

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

**RSA No.3424 of 2017 (O&M)  
Date of Decision.31.10.2018**

Gram Panchayat Village Kalwadi

....Appellant

Vs

Mukesh Kumar

...Respondent

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Sandeep Kumar Yadav, Advocate  
for the appellant.

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**AMIT RAWAL J. (ORAL)**

The appellant-defendant/Gram Panchayat has preferred this regular second appeal against the concurrent finding of fact whereby the suit of the respondent-plaintiff for injunction restraining them from interfering into peaceful possession of the plaintiff as well as forcible dispossession has been decreed.

The plaintiff instituted the suit on the premise that he was owner in possession of the suit land in Ahata No.140, Ghar No.207 within the *abadi* area of village Kalwadi, Tehsil and District Mohindergarh. Prior to that, his predecessor Rattan Singh son of Sedhu Ram was recorded as owner and thus, was legal heir. The defendants were bent upon to dispossess the plaintiff forcibly in order to settle some political revenge and therefore, cause of action arose to seek injunction.

The defendants opposed the suit by denying the status of the plaintiff or his predecessor to be the owner. It was disclosed that plaintiff had previously filed the suit in the name of his wife i.e. “Sunita VS. Gram Panchayat” whereby interim stay was not granted.

In order to overcome the aforementioned hurdle had filed the present suit to hamper the development work of the village.

The trial Court on the basis of evidence decreed the suit and the appeal taken before the lower Appellate Court was also dismissed.

Mr. S.K. Yadav, learned counsel appearing on behalf of the appellant submitted that judgments and decrees of the Courts below suffer from illegality and perversity as the Courts below abdicated in not referring to the oral and documentary evidence. It has been proved on record that the defendant had been in possession of the suit land and constructed one well, water pond and one room for the welfare of general public. The appellant-defendant/Gram Panchayat had also constructed and running an Anganwari. The report of local commissioner could not have been looked into as he was not examined, thus, urges this Court for setting aside the judgments and decrees under challenge.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Yadav, as the local commissioner's report reflected that the appellant-defendant had encroached upon 6 sq. yard land of the plaintiff. Non examination of local commissioner could not be fatal as per the provisions of Order 26 Rule 10(2) CPC, which are reproduced as under, as it was duty of the appellant to seek leave of the Court for cross-examination of the witness:-

***“(2) Report and depositions to be evidence in suit. -  
The report of the Commissioner and the evidence taken  
by him but not the evidence without the report shall be***

*evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.”*

DW1 and DW3 admitted possession of the plaintiff. In such circumstances, the Courts below had no other option but to protect possession of the plaintiff. I am of the view that the defendant miserably failed to prove that they were in possession of the property, raised any construction or running any anganwari.

As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out. The second appeal is dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**October 31, 2018**

Pankaj\*

Whether Reasoned/Speaking    Yes

Whether Reportable                No