

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

RSA no.4193 of 2017 (O&M)

Date of Decision:22.10.2018

Bakhtawar

.....Petitioner

Vs.

Rajpati and others

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Arun Sharma, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (Oral)

By this appeal the appellant challenges the judgments and decrees passed by the learned Courts below dismissing his suit seeking possession of the suit land measuring 3 *kanals* and 2 *marlas* (fully described in the plaint), situated at village Nangal Kheri, Tehsil and District Panipat.

1. The claim of the appellant over the suit land was on the ground that though it was owned by the Gram Panchayat of the village, in the revenue record it was shown to be *Gair Mumkin* land in the possession of the community to which the appellant is stated to be belonging, i.e. the *Kumhar* community, with infact the appellant earlier having faced litigation *qua* the said property by way of Civil Suit no.797 of 1996, instituted by one Bija against him, seeking a declaration that he was in possession thereof and that the revenue entries showing the suit property to be in possession of the *Kumhar* community (*Gair Mumkin Kumharan*), was an incorrect entry, which also was to be corrected. A

decree of mandatory injunction was also prayed for in that suit, restraining the present appellant and others impleaded therein from constructing a wall.

That suit having been dismissed on 17.01.2000, with the appeal filed by the aforesaid Bija also having been dismissed, as per the appellants' contention, thereafter, one Sardara, i.e. the predecessor-in-interest (husband/father) of the respondents/defendants, encroached upon one room on the suit property, with the respondents/defendants thereafter residing in it.

2. Upon notice issued in this suit, the respondents/defendants appeared and took a stand in their written statement that they had been residing in the suit property for the past 35 years, prior to which the aforesaid Sardara was residing there.

As regards the dismissal of the civil suit filed Bija, it was contended that they not being party to that suit, that decree was not binding on them.

3. On the aforesaid pleadings, the learned trial Court framed the following issues:

1. Whether the plaintiff is entitled for possession as alleged in the plaint? OPP
2. Whether the plaintiff is entitled for the relief of permanent injunction? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is time barred? OPD
5. Whether the suit is bad for non-joinder of necessary parties? OPD
6. Whether the suit is not properly valued? OPD

7. Relief.

4. After appraising the evidence led before it, the trial Court came to the conclusion that no evidence whatsoever had been led by the appellant to prove that the Gram Panchayat had at any time given possession of the suit property to the *Kumhar* community.

One Phool Singh, who was examined by the appellant/plaintiff as PW4, in his testimony also deposed that the appellant/plaintiff himself was not the sole “owner” of the land, with the entire *kumhar* community being owners thereof.

Though even respondent no.1, i.e. Rajpati, in her cross-examination had admitted that there was no proof that the room occupied by her was allotted to her or her predecessor-in-interest, the trial Court eventually came to the finding that the appellant not having shown his possession over the suit property in any manner, he was not entitled to the decree that he sought.

5. The Ist appeal filed by the appellant before the Additional District Judge, Panipat, that court also, essentially on the same ground, dismissed the appeal, observing that no evidence at all had been led by the appellant/plaintiff as to when the suit property was allotted exclusively to him and when he was dispossessed therefrom, with it in any case not in dispute that it was in the ownership of the Gram Panchayat, which had not brought any suit for possession of the property.

6. Before this Court, learned counsel for the appellant submits that the revenue record admittedly showing the suit property to be in

possession of the *kumhar* community, the learned Courts below have

both erred, ignoring the fact that the appellant himself belongs to that community, which was in possession thereof, with the respondents admittedly not belonging to the said community.

7. Having considered aforesaid argument, I find no reason to interfere with the judgments of the Courts below, in view of the fact that, as noticed by the learned trial Court, the appellant had not filed the suit in a representative capacity of the *kumhar* community; and he could produce no document whatsoever to show that he was ever allotted or handed over possession of the suit property by the owner, i.e. the Gram Panchayat. Thus, with neither any proof of him being in actual possession of the suit property or being able to show that he was never dispossessed therefrom *qua* the respondents herein, simply because the suit earlier filed by one Bija against the appellant was dismissed, that would not entitle him to the relief of possession after eviction of the respondents/defendants herein.

This is of course other than the fact that though the learned Courts below have not gone into that issue at all, in terms of Section 13 the Punjab Village Common Lands (Regulation) Act, 1961, such a suit would seemed be barred to be entertained by a Civil Court. However, that not being an issue which had been raised before the Courts below, nothing further is said on that in this second appeal.

Consequently, finding no merit in this appeal, it is dismissed in *limine*.

CM no.10892-95-C-2017

The appeal having been dismissed on merits, these

miscellaneous applications have been rendered infructuous and are disposed of as such.

(AMOL RATTAN SINGH)
JUDGE

October 22, 2018.

dharamvir/dinesh

Whether speaking/reasoned : YES
Whether Reportable : YES