

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

RSA No.919 of 2017 (O&M).

Date of Decision: 16.02.2017.

Ramala now deceased through his L.Rs. and anotherAppellants.

VERSUS

Gram Panchayat, Rampur Thandeyo and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. D.P.S. Ahluwalia, Advocate for the appellants.

SNEH PRASHAR, J.

This was Regular Second Appeal filed by appellants-plaintiffs Ramala (since deceased) and Jai Singh (hereinafter referred to as “the appellants”) impugning the judgment and decree dated 22.12.2016 passed by learned Additional District Judge-I, Panchkula whereby the appeal filed by the appellants challenging the judgment and decree dated 06.01.2016 passed in Case No.4028 of 2013 by learned Civil Judge (Senior Division), Panchkula, decreeing the suit for permanent injunction subject to the rider that if respondent-defendant No.1 Gram Panchayat succeeds in taking possession of the suit property back from the appellants in the proceedings initiated under Section 7 of the Punjab Village Common Land (Regulations), 1961 (for short, “the Act of 1961”), in that eventuality, the respondents-defendants would be at liberty to raise construction of the gali-sare-aam at the site in dispute, was dismissed and the suit itself of the appellants-plaintiffs was also dismissed.

The facts, as garnered from the record, are that appellants-plaintiffs being residents of village Rampur, Tehsil and District Panchkula filed a suit for permanent injunction seeking to restrain the respondents from interfering in possession of their respective houses as well as the open space lying vacant in front of their houses (hereinafter referred to as “the suit property”) situated within the abadi deh of village Rampur, which were depicted with letters ABCD and CDEF in the site plan attached with the plaint. They also sought an injunctive order against the respondents from constructing a street through the suit property and submitted that towards western side of their houses, there is a 3 feet wide drain (Nala) marked with letters ADE in the site plan and beyond the drain there is already a 14 feet wide main cemented street constructed by the Gram Panchayat. On the northern as well as southern side of their houses also, there is a cemented street constructed by the Gram Panchayat. The vacant space in front of their houses is in their possession and they have been storing fodder in the same and have also installed pegs, mangers etc. and have planted trees for shadow for their animals. Since they did not cast vote in favour of Suresh Pal (respondent No.2) in the election of Sarpanch of the Gram Panchayat of the village, he started nourishing a grudge against them and with the help of henchmen is bent upon to dispossess them illegally and construct a street through the suit property.

The suit was contested by the respondents raising preliminary objections with regard to maintainability of the suit, cause of action and jurisdiction of the Civil Court to try and entertain the suit. They submitted that no drain (Nala) adjoins the houses of the appellants on the western side,

appellants are situated on a 11 feet wide street which goes upto P.W.D. Road. There exist two public streets, one starts from the P.W.D. Road and goes towards Khera village and the other starts from the northern side of the houses of the appellants and goes towards P.W.D. Road upto the well. Appellant No.2 and his son in the last week of March, 2013 by putting earth on a portion of the common passage had made illegal encroachment on the public street. Submitting that with an intention to grab 11 feet wide public street the appellants had filed the instant suit presenting wrong facts, a prayer for dismissal of the suit was made.

On the rival contentions of the parties, following issues were framed:-

1. Whether the plaintiffs are entitled for decree of permanent injunction, as prayed for on the ground mentioned in the plaint? OPP.
2. Whether the suit is not legally maintainable in the present form? OPD.
3. Whether the Civil Court has got no jurisdiction to try and entertain the present suit? OPD.
4. Whether the suit is bad for non-joinder and mis-joinder of the necessary parties? OPD.
5. Relief.

Both the parties adduced evidence in support of their rival contentions.

Considering the submissions made on behalf of the parties and the evidence on record, learned trial Court decreed the suit vide judgment and decree dated 06.01.2016 restraining the respondents from interfering in the possession of the appellants over the suit property and/ or from raising any construction of gali-sare-aam through/ over the same, except in due

Panchayat succeeds in taking possession of the suit property back from the appellants in the proceedings initiated under Section 7 of the Act of 1961, in that eventuality, the respondents-defendants would be at liberty to raise construction of the gali-sare-aam at the site in dispute.

