

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

RSA No. 3687 of 2013 (O & M)

Date of Decision:-14.2.2018

Mohan Lal

...Appellant

Versus

Gram Panchayat of Village Singhpur and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amit Bhanot, Advocate
for the appellant.

Mr. Naveen Batra, Advocate
for the respondent.

AMIT RAWAL J.(Oral)

The present appeal is against the judgment and decree rendered by the lower Appellate Court dated 30.3.2013 whereby the suit of the appellant-plaintiff for permanent injunction restraining the defendants from interfering into the possession over the land and dispossessing them forcibly and further raising any type of construction over the suit land was dismissed.

Learned counsel appearing for the appellant has submitted that the appellant-plaintiff instituted a suit claiming following relief as under :-

“Suit for permanent injunction restraining the defendants, their servants or agents from interfering into

the use and peaceful possession of the plaintiff over the land measuring 3 Kanals 8 Marlas comprised in Khewat/Khatauni No.435/482, Khasra No.16R/12/2/1 (3-8) situated in the area of Village Singhpur, Had Bast No.388, Tehsil Anandpur Sahib, District Ropar, as per the jamabandi for the years 2007-2008, illegally and forcibly and for further restraining the defendants, their servants or agents from dispossessing the plaintiff from the above mentioned suit property illegally and forcibly and also for further restraining the defendants, their servants or agents from raising any type of construction over the abovesaid suit property illegally and forcibly, on the basis of oral and documentary evidence.”

The aforementioned suit was contested by defendants No.4 and 5 namely Bhajan Singh and Gram Panchayat by taking all the preliminary objections with regard to the suppression of the material facts and the possession of the plaintiff was also denied. It was stated that the revenue entries were not incorporated as per the existing position prevailing at the spot whereas the jamabandi reflected that the nature of the property was Banjar Kadim and thus it was not cultivable. It was further stated that the suit land was lying vacant and the Gram Panchayat on the demand of the villagers wanted to erect a water tank in order to fulfill the drinking water facility for the villagers.

On the preponderance of the evidence the trial Court decreed the suit on the premise that the plaintiff was found to be in possession of the aforementioned property. However, the lower Appellate Court in appeal taken by defendant No.5 Gram Panchayat held that the possession of the

plaintiff is unauthorised and therefore he cannot be granted injunction. The aforesaid finding is totally erroneous and against the settled law as laid down by Hon'ble Supreme Court in **Rame Gowda (deceased) through LRs vs. Mr. Varadappa Naidu (deceased) through LRs and another 2004(1) SCC 769.**

Per contra Mr. Naveen Batra, Advocate learned counsel appearing for the respondent-defendant submitted that the judgment and the decree of the lower Appellate Court is perfectly legal and justified. The plaintiff caused impediment in the development work of Gram Panchayat for erection of water tank for the welfare of the villagers. Copy of the jamabandi Ex.P1 contained the entry in column No.9 regarding Chakota of Rs.600/- per annum as such possession of the plaintiff was unauthorized and the plaintiff failed to prove that he had paid any Chakota and urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and apprise the paper book.

The fact of the matter is that the possession of the plaintiff has been proved even as per the orders of the learned Appellate Court where it was stated to be unauthorised. It is a settled law that a person who is in long and settled possession cannot be dispossessed except in due course of law. The Gram Panchayat is not prevented to cause eviction proceedings against the plaintiff in accordance with law but cannot dispossess him forcibly except in due course of law. Nothing prevents the Gram Panchayat to take recourse of the law. It has not been apprised to this Court whether

any recourse has been taken or not. In case any recourse is taken, the same shall follow its course.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of the Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitution Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi's case (supra) reads as thus :-

"Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High 5 of 7 Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled." [at paras 27 - 29]"

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force."

Therefore, I do not intend to framt the substantial question of law while deciding the appeal aforementioned. For the reasons aforementioned that the judgment and decree of the lower Appellate Court is illegal and perverse, the same is set aside and that of trial Court is

restored, suit of the appellant-plaintiff is decreed.

The present appeal is allowed in the aforementioned terms.

February 14, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No