

RSA No.960 of 2018

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

RSA No.960 of 2018

Date of Decision.12.02.2018

Bhani Devi and others

.....Appellants

Vs

Gram Panchayat, Village Bhali Anandpur and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Jindal, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

C.M. No.2364-C of 2018

For the reasons stated in the application, delay of 31 days in
filing the appeal is condoned.

Application is allowed.

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The present appeal has been preferred by the appellants-
plaintiffs against the concurrent finding of fact whereby the suit claiming
declaratory relief of ownership in possession qua plot measuring 100 sq.
yards as described in the plaint and consequential relief of permanent
injunction restraining the defendant No.1 from interfering in peaceful
possession of plaintiffs and forcible dispossession, has been dismissed by
both the Courts below.

The appellants-plaintiffs filed the suit seeking a declaration that
they are owners in possession of plot measuring 100 sq. yards as per the
description in para 4 of the plaint on the premise that they and defendant
No.2 were landless labour and the plot bearing No.42/3/12 measuring 3

marla i.e. 100 sq. yards was allotted by Gram Panchayat village Bhali Anandpur by virtue of gif deed dated 23.8.1984. In the year 1985, Gram Panchayat verbally exchanged the above-said plot with another plot measuring 100 sq. yards with dimensions of 15'x60' in Killa No.36/23 and the same was handed over to late Dharma. Since then, late Dharma husband of plaintiff No.1 and father of plaintiffs No.2 to 5 and defendant No.2 remained owner in possession of the said plot till his death. During his life time, he constructed boundary wall of the plot and also constructed two rooms and got an electric meter No.R-31 installed in the same. However, inadvertently, mutation of the oral exchange could not be sanctioned and the Gram Panchayat intended to dispossess the plaintiffs from their lawful possession and ownership of the said plot on which they have no right, title or interest. Civil suit bearing No.2130 of 2007 for permanent injunction was filed but the same was dismissed by the Civil Court vide judgment and decree dated 22.10.2012.

The suit was contested by the defendant-Gram Panchayat by taking customary pleas about maintainability, legal notice, suppression of material facts, estoppel, jurisdiction and res judicata etc. On merits, it was denied that there was any oral exchange. The property stood in the name of the Gram Panchayat. The Gram Panchayat had already instituted proceedings under Section 7 of the Village Common Land Act which attained finality whereas the plaintiffs instituted proceedings under Section 13-A of the aforementioned Act, which were dismissed vide order dated 15.01.2007, therefore, the plaintiffs cannot be permitted to play hide and seek by forum shopping in claiming declaration vis-a-vis ownership.

Mr. Jindal, learned counsel appearing on behalf of the

appellants submitted that the lower Appellate Court had declined injunction on the premise that possession of the plaintiff was of a trespasser, which itself is a clincher of not resorting to the forcible dispossession, therefore, injunction at least was required to be granted, if not declaration. The plaintiffs had brought on record the site plan, photographs, receipt, again site plan and allotment letter and the defendant placed on record copy of judgment dated 22.10.2012, various orders, jamabandi for the year 2009-10 and the resolution dated 25.01.2013. The findings of the Courts in not granting declaration are not maintainable in the eyes of law being erroneous and illegal, for, the previous suit was simplicitor for injunction, therefore, principle akin to res judicata would not apply. These aspects have not been looked into in correct perspective, therefore, there is illegality and perversity.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jindal. The amended provisions as inserted by the Legislature under Section 13 of the Punjab Village Common Land Act, which is reproduced herein below, bar the jurisdiction of the Civil Court to claim declaration.

“13. Bar of Jurisdiction in Civil Courts:- No civil court shall have jurisdiction:-

(a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not Shamilat deh vested or deemed to have been vested in a Panchayat under this Act ; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act, or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.”

Ultimately, the plaintiffs had instituted the suit but remained unsuccessful as the aforementioned application was dismissed vide order dated 15.01.2007, Ex.D2. In my view, the plaintiffs could not claim title again in the suit instituted on 17.01.2013.

As regards the injunction, it was incumbent upon the plaintiffs to place on record voter list, ration card, utility bills or any other document to establish the possession. Even the oral exchange has also not been produced on record. I am of the view that in the absence of proving gift deed, much less, the oral exchange, rightly so, the Courts below dismissed the suit.

For the reasons aforementioned, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 12, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No