

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.3865 of 2017 (O&M)
Date of Decision: 04.08.2017**

Om Parkash

... Appellant

Versus

Gram Panchayat, Bawana
and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.R. Yadav, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.

CM No.9646-C of 2017

For the reasons stated in the application, the same is allowed
and the delay of one day in filing the appeal is condoned.

CM No.9647-C of 2017

For the reasons stated in the application, the same is allowed
and the delay of 154 days in refiling the appeal is condoned.

Main Case

1. Admittedly, the suit property fell in the ownership of the Gram Panchayat Bawana Tehsil & District Mohindergarh. The Gram Panchayat filed the suit for permanent injunction to regain possession of the suit land from the defendants when they illegally had started constructing a temple. The suit failed for want of jurisdiction for the reason that the Gram Panchayat had remedy under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 ("1961 Act").

2. The unsuccessful Gram Panchayat appealed in the Court of the District Judge, Narnaul who by judgment and decree dated October 04, 2016 has reversed the findings of the trial Court and held the suit as maintainable. A civil suit was competent.

3. The defendants have been permanently restrained from raising construction over the suit property. It has been directed that bricks placed on the suit property by any person be confiscated by the Gram Panchayat. The learned District Judge applied the law in Mitta v. Sant Ram, 1975 PLJ (P&H) 243 to hold that the civil court had jurisdiction in a case of removal of encroachment on public land.

4. The learned District Judge was correct in holding after finding nothing on record by way of evidence which could show that the defendants are in long settled possession and thus can be evicted only under Section 7 of the 1961 Act. Even the trial Court on merits and upon the evidence found that the defendants are encroachers over Gram Panchayat land and remedy against an encroacher is by way of injunction, be it permanent or mandatory and it is only the civil court which can issue injunction.

5. The suit was rightly held to be maintainable where it was instituted and the Gram Panchayat was well within its rights to take recourse to the speedy and efficacious remedy of seeking permanent injunction from the civil court which power could not have been exercised by the revenue courts. The error committed by the trial court in showing the door to the revenue courts has been straightened by the court of first appeal exercising jurisdiction under Section 96 of the Code to bring it in accordance with law.

6. I would, for the reasons aforesated, find no ground to upset the

well considered judgment of the lower appellate court on law and facts and would dismiss the appeal.

(RAJIV NARAIN RAINA)
JUDGE

04.08.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>