

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

RSA No.189 of 2007 (O&M)
Date of Decision: August 13, 2019

Gram Panchayat

...Appellant

Versus

Jage Ram and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. H.S. Baath, Advocate
for the appellant.

None for the respondents.

JAISHREE THAKUR, J.

1. The instant regular second appeal has been filed by appellant-defendant No.4 (henceforth called 'the appellant') seeking to challenge the judgment and decree dated 28.09.2006 passed by the first Appellate Court whereby, the appeal filed by respondents No.1 and 2-plaintiffs (henceforth called 'respondents No.1 and 2') against the judgment and decree dated 29.03.2006 passed by the lower court, dismissing the suit of respondents No.1 and 2, has been allowed.

2. In brief, the facts are that respondents No.1 and 2 filed a civil suit seeking declaration with consequential relief of permanent injunction against the appellant as well as predecessors-in-interest of respondents No.3 to 12 i.e. defendants No.1 to 3 on the ground that the suit land measuring 08

kanals 11 marlas situated in village Alimudinpur, Tehsil and District Gurgaon was mortgaged by predecessors-in-interest of respondents No.3 to 12 in lieu of consideration of ₹ 11,000/- vide registered mortgage deed dated 26.10.1983 and possession was also delivered to them. It was submitted that at the time of mortgaging the suit land, it was agreed that respondents No.1 and 2 could deal with the land in any manner they like and they could make improvements on it. Thereafter, respondents No.1 and 2 levelled the suit land and raised six rooms and one baithak for tethering of bullocks and for storing food grains for cattle etc. apart from constructing a water tank and boundary wall. It was averred that predecessors-in-interest of respondents No.3 to 12 had filed an application for redemption of the suit land before the court of A.C. Ist Grade, Gurgaon, who by his order dated 30.05.1995 held that they were no more bhondedars, so their right had extinguished and they were not entitled to the possession of the suit land. It was further ordered that possession of the suit land should be delivered to the appellant i.e. Gram Panchayat. It was alleged that the said order of A.C. Ist Grade was illegal, void and without jurisdiction. It was submitted that in case, the appellant was entitled to take possession of the suit land, as per order of A.C. Ist Grade, the petition for redemption could only be filed by the appellant and not by predecessors-in-interest of respondents No.3 to 12. It was stated that A.C. Ist Grade also did not mention in his order the fact that at the time of redemption of the suit land, the predecessors-in-interest of respondents No.3 to 12 were liable to pay costs of the construction, which was raised over the suit land. It was pleaded that in case, the appellant succeeded in taking forcible possession of the suit land from respondents

No.1 and 2, they will suffer an irreparable loss and injury.

3. Upon notice, predecessors-in-interest of respondents No.3 to 12 filed their written statement with the submissions that since the suit land was mortgaged with possession to respondents No.1 and 2, therefore, they were entitled to use the land in any manner and they were also entitled to make improvements. It was denied that they were liable to pay the amount spent for raising the alleged construction. It was admitted that they had filed an application for redemption of the suit land before A.C. Ist Grade, while submitting that the order passed by A.C. Ist Grade was illegal and without jurisdiction.

4. The appellant herein i.e. the Gram Panchayat filed a separate written statement, while submitting that the suit land vested in the Gram Panchayat. The suit land was given to the ancestors of respondents No.3 to 12 on Bhonedari in lieu of the work of barber for the inhabitants of the village. The predecessors-in-interest of respondents No.3 to 12 had no right to mortgage the suit property to respondents No.1 and 2 because their Bhonedari rights extinguished due to violating the services as created in Bhonedari. It was submitted that the order passed by A.C. Ist Grade dated 30.05.1995 was legal and based on facts. It was claimed that the Bhonedari rights cannot be alienated to any person without the prior permission of owner of the land.

5. From the pleadings of the parties, issues were framed and evidence was led by both the parties. After hearing both the sides, the lower court dismissed the suit of respondents No.1 and 2. Feeling aggrieved, respondents No.1 and 2 preferred an appeal before the first Appellate Court,

which came to be allowed and the judgment and decree passed by the lower court was set aside. Feeling aggrieved, the appellant-Gram Panchayat has assailed the judgment and decree passed by the first Appellate Court.

6. Learned counsel appearing on behalf of the appellant argues that the lower court had rightly dismissed the suit of respondents No.1 and 2 holding that the order passed by the A.C. Ist Grade, Gurgaon on 30.05.1995 was not without jurisdiction and the same was binding on the parties and the suit land should be delivered to the appellant-Gram Panchayat. It is contended that the first Appellate Court reversed the judgment and decree passed by the lower court, while holding that the aforesaid order passed by A.C. Ist Grade, Gurgaon to be illegal and that respondents No.1 and 2 are entitled to remain in possession of the suit property. It is submitted that the first Appellate Court has not appreciated the fact that the suit land vested in Gram Panchayat and the same was given to ancestors of respondents No.3 to 12 on Bhondedari in lieu of the work of Barber for the inhabitants of the village. It is pointed that ancestors of respondents No.3 to 12 had no right to mortgage the suit property to respondents No.1 and 2. It is further argued that the first Appellate Court has erred in not appreciating the documentary evidence that the jamabandis for the year 2003-04 (Ex.P2) and for the year 1994-95 (Ex.P3) reflected that the suit property belongs to the Gram Panchayat. In support of his arguments, learned counsel for the appellant relied upon judgments rendered in *Dharma vs. Harbai, 1976 P.L.J. 617* and *Mamala & Ors. vs. ISA & Ors. 1983(II) All India Land Laws Reporter 145*.

