

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

RSA No.5827 of 2016 (O&M)

Date of decision:17.04.2018

Sandeep and others

... Appellants

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Harkesh Manuja, Advocate
for the appellants.

Mr. Rajbir Singh, AAG, Haryana.

AMIT RAWAL J.

The appellant-plaintiffs are in Regular Second Appeal against the dismissal of the suit seeking declaration with consequential relief of permanent injunction rendered by the Civil Judge, vide judgment and decree dated 21.04.2015 and that of Additional District Judge, whereby, civil appeal bearing No.33 of 2016 has been dismissed by affirming the findings of trial Court.

The appellant-plaintiffs instituted the suit claiming declaration to the effect that the revenue entries in the column no.4 of the jamabandi since the time of consolidation till filing of present suit, were wrong, null, void and not binding upon the rights of the plaintiffs; with a further prayer of mandatory injunction directing defendants no.1 and 2 to enter the names of the plaintiffs to the extent of ½ share in favour of plaintiffs no.1 and 2

and ½ share in favour of plaintiff no.3, out of suit land; further with a consequential relief of permanent injunction restraining the defendants from interfering in the peaceful and cultivating possession of the plaintiffs on the premise that they are permanent resident of village Naultha, Tehsil Israna, District Panipat and had right in Shamlat Deh, Gora Deh, Abadi Deh, Jumla Malkan and Panna Rajann. Prior to 26.01.1950, the forefathers of plaintiffs were owners in possession of suit land. The suit land was never used for common purposes of village but consolidation authority wrongly made changes in the revenue record in the name of Gram Panchayat. Even the Gram Panchayat had never taken the possession of the suit land. The plaintiffs continued to be owners in possession of suit land.

In the year 1967, defendant no.4- Gram Panchayat filed an application under Section 7 of Punjab Village Common Land Act (hereinafter called as “the Act”) which vide order dated 22.04.1968 was decided, wherein, the suit land was found falling within the definition of “Shamlat Deh”. In the year 1994, Dhajja Ram i.e., forefather of the plaintiffs had filed a civil suit no.1457 of 1994 which was decreed in favour of the plaintiffs. Gram Panchayat wanted to give the suit land to strong person, who wanted to oust the plaintiffs by force from the suit land. It is in that background of the matter, the suit was filed.

Defendant No.3 was proceeded against ex parte. However, defendant no.4 filed written statement by taking preliminary objections. As per the provisions of Section 13 of Act, the jurisdiction of the Civil Court was barred. The factum of possession of the plaintiffs and their forefathers

was emphatically denied. It was averred that plaintiffs did not challenge the consolidation claim since 1962 and prayed for dismissal of the suit. Replication was not filed.

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

- “1. Whether the plaintiffs are entitled to a decree for declaration as prayed for in the head note of the plaint? OPP*
- 2. If issue no.1 is proved in favour of the plaintiffs, whether the plaintiffs are entitled to a decree for mandatory injunction as prayed for in the head note of the plaint? OPP*
- 3. If issue nos.1 and 2 are proved in favour of the plaintiffs whether the plaintiffs are entitled to a decree for consequential relief of permanent injunction as prayed for in the head note of the plaint? OPP*
- 4. Whether the suit of the plaintiffs is not maintainable in the present form? OPD*
- 5. Whether the plaintiffs have no cause of action to file the present suit? OPD*
- 6. Whether the plaintiffs have not come with clean hands and have suppressed the true and material facts from the Hon'ble Court? OPD*
- 7. Relief.”*

Plaintiffs examined following witnesses:-

PW1 Sandeep

PW2 Ram Kishan

PW3 Rattan Singh and tendered affidavits Ex.PW1/A,
Ex.PW2/A and Ex.PW3/A in their evidence.

