

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

RSA-4707-2012(O&M)

Date of decision:-15.2.2019

Sarwan Singh

...Appellant

Versus

Gram Panchayat, Bodhni and another

...Respondents

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

Present: Mr.B.R. Gupta, Advocate
for the appellant.

Mr.C.P. Tiwana, Advocate
for respondent No.1.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Sarwan Singh had filed a suit against defendants i.e. Gram Panchayat, Bodhni through its Sarpanch, Tehsil Pehowa, District Kurukshetra as well as State of Haryana through Collector, Kurukshetra craving for issuance of a declaration with consequential relief of permanent injunction on the averments that Gram Panchayat, Bodhni has been shown as owner in possession of the suit land measuring 120 kanals 4 marlas as per jamabandi for the year 2002-03, though the said land was in cultivating possession of plaintiff and other legal heirs of

Kehar Singh as owner from the time even prior to consolidation of holdings; that the plaintiff was owner in possession of Khasra Nos.18, 22, 23, 24, 25, whereas Smt.Ram Kaur sister of Harnam owned and possessed land measuring 281 Bighas 1 Biswa and her land passed on to the Government termed as Sarkar Daulat Madar vide mutation No.154 which was entered and sanctioned in favour of the Government; that the said parcel of land was thrown in the pool of shamlat land, forming new addition by the Government; that the Government had conducted auction in case No.291 of 1935 of land measuring 281 bighas 1 biswa situated at village Bodhni; that Sh.Kehar Singh father of the plaintiff had purchased that land in open auction for Rs.1,318/-; that the sale was confirmed by Commissioner, Ambala vide letter No.6569 dated 24.10.1938; that Sh.Kehar Singh was declared owner in possession of land on 3.5.1939; that mutation No.170 was entered and sanctioned in the name of Sh.Kehar Singh on 29.1.1939; the land was auctioned, purchased and mutated along with all the rights including the share of shamlat land and patties; that subsequently Kehar Singh sold 2/3 share of 281 bighas 1 biswa, the land purchased in open auction to Munga for consideration; that mutation No.172 was entered and sanctioned in the name of vendee Munga on 11.3.1940; that Kehar Singh was left with 1/3 share of the land measuring 281 bighas 1 biswa as owner in possession being vendee auction purchaser from the Government; that in terms of

letter No.4999 RCH/568 dated 20.4.1954 shamlat land got vested in Gram Panchayats under the provisions of the Punjab Village Common Lands (Regulation) Act, 1953; that a mutation was entered and sanctioned in favour of Gram Panchayat, Bodhni of shamlat land on 8.8.1958, however, at the time of entering and sanctioning this mutation inadvertently or by mistake or in routine the share of shamlat land sold in open auction to Kehar Singh was also mutated in favour of Gram Panchayat, Bodhni, though earlier Sh.Kehar Singh and thereafter his LRs continued to be in possession as owners of the land purchased in the open auction. According to the plaintiff, mutation No.333 in the name of Gram Panchayat, Bodhni of shamlat land to the extent of land purchased by Kehar Singh in open auction is null, void and not binding upon rights of the plaintiff and other legal heirs; that name of Gram Panchayat has been wrongly entered in the column of ownership; that the shamlat share of Ram Kaur purchased by Kehar Singh in open auction for consideration no longer remains shamlat land and it could form part of shamlat land, which was to be mutated in the name of Gram Panchayat under the letter and provisions of the Punjab Village Common Lands (Regulation) Act, 1953; that on the basis of these wrong entries, Gram Panchayat, Bodhni was bent upon dispossessing the plaintiff from the suit land to which it had got no right. Feeling aggrieved, the plaintiff brought the suit in question seeking a declaration that he was

owner in possession of the suit land by virtue of his father Kehar Singh being auction purchaser of the land from the Government and entry of column of ownership in jamabandi for the year 2002-03 of Panchayat Deh on the basis of mutation No.333 was wrong, null and void and not binding upon the ownership and possessory rights of the plaintiff and other legal heirs regarding the shamlat share purchased by Kehar Singh father of the plaintiff in open auction from Government, besides craving for decree for permanent injunction restraining the defendants from dispossession the plaintiff and other legal heirs of Kehar Singh from land in question illegally and forcibly.