7. I have heard learned counsel for the appellant and have also

gone through the case file.

8. The lower court, while dismissing the suit of respondents No.1 and 2, observed that the order passed by the A.C. Ist Grade, Gurgaon on the application of predecessors-in-interest of respondents No.3 to 12 for redemption is a correct and valid order, vide which Bhonedari rights of predecessors-in-interest of respondents No.3 to 12 had been extinguished and the possession of the suit land should be delivered to the Gram Panchayat.

9. The first Appellate Court, while reversing the findings of the lower court, has observed that Bhonedars were not competent to execute mortgage deed in favour of respondents No.1 and 2 and the mortgage deed was held to be null and void. Consequently, petition for redemption of the mortgage property was also not maintainable. It was further observed that the possession of the suit land was delivered to respondents No.1 and 2 by Bhonedars, who were earlier in possession of the suit land, although land vested in village Gram Panchayat, as such, possession of respondents No.1 and 2 over the suit property was permissive. It was further observed that the order passed by A.C. Ist Grade could not be held to be valid on the ground that the Collector was not deciding a petition under Section 7 or 4 of the Village Common Land Act. A petition for redemption of the mortgage land was filed before the Collector and the Collector was supposed to give findings either to accept the same or to dismiss the petition. The village Gram Panchayat, if so willing, should have filed a petition or civil suit to obtain possession of the suit land. On these basis, the appeal stood allowed and the appellant and respondents No.3 to 12 were restrained from

interfering in the peaceful possession of respondents No.1 and 2 over the suit land, except in due course of law.

10. During the course of arguments, learned counsel for the appellant has failed to point out any perversity in the findings given by the first Appellate Court. In the present case, the A.C. Ist Grade on a petition filed by predecessors-in-interest of respondents No.3 to 12 for redemption of the suit property, gave finding that Bhonedars were not rendering services and due to this reason their Bhonedars rights stood extinguished and possession of the suit land should be delivered to the Gram Panchayat, though Gram Panchayat was not a party to the said proceedings. In this regard, this court is in consonance with the findings given by the first Appellate Court because the A.C. Ist Grade had no power to give finding that rights of Bhonedars stood extinguished, in a petition filed for redemption of mortgage. Even under Section 7 of the Village Common Land Act, the A.C. Ist Grade has limited jurisdiction and such type of finding can be given only by the civil court and the Gram Panchayat can seek declaration from the civil court to this effect. The land in dispute has been shown to be in possession of Bhonedars prior to the year 1903-04. The witnesses examined by respondents No.1 and 2 stated that Bhonedars used to visit the village for providing services with intervals. In the present case, village Gram Panchayat has not sought the relief of possession by filing a counter-claim. The Collector had given directions for delivery of possession to the Gram Panchayat whereas, the Gram Panchayat neither sought such relief nor it was a party to the redemption proceedings. Such type of order should have been passed by the Collector after giving

opportunity to respondents No.1 and 2 of proper hearing and to lead evidence to the effect that as to whether respondents No.1 and 2 were entitled to protect their possession over the suit land against village Gram Panchayat. Respondents No.1 and 2 are in permissive possession of the suit land since the date of execution of the mortgage deed and the Bhonedars cannot get redeemed the suit land, as the mortgage deed was void *ab initio*. Since the Gram Panchayat cannot obtain possession over the suit property on the basis of the impugned order passed by the Collector on 30.05.1995, which has been set aside by the first Appellate Court, under these circumstances, possession of respondents No.1 and 2 cannot be disturbed except in due course of law. The case laws relied upon by learned counsel for the appellant are distinguishable and the same are not applicable to the facts and circumstances of the present case.

11. During the pendency of proceedings before this court, application bearing CM No.12023-C of 2016 has been filed by the appellant for disposal of the instant appeal, in view of the affidavits Annexures A-2 to A-11. Annexures A-2 to A-11 are affidavits of respondents No.3 to 12 to the effect that the suit land was given to their predecessors-in-interest by the Gram Panchayat about 50 years ago, who are now dead. They have no connection with the suit land as Bhumidar and they are not in possession of the same. It is further stated in these affidavits that the Gram Panchayat is the owner of the suit land and they have no objection, if the revenue record is corrected to this effect. In this regard, this court is of the considered view that these affidavits are of no help to the appellant, since respondents No.1 and 2 are in permissive possession of the suit land (as discussed in the

earlier part of this judgment). No doubt, the Gram Panchayat is the owner of the suit land, however, direction to change the revenue record qua possession in favour of the Gram Panchayat cannot be given by this court, once respondents No.1 and 2 are in possession of the same. As such, this application is dismissed accordingly.

12. In view of the above, this court finds no illegality or perversity in the findings so recorded by the first Appellate Court. As such, no question of law requiring determination arises in this regular second appeal filed by appellant-defendant No.4, which has no merit. Needless to say, the appellant Gram Panchayat is at liberty to obtain possession of the suit property in due course of law.

13. Dismissed. Civil misc. application, if any pending, stands also dismissed accordingly.

August 13, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No