

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

RSA No.1227 of 2016

Joginder Singh

....Appellant

Versus

Gram Panchayat through its Sarpanch & Anr.

....Respondents

And

RSA No.2010 of 2016

Kabal Singh

....Appellant

Versus

Gram Panchayat through its Sarpanch

....Respondents

And

RSA No.2016 of 2016

Joginder Singh

....Appellant

Versus

Gram Panchayat through its Sarpanch & Anr.

....Respondents

And

RSA No.2024 of 2016

Kabul Singh

....Appellant

Versus

Gram Panchayat through its Sarpanch

....Respondents

Date of Order: 03.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Rakhi Sharma, Advocate for the appellant.

Mr. V.K. Sandhir, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

This common order of mine shall dispose of aforesaid four appeals arising out of a suit seeking declaration of ownership with consequential relief of permanent injunction since common questions of law

and facts are involved in the same.

Appellants have preferred instant appeals against the common judgment and decree dated 09.10.2015 passed by learned Addl. District Judge, Amritsar whereby the two appeals against the judgment and decree dated 18.12.2014 passed by learned Addl. Civil Judge (Sr. Divn.), Ajnala, decreeing the suit of the plaintiffs, one filed by appellant-Joginder Singh has been dismissed and the another filed by Gram Panchayat has been allowed. For the sake of convenience, the facts are being extracted from RSA No.1227 of 2016.

The facts of the case in nutshell are that the plaintiffs filed suit for declaration that they are owners in possession of land, which was purchased by them from the Drainage Land Rehabilitation Department Punjab vide registered sale deed. Same was being cultivated by the plaintiffs and defendant No.2. Subsequently, Punjab Government formulated a Scheme and in pursuance thereof executed a conveyance deed dated 28.3.2011 in favour of the plaintiff and defendant No.2 conferring ownership rights as well as possessory rights of the suit property. Aforesaid sale deed was reflected in the jamabandi for the year 2009-10 wherein the plaintiffs and defendant No.2 had been recorded as owner. Respondent-Gram Panchayat erroneously filed petition under Section 7 of the Punjab Village Common Land Act, 1964 (for short "the Act") for ejectment of the plaintiffs, which was decided vide order dated 11.3.2013. It was averred that the said order was without jurisdiction as the possessory rights had already been transferred in favour of the plaintiffs.

Said suit was contested by the defendants by taking the pleas of maintainability of the suit and jurisdiction of the civil Court. It was denied

that the property was sold by the Government for a paltry amount as it was in ownership of the Gram Panchayat. It was averred that the suit land was under the management of the Gram Panchayat and the conveyance deed executed in favour of the plaintiffs was illegal, null and void.

From the pleadings of the parties, trial Court framed the following issues:

- “1. Whether Punjab Government executed conveyance deed dated 28.3.2013 in favour of the plaintiff regarding the suit land measuring 25 kanals 3 marlas?OPP*
- 2. Whether the ejectment order dated 11.03.2013 passed by the Collector-cum-DDPO is illegal, null and void and without jurisdiction?OPP*
- 3. Whether the plaintiff is entitled to relief of declaration as prayed for?OPP*
- 4. Whether the plaintiff is entitled to relief of permanent injunction?OPP*
- 5. Whether the present suit is maintainable?OPP*
- 6. Whether the plaintiff has suppressed the material facts from the notice of this court?OPD*
- 7. Whether the suit of the plaintiff is barred under Section 13 of Punjab Village Common Land Act?OPD*
- 8. Whether the suit of the plaintiff is bad for non-joinder of necessary party?OPD*
- 9. Relief.”*

In order to support their case, plaintiffs examined as many as 4 witnesses and brought on record conveyance deed dated 23.5.2008 as Ex.P1, receipt challan Ex.P.2, jamabandi for the year 2004-05 as Ex.P3 and jamabadi 2009-10 as Ex.P4 before closing their evidence whereas defendant did not turn up and was proceeded ex parte by the trial Court.

On the basis of unrebutted evidence placed on record, the trial

Court although partly decreed the suit while granting the right of ownership of the suit property but dismissed the suit qua grant of permanent injunction. Both the parties filed two separate appeals out of which the appeal filed by appellant-Joginder Singh has been dismissed whereas the appeal filed by the Gram Panchayat has been allowed. Hence the present two regular second appeals have been preferred.

Learned counsel for the appellant-plaintiff submitted that the lower Appellate Court has committed illegality and perversity in dismissing their appeal on the premise that the Civil Court did not have jurisdiction. In support of her contention, she referred to the provisions under Section 13 of the Act which only bars the jurisdiction of the Civil Court only in respect of the land, which is sham lat whereas no evidence was led to prove this fact, therefore the proceedings initiated under Section 7 of the Act by the Gram Panchayat were without jurisdiction. Plaintiff had already brought on record the relevant document i.e conveyance deed, which carried the presumption of truth unless seriously rebutted. No contrary evidence was placed on record to belie such registered document. Moreover, the jamabandi post conveyance deed are testimony of fact that the plaintiff had been owner of the property. Since the plaintiff had been deprived of the right of adjudication in appeal on merits, it is a fit case where the matter has to be re-visited by the lower Appellate Court.

