situated in village Barwala, from Shamsher Singh son of Bhagwant Singh vide sale deed dated 21.03.1963. They were also having their own land in village Barwala. It was alleged that they were absolute owners in possession of the suit land for the last more than 50 years and had constructed a Pucca room. The real brother of grand-father of defendant No.1, namely Lachhman Singh, filed a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the Act') against the predecessors-in-interest of the plaintiffs. The same was allowed by the Assistant Collector Ist Grade, Kalka, and eviction order was passed. In the appeal filed by the predecessors-in-interest of the plaintiffs, the order of the Assistant Collector Ist Grade was set aside. The revision and civil writ petition filed by Lachhman Singh were dismissed. During the pendency of the proceedings, predecessors-in-interest of the plaintiffs expired, leaving behind the plaintiffs as their legal heirs. It was alleged that after 20 days of disposal of the civil writ petition, defendant No.1 in collusion with defendants No.2 and 3 filed a suit for permanent injunction for restraining defendant No.2 –

Gram Panchayat from interfering in the alleged possession of defendant No.1 over the disputed plot. In the said suit, the earlier litigation was not mentioned intentionally. As a result, the suit was decreed vide judgment and decree dated 29.05.2013. The plaintiffs, on coming to know about the judgment and decree dated 29.05.2013, requested the defendants to admit their ownership and possession. On being threatened of interference in the possession and also to alienate the suit land, the suit was filed.

On notice, defendant No.1 filed written statement resisting the claim of the plaintiffs. It was denied that the property was purchased by predecessors-in-interest of the plaintiffs. It was alleged that the sale deed is false and fabricated and does not belong to the suit property. It was further pleaded that there is no description of property mentioned in the sale deed. Defendant No.1 claimed his ownership and possession over the suit property.

Defendants No.2 and 3 filed joint written statement submitting that the suit land is lying vacant and trees have been planted by the Gram Panchayat. The plaintiffs and defendant No.1 have no concern with the suit land. It was stated that the land belongs to Gram Panchayat.

The learned trial court framed ten issues.

The plaintiffs, in order to support their claim, examined Baldev Singh plaintiff No.1 as PW.1 and Ashok Kumar was examined as PW.2. The documentary evidence was produced as Ex.P1 to Ex.P5. Site plan was exhibited as Ex.PX and documents Mark A to Mark D were also produced.

The defendants examined Krishan Pal defendant No.1 as DW.1 and tendered copy of petition under Section 7 of the Act as Mark D1.

The learned trial court, after appreciating the facts and considering the evidence produced, decided issues No.1 to 4 against the plaintiffs and issues No.5 to 10 were decided against the defendants. The net result was that the suit was dismissed vide judgment and decree dated 28.01.2016.

Feeling Aggrieved of the aforesaid judgment and decree, the plaintiffs preferred an appeal. Learned Additional District Judge, Panchkula, dismissed the appeal vide judgment and decree dated 06.02.2017.

Hence, the Regular Second Appeal.

Learned counsel for the plaintiffs contended that from the earlier litigation which went upto the High Court, it was duly established that the plaintiffs were owners in possession of the disputed property. He further contended that Ex.PX, which was the site plan, was not discussed by the learned courts below. In order to establish claim of the plaintiffs, learned counsel further relies upon the judgment and decree dated 29.05.2013 (Annexure A-2) which was produced with an application for additional evidence before the learned first appellate court.

No other issue was raised or argued.

The substantial questions of law framed in the regular second appeal have not been addressed, but only the abovesaid contentions have been raised.

The entire case set up by the plaintiffs is that they are owners in possession of the suit land. It had been claimed that they became owners of the suit land vide sale deed dated 21.03.1963. The basis of the entire claim was neither exhibited nor proved by the plaintiffs. So far as the possession of the plaintiffs over the plot is concerned, apart from the testimony of PW.1 Baldev Singh, the documents Ex.P1 to Ex.P5 pertaining to the proceedings under Section 7 of the Act were relied upon. On the other hand, the Gram Panchayat alleged that the suit land vests with it. The plaintiffs failed to establish that the earlier litigation under Section 7 of the Act was with regard to the same property. In absence of the sale deed, detail of the property was not proved on record. In such circumstances, the contention raised by learned counsel that the ownership and possession of the plaintiffs over the suit land was proved in the earlier litigation has no legs to stand. Even otherwise, from a perusal of the order dated 07.09.2010 passed by the High Court in Civil Writ Petition No. 611 of 1987, titled as Lachhman Singh Vs. The Commissioner, Ambala Division and others, it is evident that it was not the issue decided by the court as to whether the plaintiffs were owners of the disputed land or not. For ready reference, the relevant portion of the order is re-produced below :-

“In my opinion though there is considerable weight in the argument that the findings of the authority who had himself visited the spot could not be lightly interfered with yet as has been noticed above the Assistant Collector

himself found no encroachment on the passage by the private respondents. In these circumstances the finding that merely because there was no other construction in that area and merely because the private respondents were not able to establish their title over the property where they had built their Kotha it could not be held that the land in dispute was Shamilat land.