Feeling unsatisfied, the appellants preferred an appeal which was dismissed by learned Additional District Judge-I, Panchkula vide judgment and decree dated 22.12.2016 and the suit of the appellants itself was also dismissed.

Feeling aggrieved, the appellants-plaintiffs filed the instant Regular Second Appeal.

The submissions made by Mr. D.P.S. Ahluwalia, learned counsel representing the appellants have been heard.

Learned counsel for the appellants argued that respondents-Gram Panchayat etc. have not disputed possession of the appellants on the suit property. The suit property is situated within the abadi deh of the village and is part of respective houses of the appellants. It neither vests in Gram Panchayat nor is part of a common passage. During pendency of the suit, a Local Commission was appointed who inspected the site in the presences of the respondents and their counsel and submitted his report based on which finding the appellants to be in possession of the suit property, learned trial Court had passed the decree of permanent injunction in favour of the appellants though with a rider that in case the Gram Panchayat succeeds in taking possession of the suit property from the appellants in the proceedings initiated under Section 7 of the Act of 1961, in that eventuality the Gram Panchayat would be at liberty to raise construction of the common passage (gali-sare-aam) at the site in dispute.

Learned counsel asserted that due to the rider in the injunctive order passed by learned trial Court, the appellants preferred an appeal and learned first appellate Court proceeded to dismiss the very suit of the appellants. The judgment passed by learned first appellate Court is erroneous and contrary to the provisions of law especially when the respondents had not preferred any appeal.

There appears no merit in the arguments of learned counsel for the appellants. As is apparent from his submissions, the contentious issue arising out of the rival pleadings of the parties is whether the suit property, alleged to be part of houses of the appellants and in their possession, is 'shamlat deh' or not. The question whether the possession of the appellants on the suit property is legal, would form part of the same contentious issue. Though the appellants alleged that the suit property (open space) was part of their houses, but they failed to establish their ownership in respect of the same. The fact that a petition under Section 7 of the Act of 1961 for removal of encroachment of the appellants from the suit property had been filed by the Gram Panchayat and was pending before Assistant Collector Ist Grade-cum-D.R.O., Panchkula, was proved by the respondents by summoning the relevant record. Section 13 of the Act of 1961 reads as under:-

“Bar of Jurisdiction in Civil Courts—No civil courts shall have jurisdiction—

(a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not Shamlat deh vested or deemed to have been vested in a Panchayat under this Act ; or

- (b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act, or*
- (c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.”*

Since the question of title qua the suit land was to be decided, the jurisdiction of the Civil Court to entertain and adjudicate upon the said question is barred under Section 13 of the Act of 1961. The question of title has to be decided by the Collector under Sections 11 and 13 of the Act of 1961 and not by the Civil Court.

Surprisingly, having noticed all the aforesaid facts, learned trial Court proceeded to pass a decree of injunction in favour of the appellants though with a rider as indicated above. Firstly, on account of bar of the jurisdiction of the Civil Court to entertain and adjudicate the suit where the question posed was whether the suit property was 'shamlat deh' or not; and secondly, when from the facts it was proved that the appellants were in unauthorized possession of the suit property and the Gram Panchayat had already filed a petition for removal of their encroachment, the instant suit was not maintainable. Learned first appellate Court rightly reversed the findings of learned trial Court and dismissed the suit.

Order XLI Rule 2 of the Civil Procedure Code (for short, “CPC”) postulates that the appellant shall not, except by leave of the court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the

in the light of provisions of Order XLI Rule 2 CPC, learned first appellate Court committed no illegality or perversity in dismissing the suit of the appellants in the first appeal preferred by them.

Thus, there being no ground for intervention in the findings of learned first appellate Court, the instant appeal is dismissed.

16.02.2017.

jitender sharma

(SNEH PRASHAR)
JUDGE

Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**