

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

208

RSA-1517-2013 (O&M)
Date of Decision : 19.09.2019

Sukhbir Singh

.... Appellant

Versus

Gram Panchayat village Jakholi

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.S.R.Hooda, Advocate
for the appellant.

Mr.Navneet Singh, Advocate
for the respondent.

Mr.Sanjiv Pabbi, Advocate
for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

CM-4093-C-2013

For the reasons mentioned in the application, the same
is allowed and delay of 47 days in re-filing the appeal is condoned.

CM-4094-C-2013

For the reasons mentioned in the application, the same
is allowed and delay of 15 days in filing the appeal is condoned.

RSA-1517-2013

Unsuccessful plaintiff has filed this regular second
appeal against judgment and decree dated 20.09.2012 of the
Appellate Court, affirming judgment and decree of the trial Court
dated 14.09.2011 whereby, his suit for declaration with

consequential relief of permanent injunction, was dismissed.

Briefly, plaintiff-appellant claiming himself to be a “occupancy tenant” being in possession of the suit land fully detailed in para 1 of the judgment of trial Court as “*gair marusi*” without payment of any rent or *batai*, since, more than 60 years through his forefathers before consolidation took place in the village Jakholi, filed a suit to declare him owner.

After holding trial, learned trial Court dismissed the suit vide judgment and decree dated 14.09.2011.

Being aggrieved, the appellant approached the lower Appellate Court, but remained unsuccessful as his appeal too was dismissed vide judgment and decree dated 20.09.2012.

Learned counsel for the appellant, relying upon judgments of a Co-ordinate Bench of this Court in **Muni Ram and others vs. Phullia and Lalu, 1974 PLJ 369** and **Sher Singh vs. Kewal Krishan, 1997(1) RCR (Civil) 199** contends that both the Courts below failed to appreciate that own witness of the respondent-defendant DW1-Prem Singh, Member Panchayat favoured the appellant-plaintiff, testifying that he was in possession of the suit property, since last 50 years. Both the Courts below committed error in not relying upon Jamabandi for the year 1959-60, Ex.P3 and Khasra Girdawaris Exs. P1 to P-4 showing long possession of the appellant-plaintiff over the suit land.

On the other hand, learned counsel for the respondent refuting the above submissions, pleaded the legality and validity of

impugned judgments and decrees.

Having given thoughtful consideration to the rival submissions, this Court finds the instant appeal merits dismissal for the reasons to follow.

The appellant-plaintiff, during trial examined PW2-Jai Parkash and PW3-Richpal, besides him as PW1. However, their statements before Court were contrary to each other and his pleading, inasmuch as, the appellant-plaintiff in his pleading claimed his possession over the suit land since last 60 years, admitting ownership of the respondent. Contrary to it, PW2-Jai Parkash asserted ownership of the appellant as well. The things did not rest here. PW3 Richhpal, own witness of appellant-plaintiff, altogether introduced a new case, testifying that the appellant-plaintiff was in possession of the suit land only for the last 32 years, asserting ownership of respondent-Gram Panchayat, contrary to the stand taken by appellant-plaintiff that he was in possession over the suit land, since last 60 years. Thus, the above contradictory oral evidence led by appellant-plaintiff has rightly been ignored by the both the Courts below.

As far as the revenue record produced by the appellant-plaintiff is concerned, the same also did not prove long possession of the appellant-plaintiff, inasmuch as, Jamabandi for the year 2003-04 (Ex.P4), records possession of the respondent-Gram Panchayat. That apart, it is pertinent to mention that appellant-plaintiff admitted his signature upon application (Ex.D1)

moved by him before the SDO (Civil), Sonapat to permit him to participate in the auction to lease out the suit property. His above conduct proves that entries recorded in the revenue record were stray entries.

The Co-ordinate Bench of this Court in **Puran vs. Gram Panchayat, Hasapur, Tehsil Palwal, 2003(1) RCR (Civil)**

92, in para held as under:-

8. From a perusal of the above, it would be clear that the rights of those persons, who are in cultivating possession of the Shamilat Deh for more than 12 years immediately preceeding the commencement of the Punjab Village Common Lands (Regulation) Act, without payment of rent, etc., shall not be affected by the provisions of Section 4(1) of the said Act, whereby all rights, title or interest in the land, which is included in Shamilat Deh of any Village, shall vest in a Panchayat. This would mean that only those persons who are found to be in cultivating possession of the Shamilat land 12 years prior to the commencement of the aforesaid Act, would be entitled to claim, under the general law i.e, under the Punjab Tenancy Act read with Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, that they had become the owners of the property being the occupancy tenants. However, those persons, who are not in possession of the property 12 years preceeding to the commencement of

the Punjab Village Common Lands (Regulation) Act, 1961, shall not be entitled to claim that they were occupancy tenants and they had acquired occupancy, rights. This is so because Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961, starts with the words 'notwithstanding anything to the contrary in any other law for the time being in force'. Thus, the provisions of Section 4 of this Act would have precedence over the provisions of Punjab Tenancy Act, 1887, Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953.

The above decision is fully applicable to the facts and circumstances of the instant case, whereas facts and circumstances of the citations relied upon by learned counsel for the appellant, being not identical to facts of the case, are liable to be ignored.

No question of law much less any substantial question of law has arisen in this appeal.

Dismissed.

September 19, 2019
anju

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No