

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

**RSA No.1302 of 1992 (O&M)
Date of Decision.27.09.2018**

Punjab State and another

...Appellants

Vs

Jagir Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Anu Pal, DAG, Punjab
for the appellants.

Mr. Vivek Suri, Advocate
for the respondents.

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AMIT RAWAL J. (ORAL)

The appellant-State is in regular second appeal against the judgment and decree of the lower Appellate Court whereby the suit of the respondents-plaintiffs claiming possession of land comprised in Khewat/Khatauni No.34/41, Khasra No.28/10/2(1-3), 11/2(0-12), total 1-15 situated in the area of village Chak Dhera, H.B. No.27 (hereinafter called the “suit land”) dismissed by the trial Court, has been decreed.

The respondents-plaintiffs, Jagir Singh, Sarup Singh, Norang Singh @ Noranga and Karam Kaur, sons and daughter of Gujjar Singh instituted the suit aforementioned on the premise that their father Gujjar Singh was owner of the aforementioned suit land. Defendant, PWD B&R Department was to construct the road from village Miani to Chak Dhera, which was to be linked with the already existing pucca road leading to village Ghanauli and the land in dispute was lying in between the said road. On 15.01.1970, the Gram

Panchayat of village Chak Dhera had passed a resolution whereby it was agreed to take the land from Gujjar Singh and in lieu thereof, give him some other land upto the boundaries of village Chak Dhera. However, the Gram Panchayat did not honour the resolution as no exchange was effected and revenue record continued in the name of plaintiffs' father, in essence, plaintiffs' father continued to be owner of the land. Plaintiffs were deprived of cultivation of the land and having deprived of sale of the yield of ₹20,000/-, thus, claimed possession.

The defendant-State of Punjab contested the suit by raising preliminary objection with regard to maintainability, limitation and misjoinder of parties etc. On merits, it was stated that the plaintiffs did not object to the construction of road, which was done long time ago. In fact, as per the resolution, Gram Panchayat had given the land in exchange to the predecessor-in-interest of the plaintiffs and therefore, for all intents and purposes, plaintiffs had no locus standi or title in the suit property.

Since the parties were at variance, the trial Court had framed following issues:-

“1. Whether the plaintiffs are owners of the land in dispute? OPP

2. Whether the suit is not maintainable in the present form? OPD

3. Whether the suit is within time? OPP

4. Whether the suit is bad for mis-joinder of parties? OPD

5. Relief.”

In support of pleadings, plaintiff examined two witnesses, PW1 Udham Singh and PW2 Jagir Singh and tendered into evidence documents Ex.P1 notice under Section 80 CPC, postal receipts Ex.P2 to P-4, copies of jamabandies Ex.P-5, P-6, copies of resolution of Gram Panchayat Ex.P-7 to P-9. On the other hand, defendants examined Mast Ram, Junior Engineer as DW-1.

On preponderance of evidence, the trial Court dismissed the suit on the premise that plaintiffs admitted that they had no objection to the construction of the road because the Gram Panchayat assured them that they would be given land in lieu thereof. Therefore, there was an acquiescence on their part with regard to construction of the road. In appeal laid before the lower Appellate Court, as notice above, the suit has been decreed on the premise that the exchange was not reflected in the revenue record, in essence, the Gram Panchayat had not transferred the land as agreed in favour of the predecessor-in-interest of the plaintiffs, thus, the plaintiffs remained the owners. Without acquisition of the land, defendants cannot claim the title and ownership. It is in these circumstance, present appeal had been filed.

Ms. Anu Pal, DAG, Punjab in support of the memorandum of appeal made following submissions:-

- (i) The finding of the lower Appellate Court is totally illegal and perverse as the same is based upon the fact that the defendants had taken the plea of adverse possession whereas no such plea or any issue was raised

or framed.

(ii) Plaintiffs' witnesses had been candid enough to admit construction of the road, thus, they were not owners.

(iii) Plaintiffs' grievance, if any, was against the Gram Panchayat and not against the State.

(iv) The finding of fact arrived at by the trial Court cannot be interfered with unless and until there is gross illegality and perversity, which is conspicuously wanting.

(v) The suit instituted was beyond limitation as the road had already been constructed 20 years back.

Mr. Vivek Suri, learned counsel appearing on behalf of the respondents-plaintiffs supported judgment and decree of the lower Appellate Court to contend that revenue record i.e. jamabandies Ex.P5 and P6 irresistibly proved ownership of the plaintiffs, which had not been rebutted and therefore, the documents carried presumption of truth as per the provisions of Section 44 of the Punjab Land Revenue Act. No person can be deprived of the ownership and title of the land without any compensation as it is violation of Article 300A of the Constitution of India. If at all, State had to raise construction, they could have acquired the land and suitably compensated the plaintiffs. He submitted that his clients would not have any grievance in case they are compensated in accordance with law. The manner and mode in which their ownership is deprived, is not permissible, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is some force and merit in the submissions of Ms. Anu Pal. The revenue record brought on record unequivocally proved their ownership and the construction of road was also not denied. In such circumstances, I am of the view that the State cannot take away the title of true owner in the manner and mode as indicated above. The remedy was to send requisition to the concerned Department for acquisition of land and after following the due procedure, defendants could have taken steps for acquisition of land.

Be that as it may, even if road has been constructed, the lower Appellate Court could have moulded the relief by confining to the damages instead of possession as it would tantamount to putting the clock back, which would create an anomalous situation causing inconvenience to the commuters of the area. The State has not been able to prove that Resolution of the Panchayat was also implemented and land in lieu thereof was exchanged. Had it been so, the same would have been reflected in the revenue record. In the absence of the same, stand of the State is totally devoid of merit.

As an upshot of my finding, finding of ownership recorded by the lower Appellate Court is perfectly legal and justified, however, since the road is in existence as both the parties agreed for construction of the road 20 years ago, the decree of possession is converted into decree of compensation. In other words, the State will assess the value of the land as per the prevailing rates. Since plaintiffs have been deprived of ownership, it would open to the State

to take measures for acquisition of land in accordance with law i.e. law applicable today and thereafter, follow the procedure envisaged therein. Let this exercise be done within a period of six months from the date of receipt of certified copy of this order.

The second appeal is disposed of in the above terms.

(AMIT RAWAL)
JUDGE

September 27, 2018
Pankaj*

Whether Speaking/Reasoned	Yes
Whether Reportable	No