

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

**RSA-3629-2015 (O&M)
Date of Decision: 06.02.2019**

Karnail Singh and another

...Appellants

Versus

Gram Panchayat Village Bihla through its Sarpanch and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Manish Kumar Singla, Advocate,
for the appellants.

Mr. Gaurav Sharma, Advocate,
for respondent No.1.

JAISHREE THAKUR, J.

1. Present appeal, at the instance of defendants No. 2 & 3, is directed against the concurrent findings recorded by both the learned Courts below thereby decreeing the suit of the plaintiff-Gram Panchayat, for permanent injunction.

2. Gram Panchayat plaintiff-respondent No.1 filed a suit for specific performance seeking permanent injunction and a relief was sought that the property is in the ownership of the Gram Panchayat and some forged entries were got entered by Kirpal Singh, father of the defendant in his favour in the revenue record and the defendants were sought to be

restrained from taking forcible possession from the plaintiff.

3. Briefly stated the case of the plaintiff-Gram Panchayat was that the Gram Panchayat is the owner of land measuring 14 Kanals-03 Marlas wherein on some portion of the land, eucalyptus trees were planted, some land was leased out by the Gram Panchayat to Gajjan Singh son of Amar Singh, resident of Bihla and the remaining some land was lying vacant. Father of the defendant, namely Kirpal Singh who had since died got mutation sanctioned in his favour and he got his name reflected in the ownership column of the Jamabandi in connivance with the revenue officials and when this fact came in the notice of the Gram Panchayat Bihla, injunction was got entered in the revenue department and qua this Rapat No. 141 dated 28.02.1994 was also got entered. It was also alleged by the plaintiff that various litigations were pending between the Gram Panchayat and the family members of the defendants regarding property and in the year 2005, the defendants also tried to take forcible possession and in that process injuries were caused to Mohinder Kaur, the then Sarpanch of the village. Thereafter, proceedings under Sections 145 & 146 Cr.P.C. were initiated by the SDM and the SHO, Police Station, Bhadaur was appointed as Receiver. The revision petition preferred against the said order was also dismissed. It was also submitted by the plaintiff that during the life time of Kirpal Singh, he used to contest the litigations with the Gram Panchayat and thereafter, the defendants wanted to take forcible possession of the property and they also tried to take possession of the property many times and regarding this dispute proceedings under Section 107/151 were initiated

against the defendants. There were some writings also executed by the defendants to the effect that they would not interfere in possession of the suit land. Thereafter, the DDPO, Sangrur also imposed fine of ₹ 9,00,000/- upon the defendants and order was also passed for possession of the property in dispute in favour of the Gram Panchayat and as per that order, possession was taken by the plaintiff Gram Panchayat and one FIR No. 105 dated 17.11.2005 under Section 447/34 IPC was also registered against the defendants when they tried to take forcible possession of the property from Gajjan Singh. The plaintiff further alleged that on 05.12.2009, the defendants again tried to take forcible possession of the property. The plaintiff-Gram Panchayat approached and requested the defendants to desist from their illegal acts but to no effect, hence the said suit was filed.

4. Upon notice defendants appeared and contested the suit by filing written statement in which they raised preliminary objections: that the plaintiff had got no locus standi and cause of action to file the suit; that the suit was not maintainable; that the plaintiff was estopped by its own act and conduct from filing the suit and that the suit had been filed by the plaintiff just to harass the defendants. On merits, the defendants denied that the plaintiff is owner of the property measuring 14 Kanals-03 Marlas, and plantation of eucalyptus trees was also denied. It was alleged that the plaintiff had no concern with the property nor it was having possession of the property in any manner. Ownership was claimed and on the basis of which mutation No. 6668 Ex. D1 was sanctioned. The defendants further alleged that Kirpal Singh, father of the defendants had died and he had

executed a registered Will dated 16.12.1999 in favour of the defendants. The defendants denied that Kirpal Singh had got his name entered in the ownership column fraudulently and regarding the injunction order, no specific denial had been made by the defendants. The defendants submitted that the plaintiff is not in possession of the suit property in any manner and denied the remaining averments of the plaint being incorrect, and the defendants prayed for dismissal of the suit with costs.

5. Replication was filed to the written statement of the defendants denying the averments made therein and reiterating those of the plaint as correct. From the pleadings of the parties, following issues were framed by the lower Court :-

- “1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?OPP*
- 2. Whether plaintiff has got no locus standi or cause of action to file present suit?OPD*
- 3. Whether suit is not maintainable in the present form?OPD*
- 4. Whether plaintiff is estopped by his act and conduct from filing the present suit?OPD*
- 5. Whether defendants are entitled for special costs?OPD*
- 6. Relief.”*

6. In order to substantiate their respective stands taken, both the parties led their documentary as well as oral evidence.

7. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court while decreeing the

suit held that ownership over the suit property of the defendants has not been proved whereas from the documentary evidence it was duly proved that Gram Panchayat is in possession of the suit property and the defendants have no right to interfere in the peaceful possession of the Gram Panchayat. Accordingly, suit was decreed with costs and defendants were permanently restrained from interfering in the peaceful possession of the plaintiff Gram Panchayat except in due course of law.

8. Feeling aggrieved, defendants filed first appeal which came to be dismissed while affirming the findings recorded by the learned trial Court on all the issues. During the pendency of the appeal an application was also filed by defendant-appellants under Order 41 Rule 27 read with Section 151 C.P.C. for additional evidence to produce copy of the order of Consolidation Officer dated 24.01.1994 vide which the land was allotted to Kirpal Singh in lieu of less land given to Kirpal Singh during consolidation proceedings and on the basis of which mutation No. 6668 Ex. D1 was sanctioned. However, the said application was also dismissed by the Addl. District Judge on the same day.

9. Learned counsel appearing on behalf of the appellants submits that the courts below have recorded the ownership and possession of the Gram Panchayat, qua the suit property. In fact, the land was allotted to the father of the present appellants by order dated 24.01.1994 by the Consolidation officer, Jalandhar in continuation of Consolidation proceedings. It is contended that only mutation was placed on the record since the order of the Consolidation officer was not readily available.

However, an application was filed during the pendency of proceedings before the Appellate Court to place on record the order of allotment as issued by the consolidation officer which came to be dismissed only on the ground that there was a delay in producing the same.

10. Per contra, learned counsel appearing on behalf of the respondent Gram Panchayat contested the suit on the ground that Ex D1, the mutation does not sanction title upon the appellants and once both the Courts below have come to the conclusion that the ownership vested with the Gram Panchayat, this court should not interfere on a concurrent finding of fact.

11. I have heard the counsel for the parties and have also perused the pleadings of the case.

12. The claim of the Gram Panchayat has been contested on the ground that the appellant herein are owners in possession of the suit property on the basis of a mutation that was sanctioned in favour of the predecessor-in-interest of the appellants, namely Kirpal Singh. It is contended that the land was allotted to Kirpal Singh by the Consolidation Officer, Jalandhar on 24.01.1994 on account of a shortage in allotment of land. The appellants herein have been non-suited on the ground that the mutation entry Ex. D1 as relied upon by the appellants does not confer any title upon the appellants. The appellants herein are claiming possession and ownership on the basis of an order of the Consolidation Officer dated 24.01.1994 which is a public document.

13. Without going into the merits of the appeal on all issues, the

first question that needs to be addressed is whether there is any illegality in the order dated 24.01.1994 of the Appellate Court dismissing the application filed under Order 41 Rule 27 C.P.C.?

14. The Appellate Court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment", but also for "any other substantial cause". The view expressed by the Hon'ble Supreme Court in *AIR 1963 S.C. 1526 K. Venkataramiah v. A. Veetharama Reddy and others* has been consistently followed by the Courts.

15. In the present case, an application under Order 41 Rule 27 C.P.C. was filed during the pendency of the appeal before the Appellate Court seeking permission to lead additional evidence in support of their claim that the suit land stood allotted to Kirpal Singh on the basis of an order of the Consolidation Officer. The mutation Ex. D1 also noted that the land was transferred on the basis of the order dated 24.01.1994 of the Consolidation Officer. In the opinion of the Court, this document as sought to be placed on the record is an important piece of evidence which would go to the very root of the case. The appellants should have been given one opportunity to exhibit the same, instead of dismissing the application on the ground of delay in producing the same. With the relevant documents on the record, the Court would have been able to do substantial justice between the parties and pronounce judgment accordingly.

16. Consequently, the appeal is allowed and the judgment and decree as passed by the First Appellate Court is set aside as also the orders

passed on the application filed under Order 41 Rule 27 C.P.C..

17. In view of aforesaid, this court deems it appropriate to remand this case back to the Court of District Judge, Barnala, who in turn would pass appropriate orders with regard to two options available to the Appellate Court in the context of remand on the basis of additional evidence i.e. either to record evidence itself or to summon report from the trial Court on the issue. This would also be in consonance with the judgment as rendered by Hon'ble the Supreme Court in *H.P. Vedavyasachar v. Shivashankara, (2009) 8 S.C.C.231* wherein it has been held that once an application has been filed for leading additional evidence, the Appellate Court has two options before it- one to lead evidence itself and the other to direct the trial court to do so. Needless to say, the documents as sought to be relied upon would have to be proved in accordance with law. The first appeal to be decided thereafter.

18. Accordingly, the matter is remanded back. Both the parties are directed to appear before the Court of District Judge, Barnala on 15.03.2019, who will decide the matter expeditiously, preferably within a period of six months from the date of receipt of certified copy of this order. Registry is also directed to return the record which has been summoned.

06.02.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.