In documentary evidence, the plaintiffs produced the following
documents:-

Ex.P1 certified copy of jamabandi for the year 1963-64

Ex.P2 certified copy of jamabandi for the year 1963-64
(hindi version)

Ex.P3 certified copy of jamabandi for the year 1965-66

Ex.P4 certified copy of jamabandi for the year 1965-66
(hindi version)

Ex.P5 certified copy of jamabandi for the year 1970-71

Ex.P6 certified copy of jamabandi for the year 1970-71
(hindi version)

Ex.P7 certified copy of jamabandi for the year 1980-81

Ex.P8 certified copy of jamabandi for the year 1980-81
(hindi version)

Ex.P9 certified copy of jamabandi for the year 1990-91

Ex.P10 certified copy of jamabandi for the year 1995-96

Ex.P11 certified copy of jamabandi for the year 2000-01

Ex.P12 Certified copy of khasra girdawari

Ex.P13 Certified copy of order dated 22.04.1968

Ex.P14 certified copy of judgment dated 9.6.2000

Ex.P15. certified copy of decree dated 9.6.2000

Ex.P16 certified copy of judgment dated 7.10.2005.

Ex.P17 certified copy of judgment dated 10.08.2006.

Ex.P18 certified copy of decree dated 10.08.2006.

Mark A copy of judgment dated 09.06.2000.

Mark B copy of decree sheet dated 09.06.2000

Mark C copy of death certificate of Dhajja Ram.

On the other hand, defendants did not produce any oral and documentary evidence to rebut the case of plaintiffs.

The trial Court on the basis of evidence did not grant the injunction and held that only few persons were found to be in authorized possession, whereas, possession of the plaintiffs was un-authorized and dismissed the suit. The appeal preferred before the Lower Appellate Court also met with the same fate.

Mr. Harkesh Manuja, learned counsel for the appellant-plaintiffs submitted that once the Courts below found the possession of appellants to be un-authorized, for, case of the Gram Panchayat in the proceedings initiated under Section 7 of Act found that nature and character of the property was not “Shamlat Deh”, the possession could have been protected in case the Court was not agreeing with regard to granting declaration for setting aside the wrong entries. Section 2(g) of Act, specifically provided that the land which is shamlat would vest in Gram Panchayat and not other land. The plaintiffs have been able to prove the long and established possession through the revenue record and therefore, cannot be ejected except in due course of law.

In support of his contention, reliance has been placed upon the judgment rendered by the Supreme Court of India in **Rame Gowda (D) by LRs vs. Mr. Varadappa Naidu (D) by LRs and another 2004(1) SCC 769**. There is illegality and perversity in not taking into consideration the judgment and decree dated 09.06.2000 passed in civil suit no.1457 of 1994 titled as Dhajja Ram Vs. Gram Panchayat and others, wherein, a decree for permanent injunction was granted in favour of predecessor-in-interest of the plaintiffs. No cross-examination with regard to possession over the suit property since 1944-45 was conducted and therefore, the statement made in examination-in-chief was liable to be accepted. On the basis of decision 22.04.1968 (Ex.P13), other persons had also filed a civil suit which was decreed by the trial Court, vide judgment and decree dated 07.10.2004 and the same was, vide judgment and decree dated 10.08.2006 upheld by the Lower Appellate Court. Both the aforementioned judgments have been proved on record as Ex.P16 and Ex.P17 and thus, urged this Court for setting aside the findings under challenge.

Per contra, Mr. Rajbir Singh, AAG, Haryana submitted that judgments and decrees of Courts below do not call for any interference as no injunction can be granted against true owners. The status of appellant-plaintiffs was of tress-passers. The suit was not maintainable for getting the entries rectified, rightly so, the relief of declaration had also been denied. Name of the forefather of plaintiffs was not mentioned in the order dated 22/26.04.1968 (Ex.P13). The revenue record of suit property showed that it

was reserved as 'Charand' and thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is some force in the submissions of Mr. Manuja, vis-a-vis relief of permanent injunction, for, declaratory relief could not have been granted by the Civil Court in view of the express 'bar' under Section 13 of Act as applicable to Haryana. For the sake of brevity, Section 13 of Act reads as under:-

“13. No civil court shall have jurisdiction.-

(a) to entertain or adjudicate upon any question whether-

(i) any land or other immovable property is or not shamilat deh ;

(ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a panchayat under his Act ;

(b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine ; or

(c) to question the legality or any action taken or matter decided by any revenue court, officer or authority empowered to do so under this Act.”

