

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

RSA No. 1395 of 2017 (O&M)

Date of decision : September 04, 2018

Rattan Chand

.....Appellant

Versus

Gram Panchayat village Bassa, District Gurdaspur

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vishal Aggarwal, Advocate
for the appellant.

LISA GILL, J.

Appellant – plaintiff is aggrieved of concurrent findings rendered against him by the learned Civil Judge (Senior Division), Pathankot vide judgment and decree dated 19.05.2015 and learned Additional District Judge, Pathankot vide judgment and decree dated 23.08.2016 and consequential dismissal of their suit.

Appellant – plaintiffs filed a suit for declaration to the effect that order dated 23.12.2009 passed by the Collector-cum-District Development and Panchayat Officer, Gurdaspur directing eviction of the appellant from the suit property as detailed in the plaint was illegal, null, void, unconstitutional and not binding upon the rights of the plaintiff. Consequential relief of permanent injunction restraining the defendant – Gram Panchayat from dispossessing the plaintiff was also prayed for. It was averred that the respondent – Gram Panchayat had no right, title or interest in the land in question. Suit land was jungle and unutilised land, which was reclaimed by the plaintiff by spending huge amount of money from his own pocket. Moreover, the Gran Panchayat had filed an ejectment petition

against the plaintiff only with a view to harass him. Jurisdiction for filing the ejectment petition was Dhar Sub Division and it was wrongly preferred before the Collector-cum-District Development and Panchayat Officer, Gurdaspur. It was, thus, prayed that the suit be decreed.

Respondent – Gram Panchayat resisted the suit. Preliminary objection was taken that the civil Court had no jurisdiction to entertain and try the suit. The plaintiff, it was pleaded, was not in possession of the suit land. Ejectment of the plaintiff from the suit land was ordered vide impugned order dated 23.12.2009. Appeal filed by him was dismissed and the possession of the suit land was delivered on 10.05.2011 at the spot by Girdawar Halqa in presence of the plaintiff and other respectables of the village. Dismissal of the suit was prayed for.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether plaintiff is entitled to declaration as prayed for?OPP.
- ii) Whether plaintiff is entitled to permanent injunction as prayed for?OPP
- iii) Whether suit is not maintainable? OPD.
- iv) Relief.

Evidence was led by both the parties.

Learned trial Court dismissed the suit filed by the plaintiff – appellants. Appeal filed by the appellant was also dismissed by the learned Additional District Judge, Pathankot vide judgment dated 23.08.2016. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant submits that both the learned courts below have erred in dismissing the suit filed by the appellant – plaintiff who has been in continuous possession of the suit property for over

40 years. His possession was open, continuous and hostile. The land was un-utilised and was made cultivable by the appellant – plaintiff himself at his own expense. The plaintiff was singled out for action due to political rivalry. No action was taken against other similarly situated villagers. The plaintiff – appellant was subjected to discrimination. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 19.05.2015 passed by the learned Civil Judge (Senior Division), Pathankot and judgment and decree dated 23.08.2016 passed by the learned Additional District Judge, Pathankot be set aside and suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have perused the file.

The appellant has challenged order dated 23.12.2009 passed by Collector-cum-District Development and Panchayat Officer, Gurdaspur whereby his eviction has been ordered. The plaintiff claims to be the owner in possession of the suit property. There is no dispute that as per the jamabandi pertaining to years 2007-08 (Ex.P1), suit property is recorded as Panchayat Deh. Application under Section 7 of Punjab Village Common Lands (Regulation) Act, 1961 (for short – 'the Act') filed by the Gram Panchayat was allowed by the Collector-cum-District Development and Panchayat Officer, Gurdaspur vide order dated 23.12.2009. Illegal possession of the plaintiff over the suit land was proved and eviction order was, accordingly, passed. Appeal filed by the appellant – plaintiff against the said order was also dismissed by the Collector-cum-District Development and Panchayat Officer, Gurdaspur vide order dated 29.12.2010 (Ex. D2/D6). As per copy of rapat roznamcha dated 10.05.2011

(Ex.D3), possession of the suit property was delivered to the respondent –

Gram Panchayat on 10.05.2011 at the spot by Girdawar Halqa in presence of the plaintiff and other respectables of the village.

Appellant - plaintiff while deposing as PW3 before the learned trial Court admitted that Subhash Chander is his son. Special power of attorney was executed by the plaintiff in favour of his son Subhash Chander. Dismissal of the appeal of the plaintiff as well as handing over the possession of the suit land on 10.05.2011 was duly put to PW3. It is a matter of record that the order passed by the appellate authority upholding his eviction from the suit property was not challenged by the appellant – plaintiff. The appellant relied upon an entry in the revenue record reflecting him as Gair Dhakhilkar but the same is of no avail to him. It is proved on record that the plaintiff was never inducted as a tenant nor the property was leased out to him. His possession was clearly that of a trespasser, therefore, the gram Panchayat acted in accordance with the provisions of the Act. The competent revenue courts have passed the necessary orders.

Moreover, learned courts below have rightly held that jurisdiction of the civil courts is clearly barred under Section 13 of the Act especially in view of the admission of the plaintiff – appellant himself that the Gram Panchayat is the owner of the land in question. Argument raised on behalf of the appellant that he was discriminated against, inasmuch as no action was taken against similarly situated persons is clearly untenable, hence rejected. This is so for the reason that firstly there is no such evidence on record to substantiate this plea and furthermore no right can accrue to the appellant on account of the alleged inaction of the Gram Panchayat, in the absence of any right vested with the appellant.

Both the learned courts below have rendered concurrent

findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality and infirmity in judgment and decree dated 19.05.2015 passed by the learned Civil Judge (Senior Division), Pathankot as well as judgment and decree dated 23.08.2016 passed by the learned Additional District Judge, Pathankot which calls for interference by this Court.

There is a delay of 43 days in filing of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is, accordingly, disposed of.

Present appeal being devoid of merit is dismissed with no order as to costs.

September 04, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No