Notice of the suit was given to defendants, who put in appearance. Defendant No.1 filed written statement contesting the suit taking preliminary objections with regard to maintainability of the suit, locus standi of the plaintiff file the same; the suit being time barred; that the plaintiff being estopped from filing the suit. On merits refuting the assertions in the plaint, the answering defendant came up with a plea that Gram Panchayat is duly recorded as owner in possession of the suit land since time of consolidation of holdings and the land is still being used by it and it is under its occupation; that no body came forward to challenge the ownership of the defendant; that the jurisdiction of the Civil Court in such like matter is barred under Section 13-A of the Punjab Village Common Lands

(Regulation) Act, 1953 since only Collector can determine the question of title in such like matters; that the plaintiff had filed petition before Collector, Kurukshetra, which was dismissed; that the plaintiff was neither owner in possession of the suit land rather he has got no concern therewith. In the end, such respondent prayed for dismissal of the suit.

Learned Government Pleader representing defendant No.2 by making statement in the Court on 20.7.2007 adopted the written statement filed by defendant No.1 to be read on behalf of defendant No.2 also.

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 vide order dated 14.9.2007:

1. Whether the plaintiff is entitled for injunction on the grounds mentioned in the plaint? OPP.
2. Whether the plaintiff has no cause of action or locus-standi to file and maintain the present suit? OPD.
3. Whether the plaintiff is liable to be estopped from his own act and conduct to file and maintain the present suit? OPD.
4. Whether the plaintiff is liable to be rejected under Order 7 Rule 1, 11 and 14 CPC?OPP.

5. Relief.

Subsequently the issues were reframed vide order dated 20.8.2011, which are as under:

1. Whether plaintiff is owner in possession over the suit land detailed in para No.1 of the plaint? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD.
4. Whether the suit of plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
5. Whether the suit of the plaintiff is liable to be rejected under Order 7 Rule 1, 11 and 14 CPC? OPD.
6. Whether the suit of plaintiff is time barred? OPD.
7. Relief.

In order to prove his case, the plaintiff had got his statement recorded as PW1.

On the other hand, the defendants had examined Hari Singh as DW1.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff, issue No.2 in favour of the defendants and against the plaintiff, issues No.3 to 5 against the

defendants being not pressed, issue No.6 in favour of the defendants and against the plaintiff. Resultantly, suit of the plaintiff was dismissed. This was so done vide judgment and decree dated 26.8.2011.

The plaintiff was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Kurukshetra, which was assigned to Additional District Judge, Kurukshetra, who vide judgment and decree dated 24.9.2012 dismissed the appeal.

Feeling dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff had filed the present regular second appeal before this Court, notice of which was issued to the respondents.

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

The trial Court considering the facts and circumstances of the case by properly appraising evidence adduced before it by the parties and interpreting the law correctly has rightly come to the conclusion that the plaintiff is not entitled to declaration as prayed for the reason that the plaintiff has failed to connect the suit land with the land measuring 281 Bighas 1 Biswa statedly owned and possessed by Smt.Ram Kaur falling to share of the Government. The

plaintiff had failed to prove his possession over the suit land even inasmuch as jamabandi for the year 2002-03 Ex.P3 relied upon by the plaintiff himself shows that Gram Panchayat, Bodhni is owner in possession of such land. These entries are further fortified from the copies of lease register proved in evidence by defendant No.1 as Ex.D1 to Ex.D34 showing that some khasra numbers out of the suit were being leased out by Gram Panchayat to various persons on yearly basis for valuable consideration. The plaintiff himself had conceded during his cross-examination that whenever auction of the suit land took place, it was given on lease to the highest bidder. The trial Court has rightly come to the conclusion that plaintiff having not been found to be in possession of the suit land, his suit for declaration simplicitor was not maintainable being barred under Section 34 of the Specific Relief Act since he had not sought consequential relief of possession. It was further observed that suit is time barred also since mutation No.333 was entered and sanctioned in the name of Gram Panchayat on 8.8.1958.

Further, limitation for filing of the suit for declaration is three years, however, the suit was filed by the plaintiff on 11.1.2007 i.e. after more than 48 years, therefore the suit is hopelessly time barred. The Appellate Court on its part reached the same conclusion while dismissing the appeal filed by the plaintiff. Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 provides

that only Collector having jurisdiction in the area where land in question is situated can decide the question with regard to its title i.e. whether any land vests or does not vest in the Gram Panchayat. The jurisdiction of the Civil Court in such like matters is clearly barred. Therefore, the plaintiff was inadvised in approaching the Civil Court when jurisdiction of Civil Court was clearly barred. As it has come on record that the plaintiff had approached the Collector under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 but subsequently withdraw the said petition, which goes to show that in heart of his hearts he knew that the jurisdiction is with the Collector and not the Civil Court.

Thus I do not find any illegality or infirmity in the judgments and decrees passed by the Courts below. Rather the same are based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Furthermore, no substantial questions of law arises.

Finding no merit in the appeal, the same stands dismissed.

15.2.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No