Resultantly I hold that no ground has been made out to interfere with the concurrent findings of the Collector and the Commissioner under the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India.”

The argument of learned counsel that the site plan (Ex.PX) was not discussed by the learned courts below does not enhance the case of the plaintiffs, for the reason that once it is concluded that detail of the property purchased by the plaintiffs has not been proved, in such circumstances, there cannot be any comparison or reliance upon any site plan. Even if there was no discussion of the said document, no prejudice is caused to the case of the plaintiffs. The reliance by the learned counsel on Annexure A-2 cannot be accepted, as the said Annexure was never exhibited before the learned trial court.

The learned trial court rejected the said relief on the ground that the judgment and decree dated 29.05.2013 has neither been tendered in evidence nor produced in court. In order to fill the lacuna, an application under Order 41 Rule 27 CPC was moved by the plaintiffs in appeal

proceedings. The learned appellate court rightly rejected the said application. In the regular second appeal, there is no occasion to take into consideration the said document. Firstly, the said document was available with the plaintiffs, yet it was not produced before the learned trial court, in spite of sufficient opportunity provided to them to adduce evidence. Secondly, it was an attempt to fill the lacuna left in the trial proceedings. In such circumstances, Order 41 Rule 27 CPC does not permit production of additional evidence.

There is another angle to the said litigation, i.e. the suit filed by the plaintiffs raised a dispute regarding ownership of the suit land. The plaintiffs claimed themselves to be owners of the land and on the other hand, the Gram Panchayat stated that it is the Panchayat land. Section 13 of the Act bars jurisdiction of the civil court to adjudicate the question of title of the land, whether it vests with the Panchayat or not.

The Hon'ble Apex Court in **Dhruv Green Field Ltd. Vs. Hukam Singh, 2002 (6) SCC 416**, while dealing with the question as to when and in what circumstances, a suit of civil nature can be said to be barred by a special statute, held as under :-

“The question, when and in what circumstances, can a suit of civil nature be said to be barred by a special statute, is no longer res integra. In M/s. Kamala Mills Ltd v. State of Bombay, AIR 1965 SC 1942, a seven Judge Bench of this Court laid down the principle thus:

"The question about the exclusion of the

jurisdiction of civil courts either expressly or by necessary implication must be considered, in every case, in the light of the words used in the statutory provision on which the plea is rested, the scheme of the relevant provisions, their object and their purpose.

Whenever a plea is raised before a civil Court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the Court naturally feels inclined to consider whether the remedy afforded by an alternative provision prescribed by a special statute is sufficient or adequate. Where the exclusion of the civil Court's jurisdiction is expressly provided for, the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of remedies provided for by it may be relevant, it cannot however, be decisive. But when exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and in conceivable circumstances, might even become decisive. If a statute creates a special right or a liability and provides for the determination of the right and liability to be dealt with by tribunals specially constituted in that behalf, and it further

lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, it is pertinent to enquire whether remedies, normally associated with actions in civil courts are prescribed by the said statute or not."

*That judgment was followed in **Lala Ram Swarup and others v. Shikar Chand and another**, 1966 (2) SCR 553. There Gajendragadkar, CJ., speaking for a Constitution Bench of this Court formulated the following tests:*

"The two tests, which are often considered relevant in dealing with the question about the exclusion of civil Courts' jurisdiction are (a) whether the special statute which excludes such jurisdiction has used clear and unambiguous words indicating that intention; and (b) does that statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions. Applying these tests the inference is inescapable that the jurisdiction of the civil courts is intended to be excluded.

xxx xxx xxx

The bar excluding the jurisdiction of civil Courts cannot operate in cases where the plea raised before the civil Court goes to

the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity."

Further, a Division Bench of this Court in **Bhagu Vs. Ram Sarup and others**, 1985 PLJ 366, when dealing with the jurisdiction of Civil Court under Section 13 of the Act, held as under :-

"This is so said by the Supreme Court in Samarth Transport Co. v. The Regional Transport Authority, AIR 1961 Supreme Court 93, in the context of Section 68F of the Motor Vehicles Act, 1939 wherein it is laid down that the Regional Transport Authority may by order "refuse to entertain" any application for renewal of any other permit. So, in a nutshell the whole implication of Section 13 of the Act is that the jurisdiction of the Civil Court is taken away when the lis is between the Gram Panchayat and a private person and it relates to any of the questions specified in this section."

Similarly, this Court in **Dharam Singh and others Vs. Gram Panchayat of Village Joshi Chauhan and others**, 2017 (1) RCR (Civil) 409, held as under :-

"In view of all that has been discussed, this appeal is dismissed, but for a reason different to the ones given by the Courts below, i.e. this appeal is dismissed, holding that the suit out of which this appeal arises, could not have been entertained by a Civil Court, being beyond its

jurisdiction, in view of the bar contained in Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana). A decree sheet be drawn up accordingly.”

In the above said decisions, it has been held that jurisdiction of the Civil Court to decide the issue of title of a land of the Gram Panchayat is barred.

For the reasons mentioned above, no fault can be found in the judgments and decrees passed by the learned courts below.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant second appeal is dismissed, however, with no order as to costs.

December 21, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes