

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

RSA-2933-2012(O&M)

Date of decision:-31.10.2019

Jasbir Singh

...Appellant

Versus

Gram Panchayat of village Burj Kandhari

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sarju Puri, Advocate
for the appellant.

None for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff – Jasbir Singh son of Sh.Kuldip Singh son of Sh.Ishar Singh, resident of village Burj Kandhari, Tehsil and District Nawanshahar had brought a suit against Gram Panchayat of his village through its Sarpanch – Smt.Parminder Kaur seeking a decree for permanent injunction restraining the defendant Gram Panchayat from interfering in possession of the plaintiff or raising any construction and obstructing the plaintiff from using the land comprised in Khasra No.12//27(0-6) bearing Khewat No.2, Khatauni No.2, as per *fard jamabandi* for the year 1997-98 situated at village Burj Kandhari, Tehsil and District Nawanshahar.

As per the version of the plaintiff, he along with others is a co-sharer in joint possession of the suit property, which is in the form of *Gair Mumkin Taur Chah* using the same for agricultural purposes; the name of the plaintiff is duly reflected in the revenue record as co-sharer in the joint possession of the suit property; the defendant has got no concern with it either as owner or in possession but even then it threatened to interfere in possession of the plaintiff by raising construction and obstructing the plaintiff from using this property on account of party factionalism in the village, giving rise to a cause of action to him to bring the suit in question.

On notice, the defendant appeared and filed written statement, contesting the suit, *inter alia* raising preliminary objections that the plaintiff has suppressed the real and actual facts from the Court; that the property in question is commonly known as *Gore Wala Khuh*, which was lying in an absolute desolate and abandoned condition and being open was a death trap for the inhabitants of the village more particularly for the children, therefore the concerned residents, who also happened to be the recorded co-sharers approached the Gram Panchayat in the year 1998 for closure of the said well and for constructing a *Chaunta* (cemented platform) over it and accordingly the Gram Panchayat took over the control of the well in question and a resolution was passed in the year 1998 and the well in question was covered and a *Chaunta* was constructed over the same with the Panchayat funds, since then the well so covered having *Chaunta* is being managed by the Gram Panchayat with Panchayat funds and the said property is being used for the common purposes of the

village without any objection from any quarter, therefore the property in question is a village common land falling within purview of Punjab Village Common Lands (Registration) Act, therefore the jurisdiction of the Civil Court to entertain and try the suit is barred. On merits, the defendant controverted the material assertions in the plaint and repeated the pleas taken in the preliminary objections while praying for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled for the relief of permanent injunction, as prayed for? OPP.
2. Whether the plaintiff is guilty of suppressing true facts from the Court? OPD.
3. Whether the suit has become infructuous? OPD.
4. Relief.

Both the parties were afforded opportunities to lead their evidence.

After hearing learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff and in favour of the defendant, issue No.2 in favour of the defendant and against the plaintiff, issue No.3 against the defendant and in favour of the plaintiff. Resultantly, suit of the plaintiff was dismissed. This was so done vide judgment and decree dated

16.12.2010.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, SBS Nagar, which was assigned to learned Additional District Judge, SBS Nagar, who vide judgment and decree dated 16.2.2012 dismissed the same with costs.

Being dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing present regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and suit of the plaintiff be decreed.

Notice of the appeal was given to respondent/defendant – Gram Panchayat, which was duly served but did not put in appearance to offer a contest.

I have heard learned counsel for the appellant besides going through the record and I find that there is absolutely no merit in the appeal.

The trial Court in light of the factual and legal position had come to the conclusion that document Ex.D3 bears signatures of plaintiff, which goes to show that the suit property was owned by all the co-sharers whose names are mentioned in Ex.D3. It bears signatures of plaintiff and all the co-sharers had made a joint request to the Gram Panchayat for raising construction of a *Tharra* and it was only thereafter that construction of Chaunta/Tharra was raised by the Gram Panchayat by spending considerable amount, therefore the plaintiff is barred by his act, conduct and acquiescence from filing the instant suit and Gram Panchayat

has got right to take care of the management of such property. Furthermore, the plaintiff has not made any such mention in his pleadings and tried to conceal material facts, which disentitles him to the discretionary equitable relief of permanent injunction. The First Appellate Court had examined the matter and also came to the same conclusion. The relevant paras No.11 and 12 of the judgment passed by the First Appellate Court for ready reference are being reproduced as under:

11.From my above discussion, it is clear that all the witnesses of the plaintiff proved the site plan Ex.P1 and draftsman proved the site plan Ex.Pl and as per the site plan, there is well in khasra No.12//27, which was the property of Jasbir Singh alongwith other co-sharers. Jamabandi proved on record Ex.P2 also reflects that plaintiff is owner in possession alongwith co-sharers in khasra No.12//27 of an area of 6 marlas. It is settled law that the presumption of truth is attached to the jamabandi under the provisions of Punjab Land Revenue Act, but on the other hand, plaintiff alongwith other inhabitants of the village made request in form of application Ex.D3 to construct the Chaunta on the well, so that any incident may be avoided and place might be used for the common use of all the villagers and on this request, Gram Panchayat passed a resolution Ex.D2 and Gram Panchayat asked the plaintiff through order Ex.D4 to move the woods lying near the well. Section 85 of the Punjab Panchayati Raj Act, 1994 deals with the property of Gram Panchayat, which provides that Gram Panchayat shall have the power to acquire, hold and dispossess the

property. Section 85 Clause-2(c) of the Act provides that all the public channel, water-courses, springs, tanks, ghats, reservoirs, cisterns, wells,, aqueducts, conduits, tunnels, pipes, pumps and other water works whether made, laid or erected at the cost of the Gram Panchayat or other wise, and all bridges, buildings, engineer works, materials and things connected therewith or appertaining thereto and also any adjacent land (not being private property) appertaining to any public tank. Section 30 of the said Act also provides that it is the duty and power of the Gram Panchayat to prepare and construct and maintain the community assets including well, water pump etc. The facts of the citation in case titled Tikam Dass deceased represented by his LRs Vs. Gram Panchayat of village Jhumian Wali (supra), are not different, in which it was held that management of suit land handed over to Gram Panchayat, For Gram Panchayat to utilise the same in the manner it likes. Plaintiff or any other owner of suit land not entitled to restrain Gram Panchayat from entering upon management of suit land.

12. The learned counsel for the plaintiff put much stress on the point that the learned lower court has ignored the jamabandi Ex.P2, which reflects that plaintiff is co-sharer in possession of khasra No 12//27 and has also held that presumption of truth is attached to the jamabandi, but section 44 of the Punjab Land Revenue Act provides that any entry made in the record of rights in accordance with law for the time being in force or in an annual

record in accordance with the provisions of this chapter and rules thereunder shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefore. In this case, the contrary is proved in the form that a request was made to the Gram Panchayat vide application Ex.D3 to construct the CHAUNTA over the well and on this, the resolution Ex.D2 was passed by Gram Panchayat and expenditure of the construction of Chaunta over the well is borne by the panchayat and resolution regarding expenditure is Ex.D5. Plaintiff handed over the well to the Gram Panchayat for the use of common purposes of the villagers and the learned lower court has held that Gram Panchayat shall have right to take care of the management of the property in dispute and has rightly dismissed the suit of the plaintiff for permanent injunction.

Thus, the plaintiff cannot possibly ask for relief of permanent injunction, once it is established on the file that it was at the instance of the plaintiff and other co-sharers, that the defendant Gram Panchayat had covered the unused well, which was posing a danger to the inhabitants of the village more particularly to the children. With a platform constructed thereupon by the Gram Panchayat using its own funds, the inhabitants of the village have been using the said platform and plaintiff is estopped by his act and conduct from bringing the suit seeking relief of permanent injunction.

The concurrent findings returned by the Courts below vide judgments, which are well reasoned, based on proper appraisal of

evidence and correct interpretation of law do not call for any interference.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below.

The appeal stands dismissed accordingly.

31.10.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No