The findings of the Courts below in declining the relief of declaration is perfectly legal and justified and do not call for interference.

Vis-a-vis, relief of permanent injunction, I am of the view that plaintiffs have been able to prove the possession of the suit property since long, for, it has been noticed by the Courts below that as per the order dated 22.04.1968, possession of few persons namely Abha, Chandan, Tara, Dhanna, Kanshi, Deepa, Gyani and Hukmi was found to be authorized and possession of remaining persons was found to be un-authorized and they were found to be possession of shamlat deh. The proceedings are of 1968. Even if the possession of the appellant-plaintiffs is found to be un-authorized possession, they cannot be ejected except in due course of law. A person, who is not even a tenant but has been found and proved to be in long and settled possession, cannot be dispossessed forcibly and illegally except in due course of law. This view of mine is supported by the ratio decidendi culled out by the Hon'ble Supreme Court in the **Rame Gowda 's case** (supra). For the sake of brevity, paragraphs 8 and 12 of the said judgment are extracted herein below:-

“8. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner

shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

12. The learned counsel for the appellant relied on the Division Bench decision in Sri Dasnam Naga Sanyasi and Anr. Vs. Allahabad Development Authority, Allahabad and Anr. AIR 1995 Allahabad 418 and a Single Judge decision in Kallappa Rama Londa Vs. Shivappa Nagappa Aparaj and Ors. AIR 1995

Karnataka 238 to submit that in the absence of declaration of title having been sought for, the suit filed by the plaintiff-respondent was not maintainable, and should have been dismissed solely on this ground. We cannot agree. Sri Dasnam Naga Sanyasi and Anr.'s case relates to the stage of grant of temporary injunction wherein, in the facts and circumstances of that case, the Division Bench of the High Court upheld the decision of the court below declining the discretionary relief of ad-interim injunction to the plaintiff on the ground that failure to claim declaration of title in the facts of that case spoke against the conduct of the plaintiff and was considered to be 'unusual'. In Kallappa Rama Londa's case, the learned Single Judge has upheld the maintainability of a suit merely seeking injunction, without declaration of title, and on dealing with several decided cases the learned Judge has agreed with the proposition that where the suit for declaration of title and injunction is filed and the title is not clear, the question of title will have to be kept open without denying the plaintiff's claim for injunction in view of the fact that the plaintiff has been in possession and there is nothing to show that the plaintiff has gained possession by any unfair means just prior to the suit. That is the correct position of law. In Fakirbhai Bhagwandas and Anr. Vs. Maganlal Haribhai and Anr. AIR 1951 Bombay 380 a Division Bench spoke through Bhagwati, J. (as his

Lordship then was), and held that it is not necessary for the person claiming injunction to prove his title to the suit land. It would suffice if he proves that he was in lawful possession of the same and that his possession was invaded or threatened to be invaded by a person who has no title thereof. We respectfully agree with the view so taken. The High Court has kept the question of title open. Each of the two contending parties would be at liberty to plead all relevant facts directed towards establishing their titles, as respectively claimed, and proving the same in duly constituted legal proceedings. By way of abundant caution, we clarify that the impugned judgment shall not be taken to have decided the question of title to the suit property for or against any of the contending parties.”

The plaintiffs have expressed the threat at the hands of Gram Panchayat for forcible dispossession. The earlier ejectment proceedings were against 31 persons and not against the persons as referred to by the trial Court. The written statement did not deny the fact that no proceedings were initiated against the forefather of plaintiffs under Section 7 of Act. This aspect has totally been not taken care of by the Courts below, thus, there is illegality and perversity in the findings.

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 Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional 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 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 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 frame the substantial questions of law while deciding the appeal aforementioned.

In view of what has been noticed above, judgments and decrees of both the Courts below are hereby modified to the extent that suit is decreed by granting permanent injunction against Gram Panchayat, agent and servants etc from forcible dispossession and interference except in due course of law. The decree sheet is ordered to be prepared accordingly.

The appeal stands partly allowed.

(AMIT RAWAL)
JUDGE

April 17, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No