

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

RSA No. 4655 of 2017 (O&M)

Date of decision : 03.10.2018

Parkash Kaur

....Appellant

V/s

Gram Panchayat Khatrai Khur, Tehsil Ajnala,
District Amritsar

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. G.S. Nagra, Advocate for the appellant.

RAJAN GUPTA J.

The trial court vide judgment and decree dated 03.09.2013 decreed the suit of the plaintiff-appellant whereby it restrained the defendant-Gram Panchayat from dispossessing the plaintiff forcibly except in due course of law. Whereas first appellate court allowed the appeal filed by defendant-Gram Panchayat. As such plaintiff-appellant has preferred the instant appeal. Learned counsel for the appellant submits that first appellate court has erred in allowing the appeal as it has not appreciated the evidence available on record in correct perspective. Thus, impugned order deserves to be set-aside.

I have heard learned counsel for the appellant.

Brief factual background of the case is that plaintiff-appellant filed a suit for permanent injunction to restrain the defendant-Gram Panchayat from dispossessing her forcibly and illegally from the suit land. It has been pleaded that husband of the plaintiff namely Baldev Singh was the owner of the suit land to the extent of ½ share. After his death, plaintiff being widow of Baldev Singh, become owner of the said land. As defendant

who had no right or title over the suit land, tried to dispossess the plaintiff,

she preferred the instant suit. Plea of the plaintiff finds favour in the trial court and it decreed the suit and restrained the defendant-Gram Panchayat from dispossessing the plaintiff forcibly, illegally except in due course of law from the suit land. Aggrieved, defendant-respondent preferred an appeal before the Additional District Judge, Amritsar. Appellate court, however, accepted the claim of the defendant and reversed the findings of the trial court. I find no infirmity with the order passed by the lower appellate court. It is evident that husband of the plaintiff who was in illegal possession of the suit land was ordered to be evicted by the order of DDPO-cum-Collector, Amritsar. He preferred an appeal before Director Rural Development and Panchayat Department, Punjab. However, same was dismissed on 27.02.2008. On the basis of evidence, appellate court came to the conclusion that husband of the appellant had not been able to prove his ownership over the dispute land. Moreover, as per notification dated 23.07.2007, control of common land vests in village Panchayat and State Government and per section 42-A of East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948, the common land which was reserved for common purpose cannot be partitioned amongst proprietors of village. Thus, trial court had erred in allowing the suit. I find no reason to differ with the findings arrived by lower appellate court. There is no ground to interfere in second appeal. Dismissed.

As the main appeal has been dismissed on merits, no order needs to be passed in the accompanying application.

October 03, 2018

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No