

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

RSA-1784-2014(O&M)

Date of decision:-16.5.2019

Surjit Singh and another

...Appellants

Versus

Karma and others

...Respondents

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

Present: Mr.Vikram Anand, Advocate
for the appellants.

Mr.Jagjit Singh, Advocate
for respondents No.1 to 4 and 6 to 8.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Sh.Surjit Singh and Amrik Singh both sons of Sh.Bhagwan Singh, residents of village Nadali, Tehsil Bholath, District Kapurthala had brought a suit against Karma, Nand, Pheero, Mohinder, Faqir, Sammi, Boota and Sheru, residents of their village seeking grant of permanent injunction restraining the defendants or persons claiming under them from forcibly and illegally interfering in their possession over the suit land or dispossessing them therefrom.

As per the case of the plaintiffs, they are in peaceful, continuous, legal and uninterrupted possession over the suit land detailed in Part A of the head note of the plaint, whereas land detailed in Part B of the head note was previously owned by various persons, who had surrendered their possession in favour of the plaintiffs vide separate written agreements and since the date of the agreements, the plaintiffs are in actual and physical possession over the land detailed in Part B of the head-note of the plaint; although the khasra numbers have not been mentioned in the agreements inadvertently but sides of each and every khasra number have been duly depicted in the agreements. According to the plaintiffs, they have sown wheat crop and fodder crop in the suit land; that the defendants have no concern with such land but they threatened to interfere in the possession of the plaintiffs illegally and forcibly, giving rise to a cause of action to the plaintiffs to file the suit.

On notice, the defendants had appeared and filed written statement contesting the suit raising preliminary objections that the suit was not maintainable in the present form; that the plaintiffs had got no cause of action to file the present suit and they had not approached the court with clean hands; that the entries showing the possession of the plaintiffs were illegal, null and void; that the plaintiffs were estopped by their act and conduct from filing the present suit, and the suit was bad for non-joinder of Gram Panchayat of the village as necessary party. It was further pleaded that the suit land was 'Gair Mumkin Pits' meant for securing manure and owned and possessed by the members of the Balmiki Community of the village including the defendants; that the Gram

Panchayat of the village had allotted those to the members of the Balmiki Community, including the defendants; that the plaintiffs have no connection with it and they were not in its possession as alleged; that as per the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, a non- Scheduled Caste person cannot come in possession of the land belonging to a Scheduled Caste person; that the plaintiffs belong to Jatt community, whereas the defendants are Balmikies by caste. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

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

1. Whether the plaintiffs are in due possession over the suit property?OPP
2. Whether the plaintiffs are entitled for the relief of Permanent Injunction, they have prayed for?OPP
3. Whether the suit is not maintainable in the present form?OPD
4. Whether the plaintiffs have not approached the court with clean hands?OPD
5. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit?OPD
6. Whether the suit is bad for non joinder of necessary party Gram Panchayat of the village?OPD
7. Relief.

In order to prove their case, the plaintiff No.1 Surjit Singh had got his statement recorded as PW1 and the plaintiff further examined Sh.Sai Dass as PW2 and Sh.Nirmal Singh as PW3.

On the other hand, the defendant No.1 Karma got his statement recorded as DW1 and the defendants further examined Sh.Sat

Paul as DW2, Sh.Sucha Singh as DW3 and Sh.Faqir as DW4.

After hearing learned counsel for the parties, the trial Court dismissed the suit of the plaintiffs with costs. This was so done vide judgment and decree dated 13.2.2012.

Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal and defendants had filed cross-objections in the said appeal in the Court of District Judge, Kapurthala, which was assigned to Additional District Judge, Kapurthala, who vide judgment and decree dated 20.1.2014 dismissed the appeal as well as cross-objections.

Dissatisfied with the judgments and decrees passed by the Courts below, the plaintiffs have knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by them be decreed.

Notice of the appeal was issued to the respondents and respondents No.1 to 4 and 6 to 8 have appeared through counsel.

I have heard learned counsel for the parties besides going through the records and I do not find any merit in the appeal.

