

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

RSA No.4545 of 2017 (O&M)

Date of decision : 22.09.2017

Savitri Devi and others

...Appellants

Versus

Umed Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Chaudhary, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiff had filed a suit for permanent, prohibitory and mandatory injunction restraining defendant Nos.1 to 3 from encroaching upon the shamlat chowk sare-aam (common place). In the alternative, if they encroached upon during the pendency of the suit, then the mandatory injunction be issued directing them to remove the encroachment.

During the pendency of the suit, a Local Commissioner-a revenue official was appointed who gave his detailed report wherein it was concluded that the defendants have encroached upon 770.25 square feet area of khasra No.1263. The aforesaid Local Commissioner was examined in evidence as PW2.

The learned trial Court after appreciating the evidence available on the file partly decreed the suit to the extent that the defendant Nos.1 to 3 are restrained from making any illegal encroachment.

Plaintiff had filed an appeal. Defendants did not file any appeal.

Learned First Appellate Court after re-appreciating the evidence upheld the finding of the trial Court that the defendant Nos.1 to 3 are encroachers of the public land. The First Appellate Court also found that this encroachment was carried out by the defendants during the pendency of the suit. With these findings, the learned First Appellate Court while upholding the decree for permanent injunction also issued a decree of mandatory injunction directing the defendants No.1 to 3 to remove the illegal encroachment from public land measuring 770.25 square feet within a period of 1 ½ month from today.

Defendants have filed the present appeal challenging the judgment passed by the learned First Appellate Court.

At the cost of repetition, it would be significant to note here that the defendants did not file any appeal before the First Appellate Court. The trial Court had recorded a finding of fact that the defendants have illegally encroached upon the public land. A decree for permanent injunction was issued against the defendants. However, the trial Court did not grant the relief of mandatory injunction without assigning any reason. That error has now been corrected by the First Appellate Court.

Learned counsel for the appellants has vehemently argued that the public land vests in the Gram Panchayat and, therefore, the plaintiffs were only entitled to resort to the proceedings under Section 7 of the Punjab Village Common Lands (Regulation) Act 1961.

Learned counsel has referred to Section 13 of the Act of 1961 to contend that the Civil Court does not have jurisdiction.

I have considered the submission of the learned counsel and with his able assistance gone through the record of the case.

It is a case where the defendants had encroached upon a public place which was for common use. It has been found by the First Appellate Court that the Gram Panchayat failed to take any action. It is in these circumstances, the Court entertained the suit and granted the injunction. The ownership of the Gram Panchayat over the land in question does not fall for determination. The Gram Panchayat is custodian of the public property but it failed to act. In these circumstances, if the residents who are adversely effected have filed a civil suit, in my opinion, the jurisdiction of the Civil Court cannot be held to be barred in such circumstances particularly when the ownership of the Gram Panchayat is not subject matter of determination in the litigation.

Learned counsel for the defendants-appellants has further argued that the decree granted by the Court is not in consonance with the prayer made by the plaintiff while filing the suit. The prayer made by the plaintiff is extracted as under:-

“Suit for permanent injunction prohibitory and mandatory to the effect that the defendants No.1 to 3 be restrained from encroaching upon the shamlat Chowk Sare-aam situated towards the western side of house of the plaintiff constructed on plot No.546 and northern side of the house of the defendants no.1 to 3 situated at Village Kalirawan, Tehsil Adampur District Hisar which is fully shown with red colour in the attached rough side plan and is being used by the plaintiff, defendants No.1 to 3 and other inhabitants of the village for egress and ingress of their houses and the

defendant No.4 is legally bound to stop the defendants no.1 to 3 from encroaching upon the shamlat chowk in question with mandatory injunction that if during the pendency of present suit, the defendants no.1 to 3 succeed in encroaching upon the chowk in question then they be directed to remove the encroachment. On the basis of evidence of ever kind.”

It is clear from the suit filed by the plaintiff with the prayer for issuance of a decree of permanent, prohibitory and mandatory injunction against the defendants restraining them from encroaching upon the shamlat chowk sare-aam (common place) situated towards western side of the house of the plaintiff. Further direction was also sought that a decree for mandatory injunction be issued, if during the pendency of the present suit, the defendants succeed in encroaching upon the aforesaid land.

In view of the aforesaid, decree passed by the trial Court is in accordance with the prayer made in the plaint.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications are disposed of, in view of the aforesaid judgment.

22.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No