

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

**R.S.A No.3253 of 2016(O&M)  
Date of decision :01.10.2018**

**Malkeet Singh and others**

**..... Appellants**

**Versus**

**Prem Singh and others**

**..... Respondents**

**CORAM : HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr.Vikas Gupta, Advocate  
for the appellants.

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**LISA GILL,J**

Plaintiff-appellants are aggrieved of judgement and decree dated 19.07.2013, passed by the learned Civil Judge (Sr. Division), Tarn Taran, as well as judgement and decree dated 06.10.2015, passed by the learned Additional District Judge, Tarn Taran, whereby the suit filed by the plaintiff-appellants has been dismissed.

Brief facts necessary for the adjudication of the case are that appellants filed a suit for declaration to the effect that they are owners in possession of land as detailed in the plaint being allottees of the said land by the State Government. Plaintiffs further sought permanent injunction for restraining the defendants from interfering in their peaceful possession over the suit property as well as restraining the defendants from dispossessing them forcibly or alienating the suit land in favour of any other person. It is pleaded that the plaintiffs are allottees of the suit land and are in possession of the same since 1970. The rent of the land in

dispute was paid regularly to the Government by the father of the plaintiffs namely Gurdass Singh son of Chanda Singh as well as by the plaintiffs. The defendants, it was pleaded were threatening to dispossess the plaintiffs forcibly from the suit land by seeking to auction the same. Their peaceful possession over the suit property was also being threatened at the hands of the defendants. Hence the suit was filed.

Defendants no.1 and 2 resisted the suit. Various preliminary objections were taken in the written statement. Averments on merits were controverted. Jurisdiction of the Civil Court was stated to be barred under Section 13 of the Punjab Village common Lands Act as the suit property was owned by the Gram Panchayat of Village Goindwal Sahib, Tehsil Khadoor Sahib, District Tarn Taran. Moreover, notice under Section 80 CPC was not served upon defendants no.3 to 5. Moreover, the Gram Panchayat, which is a necessary party, as it is reflected to be the owner of the suit property, was not impleaded. It was also contended that defendants no.1 and 2 had no concern with the suit property. The plaintiffs, it was pleaded were not the allottees of the suit land. As per the official record, Gram Panchayat of the village was the owner of the suit land. The suit property was auctioned in accordance with law on 27.06.2009 in favour of Gurdev Singh son of Hazara Singh (who is also not impleaded as a party). Defendants no.3 to 5, the official defendants filed separate written statement taking similar preliminary objections. It was reiterated that no notice under Section 80 CPC had been served upon them. Material facts have been concealed. The land in question stood auctioned to Gurdev Singh son of Hazara Singh in accordance with

law on 27.06.2009 and possession thereof had been given to him.

Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiffs are entitled to declaration as prayed for?OPP
2. Whether the plaintiffs are entitled to permanent injunction as prayed for?OPD
3. Whether the present suit is nto maintainable in the eye of law?OPD
4. Whether the jurisdiction of the civil court is barred under Section 13 of the Punjab Village Common Land Act?OPD
5. Whether the suit is bad for want of notice under Section 80 CPC?OPD
6. Whether the plaintiffs have not come to the Court with clean hands, if so its effect?OPD
7. Whether Gram Panchayat of Goindwal is necessary party to the present suit, it so, its effect?OPD
8. Whether the plaintiffs have no cause of action against the defendants no.1 and 2?OPD 1 and 2.
9. Whether the plaintiffs have no cause of action against the defendants no.1 to 3 and 5?OPD 1 to 3 and 5.
10. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court on considering the facts and circumstances on record, dismissed the suit filed by the plaintiffs while concluding that the plaintiffs have failed to prove that the suit property was allotted to the plaintiffs or their predecessors-in-interest. The land in question was reflected to be in the ownership of the Panchayat, which was not a party to the proceedings.

Appeal filed by the plaintiffs-appellants was also dismissed by the learned Additional District Judge, Tarn Taran, vide impugned judgement and decree dated 06.10.2015.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellants argues that the evidence on record has been misread by the learned Courts below. Possession of the plaintiffs over the suit property has been duly proved. In-fact, the defendants were not able to prove that the plaintiffs were not in possession of the property in question or that the land was never allotted to the plaintiff-appellants. The contradictions referred to by the learned Courts below in-fact do not exist. It is thus prayed that the impugned judgements and decrees be set aside and the suit filed by the plaintiff-appellants be decreed throughout.

I have heard learned counsel for the appellants and have gone through the file with his able assistance.

Pleaded case of the appellant-plaintiffs is that the land in question was allotted to Chanda Singh, the grandfather of the plaintiffs in the year 1970. The plaintiffs father, Gurdass Singh, thereafter came in possession of the suit property and after him, the appellant-plaintiffs were in possession of the same. It is however a matter of record that there is no evidence on record to indicate that the land in question was ever allotted to Chanda Singh, the grandfather of the plaintiff-appellants.

There is no allotment letter as alleged to be issued by the Central Government in favour of Chanda Singh. Plaintiff-appellants have merely relied upon the revenue record i.e. Ex.P-1 and Ex.P-2 in which the Gram Panchayat is reflected in the column of ownership and in the column of possession, Chanda Singh, the grandfather of the plaintiffs, is reflected. The subsequent jamabandies pertaining to the year of 2007-08

reflect the possession of the suit property to be with Chanda Singh whereas it can be gathered from the evidence on record that Chanda Singh had died even prior to 1978. The said entry is apparently not based on the correct factual position and is incorrect. Both the learned Courts below have rightly concluded that the said entries in the revenue record are not sufficient to prove the title of the plaintiffs or to prove that the suit property in question was ever allotted to the grandfather of the plaintiffs.

It is further rightly held by both the learned Courts below that there are contradictions in the pleadings of the plaintiffs and the evidence on record. In this respect, reference can be made to the evidence of PW-1-Malkeet Singh (appellant no.1 in this case). No reliance can be placed on the said revenue entries to determine the ownership and possession of the plaintiffs over the suit property.

PW-1-Malkeet Singh has admitted that they are not in possession of any sale certificate etc., issued by the Central Government regarding ownership of 40 Kanals of land. No consideration, it is admitted was paid. It is relevant to note at this stage that though it is pleaded that 40 Kanals of land was allotted to Chanda Singh, suit was filed in respect to 36 Kanal 01 Marla only. Discrepancies in the testimonies of PW-1 and PW-3 are indeed material and substantial.

Furthermore, it cannot be disputed that the land in question is reflected to be owned by the Gram Panchayat, but the Gram panchayat has not even been impleaded as a party to the suit. Notice under Section 80 CPC, was admittedly not served. The plaintiffs impleaded the Ex-Sarpanch and Nambardar along with the BDPO, SDM etc., as parties to

the suit without disclosing the cause of action arising to the plaintiffs against the said defendants. Learned Additional District Judge, Tarn Taran, has rightly observed that the plaintiffs have not come to Court with clean hands. Therefore, the suit filed by the plaintiffs has been rightly dismissed by the learned Courts below.

Learned counsel for the appellant-plaintiffs is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 19.07.2013 and 06.10.2015 passed by the learned Civil Judge (Sr. Division) Tarn Taran and learned Additional District Judge, Tarn Taran, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

**01.10.2018**

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**(LISA GILL)  
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No