Learned trial Court in the judgment passed by it has given the reasoning for arriving at the conclusion, which is contained in para No.16 to 22. For ready reference these paras are being reproduced as under:

16. The plaintiffs have pleaded them to be in peaceful, continuous, legal and uninterrupted possession over the suit land mentioned in part A of the head note of the plaint. The plaintiffs

have produced and proved the copy of the Jamabandi of the said land of the year 2003-04 Ex.P1. It records the Nagar Panchayat as owner of the same. In the column 9 it has not been mentioned as to what rent/use and occupation charges the plaintiffs are paying to the Nagar Panchayat for occupying a public property as their entry in the column of possession is as Gair Marusi i.e. tenant at will. The possession over such like lands to be legal one is required to be pleaded and proved with respect to the nature of the said possession, the date on which it commenced and how it is legal. In the case in hand the plaintiffs have neither pleaded any word nor have led any evidence to prove as to on which date they have come in possession over the said land and through which mode and as to how their possession over a public land without paying any rent/Chokata/use and occupation charges to the public authority, the true owner of the land, is legal. The plaintiffs have further not impleaded the Nagar Panchayat, true owner of the said land, as party in the present suit, so as to assist the court with respect to the nature and status of the possession of the plaintiffs over the said land. Therefore, they have miserably failed to prove their possession to be a legal and valid possession. That means they are in unauthorized possession over public land. The civil courts are duty bound to protect the public lands from illegal and unauthorized encroachments like the case in hand. Therefore, the plaintiffs do not have any right to seek injunction from the court to protect their unauthorized and illegal possession over the public

land.

17. Thereafter comes the land detailed in part B of the head note of the plaint. The case of the plaintiffs is that they have obtained the possession of the said land from the persons through writing/Agreements. The plaintiffs have produced and proved the said writing/Agreements as Ex.P2 to Ex.P14, as detailed above. The plaintiffs have not pleaded the said Agreements in their plaint by mentioning their dates and as per which agreements which party has surrendered the possession in favour of which plaintiff. In the absence of the pleadings the proof cannot be led.

18. Apart from that the suit land mentioned in part B of the head note of the plaint bears the Khasra Numbers which have not been mentioned in the said agreements.

19. Apart from that the said land is an immovable property of the value of more than Rs.100/-. After receiving the entire consideration all the rights including the possession is stated to be delivered under the said writing/agreements. Such like arrangements cannot be effected otherwise than through a registered document as per Section 17 of the Registration Act, 1908. As per Section 49 of the said Act in the absence of a document requiring compulsory registration, it does not affect the immovable property comprised therein. Therefore, the plaintiffs have derived no interest in the said property on the basis of the said writings/Agreements.

20. Apart from that neither the plaintiffs nor the

defendants have produced and proved on record a record of rights contained in the Jamabandi register pertaining to the land in Part B of the head note of the plaint. The plaintiffs have sought an equitable discretionary relief from the court. Such a relief is available to a party who approaches the court with clean hands without concealing material facts from the court. If a person seeks equity from the court he must come to the court with clean hands. In the case in hand by concealing the record of rights with respect to the said land the plaintiffs have concealed the material facts and are not entitled for the relief of injunction from the Court.

21. *On the other hand the defendants have taken a plea that the Gram Panchayat has allotted the said land to them. The Gran Panchayat cannot allot the land orally. The defendants have led no evidence to prove the same. They have also withheld the record of rights with respect to the said land. Therefore, from the evidence led on record it appear that the defendants have also not derived any right, title and interest in the same.*

22. *In these facts and circumstances in the light of said discussion and observations, this court is of an opinion that the plaintiffs are not in lawful possession of the suit land. They are not entitled to the relief of permanent injunction they have prayed for. Accordingly both these issues are decided against the plaintiffs and certainly not in favour of the defendants with the liberty to the Gram Panchayat to avail due course of law in exercising its right over the suit land.*

The First Appellate Court agreed with the findings recorded by the trial Court observing that in the revenue record property in dispute is Gair Mumkin ruri, meaning thereby, it is used for the purpose of storing the manure, whereas as per the plaintiffs/appellants they are cultivating such property having sown crops there and such stand of the plaintiffs/appellants is contradictory to the revenue record; that in terms of the revenue record, the property in dispute is the ownership of Gram Panchayat as mentioned in jamabandis Ex.P1 and Ex.P16 and respondents are not shown to be owners of that property; furthermore no evidence is there that this property was ever allotted to respondents being members of Balmik Community of the village; that the appellants are claiming their possession over the property in dispute, which had allegedly been delivered to them by the respondents but the respondents never came into possession over the property in dispute as no document was there on the file, therefore the respondents were not competent to deliver any possession to the appellants and even it is presumed that the land was ever allotted to the respondents, they were not competent to transfer the possession of the property since that could only be inherited through natural succession; that the Gram Panchayat was not made a party in the suit. The First Appellate Court has further observed that the plaintiffs were out to usurp the public property in connivance with the village Gram Panchayat. It has further been noticed that the agreements Ex.P2 to Ex.P14 are unregistered documents and cannot be taken into consideration. I find that the judgment recorded by the courts below are

detailed and well reasoned based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for interference by this Court while hearing second appeal.

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 passed by the Courts below.

The appeal stands dismissed accordingly.

16.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No