

RSA-815-1989 (O&M)

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

**RSA-815-1989 (O&M)
Date of decision : 27.03.2019**

Ajaib Singh (deceased) through LRs

... Appellant

Versus

Gram Panchayat/Gram Sabha of Village Fattan Majri

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: None.

AMIT RAWAL, J. (ORAL)

Mr. H.S. Batth, learned counsel appearing on behalf of the appellants submits that his clients have taken the brief and seeks liberty of this Court to withdraw his power of attorney.

Ordered accordingly.

Since the appeal is of the year 1989, accordingly, I proceed to decide the same on merits.

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit for permanent injunction seeking restraint against the defendant from interfering in the possession of the plaintiff, has been dismissed by the trial Court and affirmed in appeal.

The plaintiff sought the injunction against Gram Panchayat from interfering into peaceful possession and demolition of Dera marked as ABCD in the site plan attached with the plaint, situated at Village Fattan Majri, on the premise that he was the owner in possession, for the last 30 (thirty) years and spent a sum of ₹5 Lacs.

The defendant opposed the suit on the ground that similar suit

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was filed by the plaintiff, which was dismissed in fault, therefore, the suit was barred under the provisions of Code of Civil Procedure, even otherwise, jurisdiction of the Civil Court, as per the provisions of Section 11 of the Punjab Village Common Land Act, 1961 (in short 'the 1961 Act') was emphatically barred. The suit for title under the garb of injunction was not maintainable. The possession of the plaintiff was also denied. It was explained that previously, the plaintiff was in unauthorized possession of the land bearing Khasra No.6//15, 16, 24, 25, 7//7, 8, 9/1 min, 9/2 min, 10, 11, 12, 20 & 19//7 and eviction proceedings were initiated under Section 5 of the Public Premises and Land (Eviction and Rent Recovery), Act, 1969 (in short 'the 1969 Act') and the plaintiff was ordered to be evicted and on 07.06.1986, obtained the physical possession. The plaintiff raised some kacha construction over the land and application was submitted to the Collector, but he failed to appear before the Collector and the Collector, vide order dated 06.10.1986, ordered for removal of the construction, but the same could not be removed as interim order was granted by the Commissioner.

Since the parties were at variance the trial Court framed the following issues:-

- 1. Whether the plaintiff is owner in possession of the Dera as alleged? OPP*
- 2. Whether the plaintiff is entitled to the injunction as prayed for? OPP*
- 3. Whether the suit is not maintainable? OPD*
- 4. Whether the suit is bad for want of description of the suit property? OPD*
- 5. Whether the suit is barred by section 11 of the Punjab Village Common Land Act and in view of earlier litigation?*

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OPD

6. Whether the suit is barred under Order 2 Rule 2 of CPC.

7. Whether the defendant is entitled to Special costs? OPD

8. Relief.

The plaintiff in support of the pleadings examined two witnesses and brought on record various documents. On the other hand, the defendant placed on record of order of ejectment and various other orders. It was stated that he had not been in continuous, physical and actual cultivation possession for the last 30 years and various documents to establish that the plaintiff was not proprietor.

Keeping in view the aforementioned facts, it would be apt to reproduce the Section 11 of the 1961 Act, which reads as under:-

"Section 11 of the 1961 Act.

11. Decision of claims of right, title or interest in Shamilat deh

(1) Any person claiming right, title or interest in any land, vested or deemed to have been vested in a panchayat under this Act or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time, as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed.

(2) Any person or a Panchayat aggrieved by an order of the Collector made under sub- section (1) may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form as manner as may be prescribed and the Commissioner may after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such as he deems fit.

On perusal of the aforementioned, it is evident that the Civil

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Court did not have the jurisdiction to confer the title.

As regards the injunction qua forcible interference and dispossession, the plaintiff miserably failed to prove his possession. It is a matter of record that the plaintiff had also availed the remedy under Section 11 of the 1961 Act, wherein he alleged himself to be proprietor. The petition vide order dated 23.10.1987 (Ex.D6), was dismissed by the Collector and it was held that he was not proprietor or any share in land. Previously, the similar suit (Ex.D3) was filed by the plaintiff, which was dismissed as withdrawn, in such circumstances, the second suit for injunction was *ex facie* barred by the provisions of the Code of Civil Procedure. It was an attempt to circumvent the eviction order as jurisdiction of the Civil Court, under the 1961 Act, was emphatically barred. No concrete evidence has been placed on record to establish the possession, in such circumstances, injunction could not be granted.

Keeping in view the aforementioned facts, the concurrent findings fact arrived at by the Courts below cannot be said to be suffering from illegality and perversity. No substantial question of law arises for determination. No ground is made out for interference. Resultantly, the present second appeal is dismissed.

Interim order dated 13.09.1990 stands vacated.

27.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**