

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

RSA-3817-2013(O&M)

Date of decision:-4.4.2019

Gram Panchayat, Fajalwas

...Appellant

Versus

Ram Narayan and others

...Respondents

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

Present: Mr.Sudhir Aggarwal, Advocate
for the appellant.

Mr.Gaurav Mohunta, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Sultan and 15 others, total 16 in number, had filed a suit against Gram Panchayat, Fajalwas, Tehsil and District Gurgaon (now Gurugram) seeking a declaration that plaintiffs No.1 to 9 are owners in possession to the extent of 1/2 share, whereas plaintiffs No.10 to 16 are owners in possession to the extent of 1/2 share in the agricultural land measuring 12 kanals 4 marlas situated at village Fajalwas, Tehsil & District Gurugram, on the averments that entries in column of ownership in the name of defendant are wrong and liable to be rectified in the names of the plaintiffs; that as a matter of fact the defendant has no right, title or interest in the suit

property; further the competent authority as per Punjab Village Common Land (Regulation) Act 1961 had already declared that the land in question is not shalmat-deh and does not vest in the defendant; that it was so done vide orders dated 25.6.1996 and 2.2.1993.

On notice the defendant appeared and filed a written statement raising various legal objections challenging the locus standi of the plaintiffs to bring the suit further contending that no cause of action arose to them to do so and the suit so filed was liable to be dismissed under Order 7 Rule 11 CPC; that the Civil Court lacks jurisdiction to entertain and try the suit; that the suit was not maintainable; that another suit titled as 'Ishwar Singh etc.Vs. Gram Panchayat, Fazalwas' was pending in the Court of Collector, Gurgaon regarding the same cause of action between the same parties; that the plaintiffs had not approached the Court with clean hands. On merits, the defendant denied the material assertions in the plaint while praying for dismissal of the suit.

The plaintiffs 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 plaintiffs are entitled to decree for declaration as prayed for? OPP.
2. Whether plaintiffs are entitled to decree for permanent injunction as prayed for? OPP.
3. Whether the plaintiffs have no locus standi to file the present suit?

OPD.

4. Whether the plaintiffs have no cause of action to file the present suit? OPD.

5. Whether this Court has no jurisdiction to file the present suit? OPD.

6. Whether the suit is false and frivolous? OPD.

7. Whether the plaintiffs have not come to the court with clean hands? OPD.

8. Relief.

Both the parties have led evidence in respect of their claims.

After hearing learned counsel for the parties, the trial Court decided issues No.1 and 2 against the plaintiffs, issues No.3 to 7 against the defendants. Resultantly, suit of the plaintiffs was dismissed. This was so done vide judgment and decree dated 7.1.2012.

Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Gurgaon which was assigned to Additional District Judge, Gurgaon, who vide judgment and decree dated 24.5.2013 accepted the appeal and suit of the plaintiffs was partly decreed to the effect that revenue entries in the name of plaintiffs are liable to be corrected showing them owners as co-sharers in possession i.e. plaintiffs No.1 to 9 to the extent of 1/2 share and plaintiffs No.10 to 16 to the extent of remaining half share in the suit property. Further the defendant was restrained from dispossessing the plaintiffs from the suit land or from alienating the same. However, the claim of the plaintiffs for declaration of ownership on the basis of adverse possession was rejected. The suit was partly decreed with costs.

Now it was the turn of the defendant Gram Panchayat to feel dissatisfied with the judgment and decree passed by Additional District Judge, Gurugram and it has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgment and decree passed by Additional District Judge, Gurugram be set aside.

On getting notice of regular second appeal, the respondents/plaintiffs have appeared before this Court through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the judgment recorded by the First Appellate Court of Additional District Judge, Gurugram is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law and there is no illegality or infirmity therein.

Learned Additional District Judge, Gurugram has correctly observed that the claim of the plaintiffs is not solely based upon the plea of adverse possession and the trial Court had wrongly dismissed the suit of the plaintiffs being influenced by the fact that they had taken plea of adverse possession as part of their claim. However, the documentary evidence in the form of order dated 28.6.1966 passed by Assistant Collector Ist Grade, Gurugram on an application under Section 7 of the Punjab village Common Land (Regulation) Act 1961 filed by Gram Panchahat village Fajalwas against predecessors-in-interest of the present plaintiffs asking for their ejectment on the ground that they were unauthorized occupants had been dismissed observing that they were in possession as co-sharers and the nature of the suit land was not shamlat

deh coming within the definition of Section 2(g)(viii), copy of that order is available on record as Ex.P1. Again when the dispute went to Assistant Collector Ist Grade, Gurugram on a petition having been filed by present plaintiffs/their predecessors-in-interest against Gram Panchayat village Fajalwas, the said Assistant Collector vide his order dated 2.2.1993, copy Ex.PZ had observed that Gram Panchayat had no right in the property. Those documents are of utmost importance and vital for proper adjudication of controversy between the parties. They cannot be brushed aside and plea of the plaintiffs that they have become owners by adverse possession cannot be picked up and interpreted in isolation. The documentary evidence is there to fortify their claim.

Learned counsel for the respondents/plaintiffs had referred to authority *Chiranjil Lal Versus Gram Panchayat of village Kojinda, 1996(3) RCR(Civil) 491* by a Co-ordinate Bench of this Court wherein while dealing with a case where the plaintiffs had sought exclusion of land from the purview of shamlat deh by way of filing a suit, which was decreed by Assistant Collector Ist Grade; though entries in the revenue record continue to show that the Gram Panchayat to be owner of the property, it was observed that a suit for declaration that plaintiffs are owners in possession of the land and are entitled to get their names duly recorded in the revenue record is maintainable under Section 45 of the Punjab Land Revenue Act. The facts of the present case are almost similar to the facts of the authority.

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 judgment passed by the Additional District Judge, Gurugram.

The appeal stands dismissed accordingly.

4.4.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No