

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

RSA No.3372 of 2012 (O&M)
Date of decision : 26.03.2018

Govind Lal

...Appellant

Versus

Sher Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Vikas Bahl, Sr. Advocate with
Mr. Rohan Jain, Advocate and
Ms. Priyanka Kansal, Advocate for the appellant.

Mr. Keshav Partap Singh, Advocate and
Mr. Adarsh Jain, Advocate
for respondent Nos.15 to 23, 25 to 29 and 31 to 35.

ANIL KSHETARPAL, J.

The defendant-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court.

The plaintiffs filed a suit for permanent injunction claiming that they are co-owners in possession of the suit property and the defendants have no right, title or interest in the same. The Municipal Committee, Hodal was impleaded as defendant No.30.

The defendants, on the other hand, claimed that the suit property is being used for common purposes and hence the plaintiffs have

no right. The defendants had pleaded that there is a passage and it is being used for the purpose of playing '*Ram Leela*' and burning '*Ravana*'.

Learned trial Court dismissed the suit whereas learned First Appellate Court after appreciating the evidence available on the file decreed the suit filed by the plaintiffs. Learned First Appellate Court while writing a detailed judgment has appreciated the evidence available on the file including the revenue record and have found that it is the plaintiffs who are entitled to the permanent injunction prayed for.

This Court has heard the learned counsel for the respective parties at length and with their able assistance gone through the judgments passed by the Courts below and the records of the Courts below.

Learned counsel for the appellant has submitted that the jurisdiction of the Civil Court was barred as the land is *shamlat*. He has submitted that Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred as 'the Act of 1961') as applicable to the State of Haryana, bars the jurisdiction of the Civil Court. The learned First Appellate Court has granted the relief to the plaintiffs beyond the prayer made. The Court had not framed any issue on the question of title or ownership of the plaintiffs. Hence, the Court could not grant any declaration. The simpliciter suit for permanent injunction was not maintainable at the behest of the plaintiffs who could only filed a suit for declaration. The previous suit filed by some of the plaintiffs has been concealed and, therefore, the suit is liable to be dismissed. Simpliciter suit for possession was not maintainable as the plaintiffs are not proved to be

in possession.

On the other hand, learned counsel for the respondents has submitted that the learned First Appellate Court has appreciated the evidence in correct manner and hence reversed the judgment of the learned trial Court.

First argument of the learned counsel for the appellant although on first blush, looks attractive, however, fails on close scrutiny. In the present case, the property is situated in an urban area. The Municipal Committee, Hodal is party defendant in the case. The provision of the Act of 1961 would have no application in an urban area governed by the Haryana Municipal Act, 1973. The aforesaid Act is only applicable if the land is *shamlat deh* and is situated in the village. Once the area falls within the jurisdiction of the Municipal Committee, the Act of 1961 would have no application.

Learned counsel for the appellant thereafter drew the attention of the Court to the provision of the Haryana Municipal Act, 1973. He has submitted that the shamlat land is also defined in the Haryana Municipal Act, 1973 and, therefore, such land would vests with the Municipal Committee as per Section 61 of the Haryana Municipal Act. It may be noticed that the revenue record produced on file proves that in the ownership column, the plaintiffs or their predecessors are recorded as owners. The revenue record from the year 1945-46 has been produced on file. The jamabandi proves that one Bhulle and others are recorded as the owners of the property which is shown to be in possession of the owners.

In the jamabandi for the year 1958-59, new khasra number has been assigned to the land and Bhulle etc. are recorded as owner. In the cultivation column, it is in possession of the owners, however, quality of the land is *Banjar Qadim*. Even in the jamabandi for the year 1966-67 Ex.P3, the present plaintiffs and their predecessor have been shown to be their owners and in cultivation column, it is recorded to be in possession of the owners. Similar is the position in the jamabandi for the years 1981-82, 1991-92 and 1996-97. In the jamabandi for the year 1996-97, the property is described as *gair mumkin* passage. Even in the jamabandi for the year 2001-02, the plaintiffs are recorded as owners. In the cultivation column, however, the passage has now been recorded as a playground. It is also proved on file that the owner had mortgaged the land and raised the loan. From time to time, the ownership of the land has been transferred from predecessor of the plaintiffs to the plaintiffs. The defendant-appellant has not produced on record any record to prove that this land was ever reserved for the common purposes. Merely because the plain land which was lying, being used for few days for playing '*Ram Leela*' or for burning '*Ravana*' would not make the land *shamlat deh*.

Next argument of the learned counsel is that the First Appellate Court has erred in granting the relief to the plaintiffs beyond the prayer made. The suit filed by the plaintiffs-appellants has been decreed. The plaintiffs-respondents had pleaded that they are owners in possession of the land. The Court has only recorded that fact. Hence, the relief granted is not beyond the pleadings. The present case was not simpliciter suit for

permanent injunction. The parties contested the suit as if it was a suit for title and after appreciation of the evidence, the First Appellate Court has recorded a finding that it is the plaintiffs who are owners in possession.

Next argument of the learned counsel is that the simplicitor suit for permanent injunction is not maintainable. This Court has already found that the suit was not simplicitor suit for permanent injunction as the plaintiffs had pleaded that they are owners in possession and even in absence of any issue, both the parties led their evidence and First Appellate Court after appreciating the evidence have found that the plaintiffs are owners in possession of the land.

Next argument of the learned counsel is that the previous suit filed has been concealed and, therefore, the suit is liable to be dismissed under Order 7 Rule 1 Sub Rule (j). Order 7 Rule 1 CPC provides what should be the contents of the plaint and particulars to be contained in the plaint. Learned counsel for the appellant failed to point out any provision in the Code of Civil Procedure which provide that on failure to disclose the particulars as provided under Order 7 Rule 1(j) CPC, the suit is liable to be dismissed. It may be significant to note that Sub-Rule (j) was added in the State of Punjab, Haryana and Chandigarh vide amendment dated 15.03.1991.

Last argument of the learned counsel is that the simplicitor suit for permanent injunction was not maintainable as the plaintiffs are not in possession. This Court has already found that the plaintiffs are owners in possession. In any case, the land is a vacant piece of land and in case of

vacant piece of land, possession always follows the title.

In view of the aforesaid discussions, there is no ground to interfere with the findings of fact arrived at by the First Appellate Court.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

26.03.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No