

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

RSA No.2679 of 1987

Date of Decision.14.02.2018

Gram Panchayat/Gram Sabha of Village JanherianAppellant

Vs

Charan Singh (since deceased) through LRsRespondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Hundal, Advocate
for the appellant.

Mr. Hardial Singh Baath, Advocate
for the respondents.

:-

AMIT RAWAL J.(ORAL)

The appellant-Gram Panchayat is aggrieved of the concurrent finding of fact whereby the suit bearing No.577-T of 1988 for permanent injunction titled as “Charan Singh Vs. Gram Panchayat of Village Janherian” was decreed restraining the Gram Panchayat from interfering into the peaceful possession of the respondent-plaintiff in the land comprising of khasra No.396(8-5) situated in village Janherian, Tehsil and Distt Patiala, personally or through their agents, servants or lessees and also from auctioning the suit land.

Before advertng to the arguments of rival parties, it would be apt to give preface of the matter. The respondent-plaintiff instituted the suit on the premise that he was owner in possession of the suit situated in village Janheria, Tehsil and District Patiala for the last more than 35 years. Previously he had filed a suit against Gram Panchayat, which was decreed in the year 1972 and was held to be owner in possession of the land in dispute. Mutation was also sanctioned in his favour. It was only a week

back before the filing of the suit, the defendant-Gram Panchayat wanted to take forcible possession, therefore, necessity arose to file the aforementioned suit.

The appellant-defendant/Gram Panchayat contested the suit by filing written statement that the Gram Panchayat had put the property in auction for leasing it out on 31.05.1983 to one Kanwaljit Singh and he was in possession of the same. It was stated that the previous decree was passed against the provisions of law and prayed for dismissal of the suit.

The trial Court on the basis of the evidence i.e. documentary found that the plaintiff was in possession of the suit property and granted injunction. The appeal filed by the Gram Panchayat against the aforementioned judgment and decree of the trial Court was also dismissed.

Mr. Hundal, learned counsel appearing on behalf of the appellant submitted that the judgments and decrees rendered by the Courts below are erroneous, illegal and cannot be sustainable in the eyes of law.

The possession of the plaintiff was of a trespasser and no trespasser can be permitted to claim injunction. The Courts below have erroneously held that order of DDPO under Section 7 of the Punjab Village Common Land Regulations Act was without jurisdiction as the trial Court had no jurisdiction to interfere with the order dated 21.03.1986. The previous suit could not have been decided clothing the respondent-plaintiff as status of declaration in view of the provisions of Section 13-B of the Punjab Village Common land Regulations Act. The only remedy for the plaintiff was to file an application under Section 11 of the aforementioned Act to claim ownership. Having failed to do so, the simpliciter suit for injunction was not maintainable and the decree could not have been passed on the basis of

the decree of 1972 whereby the respondent plaintiff was grabbed status of proprietor of the property.

Per contra, Mr. Hardial Singh Baath, learned counsel appearing on behalf of the respondent-defendant submitted that it was simpliciter suit for injunction and nothing prevented the appellant-defendant from taking recourse in accordance with law as there was no claim in the suit seeking declaration qua ownership. The judgments and decrees of the courts below were passed on the preponderance of evidence particularly the fact that in view of the initiation of proceedings against the admitted possession of the plaintiff on filing of the application under Section 7 of the Punjab Village Common Land Regulations Act, the appellant-Gram Panchayat can always seek execution of the order passed by DDPO, if it attained finality. Thus, urges this Court upholding the judgments and decrees under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that the facts as noticed above are not in dispute. The only question which is to be pondered upon is whether the simpliciter suit for injunction in the absence of claiming title under Section 11 of the Punjab Village Common Land Regulations Act can be maintainable? In my view the answer to the question is “yes”, as passing of the eviction order on 21.03.1986 is not in dispute, which itself shows that the respondent-plaintiff was in possession. Nothing prevented the appellant-Gram Panchayat to seek possession in accordance with law i.e. by seeking execution of the order passed under Section 7, if attained finality. None of the parties are able to apprise this Court about culmination of proceedings of ejectment.

In view of the aforementioned, I do not find any reason to interfere with the judgments and decrees passed by the Courts below and the

same are upheld. However, the appellant-Gram Panchayat is at liberty to seek possession of the property in dispute in accordance with law. With the aforementioned observations, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 14, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No