Per contra, learned counsel for the respondent-Gram Panchayat submitted that against the ejectment order dated 11.3.2013, plaintiff had preferred appeal before the Director but the same was dismissed vide order dated 08.5.2014. Thereafter, various writ petitions bearing CWP Nos.1440,1449,1454 and 1539 of 2016 were filed before this Court

challenging the ejectment order and this Court vide order dated 27.1.2016 disposed of the same by relegating the petitioners therein and plaintiffs herein to avail the remedy of filing petition under Section 11 of the Act besides keeping the eviction orders in abeyance subject to the petitioners furnishing adequate security. He submitted that the plaintiffs have already filed petition under Section 11 of the Act, which has been dismissed vide order dated 23.11.2016 by the Collector, who while noticing the veracity and authenticity of the sale deed held that it was a case of fraud and forgery at the instance of certain persons as no registration of sale deed alleged to have been executed by vendor had actually taken place. He further submitted that an FIR No.198 dated 29.9.2012 was also registered against the plaintiffs-appellants and various other persons. Sale deed has also not been proved in accordance with law for want of signature of the vendor much less the receipt in this respect. Thus the plaintiffs have failed to discharge the onus under Section 101 of the Indian Evidence Act. He relied upon the law laid down by Hon'ble Supreme Court in **Dhruv Green Field Ltd Vs. Hukam Singh, 2002(3) RCR (Civil) 690, Gram Panchayat Nurpur Vs. State of Punjab, 1997 (3) RCR (Civil) 47** to contend that for claiming title in the property, which does not vest in the Gram Panchayat, a person can claim ownership only by filing petition under Section 11 of the Act and not by way of the separate suit.

In rebuttal, learned counsel for the appellants also pointed out that the FIR has not been registered against one of the appellants, namely, Kabul Singh.

After hearing learned counsel for the parties and appraising the paper book, I am of the view that there is no force and merit in the

submissions made by learned counsel for the appellant. The said sale deed (Ex.P.1) does not, in any way, reflect any signature of the authorized signatory of the vendor. Even the alleged receipt of Rs.8000/- has not been proved in accordance with law as the social security does not belong to the Department of Rehabilitation. Moreover, the jamabandi does not confer any title as it is only for fiscal purposes.

It is not disputed that in pursuance of the order dated 27.1.2016, the appellants-plaintiffs have also availed the remedy of filing petition under Section 11 of the Act, which has been dismissed vide order dated 23.11.2016 by the Collector. This fact has not been controverted by learned counsel for the appellants. Even the ejectment order was also assailed before the Appellate Authority resulting into filing of the writ petition. The plaintiffs, in my view, cannot be permitted to sail in two boats i.e one by approaching the civil Court and the other by availing the remedy of filing petition under Section 11 of the Act and since the dispute was with the Gram Panchayat, the remedy of filing petition under Section 11 of the Act as applicable to Punjab is the correct approach.

From the perusal of order dated 23.11.2016, it comes out that the Collector also referred to an inquiry conducted by the Deputy Commissioner, wherein it was found that the sale deed was outcome of the fraud and forgery having been played for which the aforesaid FIR was lodged, which is pending adjudication. I do not need to comment over the criminal proceedings as it would take away the right of the accused persons. It is pertinent to reproduce paragraphs 4 & 5 of the judgment passed in **Gram Panchayat Nurpur's case (supra)**, which reads thus:

“4. The Additional Director interpreted the entries to mean that the respondentes were in continuous

possession of the land in dispute from 1944-45 onwards and on that assumption, he came to the conclusion that despite the entry in the column of ownership the land was not shamilat deh land and as such did not vest in the Gram Panchayat. The High Court upheld the finding by dismissing the writ petition in limine.

5. We are of the view that the Additional Director Consolidation, had no authority to go into the question whether the land in dispute was shamilat deh or not. This is a question which could only be decided by the authorities under the Regulation Act. We, therefore, allow the appeal, set aside the impugned order of the Additional Director Consolidation and also the order of the High Court and send the matter before the Collector, Kapurthala for decision in accordance with law under the Regulation Act. We make it clear that the Collector shall decide the matter afresh in accordance with law irrespective of the orders passed by the Consolidation Authorities in this respect. We direct the Collector to decide the matter within 2 months of the receipt of this order.”

I do not find any substance in the submission of learned counsel for the appellant for remitting the matter to the lower Appellate Court afresh as it would be, in my view, a futile exercise and would lead to *de novo* trial.

In view of aforesaid, no ground is made out for interference.

Dismissed.

April 03, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No