

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

**\* \* \* \* \***

**RSA No. 2477 of 2018**

Date of decision : 18-09-2019

**\* \* \* \* \***

Ajab Singh and others

.....Appellants

Versus

Gram Panchayat

.....Respondents

**\* \* \* \* \***

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

**\* \* \* \* \***

Present: Mr. S.K.S Bedi, Advocate for the appellant.

Mr. Som Nath Saini, Advocate for the respondent.

**\* \* \* \* \***

**RITU BAHRI, J.**

Present regular second appeal has been filed by the appellants-plaintiffs (hereinafter referred to as 'the plaintiffs') against the judgment dated 23.3.2018 passed by the Additional District Judge, Panipat whereby the appeal against the judgment and decree dated 30.1.2018 passed by the Civil Judge (Sr. Divn.), Panipat has been dismissed. Vide the trial Court judgment dated 30.1.2018, suit filed by the plaintiffs for permanent injunction restraining the defendants from interfering in the possession of the plaintiffs and also from alienating, dispossessing, leasing out or creating

any type of charge, in any manner, whatsoever on the suit property situated at Village Assan Kalan, Tehsil and District Panipat, has been dismissed.

Briefly stated, the facts of the case are that the predecessors-in-interest of the plaintiffs are residents of Village Assan Kalan and belonged to Pana Madho Thola Baddi. They were proprietors and Biswedars of Village Assan Kalan and were having share in *shamlat deh, gora deh, abadi deh and jumla mustarka malkan and digar Hakdaran Hasab Rasad Khewat*. The total shamlat land of Village Assan Kalan is 9244 Bigha 7 Biswas and by virtue of mutation no. 486 dated 26.05.1983 the shamlat land was mutated in favour of three Panas. This mutation was incorporated in the subsequent jamabandies and this land was never used for the benefit of village community and for common purposes and the proprietors were dealing with same by selling it, exchanging it etc. Even the mutation of inheritance were entered in favour of their legal heirs. It has been further averred that the land was mutated in the name of Gram Panchayat vide mutation no.1148 on the basis of letter No. 4345 dated 28.6.1954 issued by the Government. The defendants tried to dispossess them from the suit property. Hence the present suit.

Upon notice, defendants appeared and filed the written statement and submitted that in compliance of order passed by this Court in CWP No.8272/2003 titled as Pala Ram and others vs. State of Haryana and others decided on 1.11.2012, the defendants in the presence of SDO (Civil), Panipat and the police force took over the possession of the suit land from the plaintiffs. The videography of this process of taking over the possession also carried out by the authorities and entry in the Rapat Roznamcha register at Sr. No.400 has been made in this regard in the register. Thereafter, after

passing a resolution on 23.7.2013, most of the land had been leased out.

The trial Court framed the following issues on 28.4.2015

- 1. Whether the plaintiffs are entitled to permanent injunction restraining the defendant from dispossessing the plaintiffs from the suit property forcibly, illegally and except in due course of law? OPP*
- 2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD*
- 3. Whether the plaintiffs have no locus standi or cause of action to file the present suit? OPD*

Both the Courts held that mutation no. 1184 which was sanctioned on the basis of letter no. 4345 dated 28.6.1954 was challenged by the plaintiff in CWP No.8272 of 2003 titled, '***Pala Ram and others vs. State of Haryana and others***' and the Division Bench of this Court had dismissed their writ petition and upheld the mutation no. 1184 resultantly upholding the ownership of Gram Panchayat in respect of the suit land. In compliance of the order passed in this writ petition, by this Court, Gram Panchayat had taken the possession of the suit property. The plaintiffs' suit for permanent injunction was dismissed by both the Courts and it was further held that under Section 13 of the Punjab Village Common Land (Regulation) Act, 1961, the jurisdiction of the Civil Court is barred to entertain or adjudicate upon any question relating to whether land or other immovable property is shamlat deh or not. Reference has been made to decision made by this Court in *Jai Singh vs. State of Haryana* (2003) 134

PLR 158. In this case Government notification of 1992, whereby the lands so contributed and recorded in revenue record as “Jumla Malkan We Digar Haqdarani Arazi Hassab Rasad” were mutated in favour of the Gram Panchayat, was quashed. It was further clarified that despite quashing of the Government notification of 1992, the land contributed by a proprietor on pro rata basis would not automatically vest in such proprietor and the concerned proprietor has to rather file a suit before the Collector under Section 13 of the Act for declaring him as owner of the land which he had earlier contributed for common use.

In the present case, appellants are seeking suit for permanent injunction only on the basis that they are in the cultivating possession of the land. Counsel for the plaintiffs has referred to a judgment passed by this Court in ***RSA No.5827 of 2016, titled, 'Sandeep and others Vs. State of Haryana and others'*** decided on ***17.4.2018***. In this case, a suit filed by the plaintiffs for permanent injunction restraining the defendants from interfering in the possession of the plaintiffs has been dismissed. While deciding the regular second appeal reference has been made by this Court to the judgment in the case of ***Pankajakshi (dead) through Lrs and others vs. Chandrika and others AIR 2016 SC 1213***. The judgments and decrees of both the Courts were modified to the extent that suit was decreed by granting permanent injunction against Gram Panchayat, agent and servants etc. from forcible dispossession and interference except in due course of law.

The aforementioned judgment cannot be made applicable on the facts of the present case. In the present case mutation no.1148 on the basis of letter No. 4345 dated 28.6.1954 has been sanctioned in favour of

the Gram Panchayat in respect of ownership. The plaintiffs in their suit for permanent injunction and restraining the defendants from interfering in the possession have challenged mutation no.1148 on the basis of letter no.4345 dated 28.6.1954 by which land had been mutated in favour of Gram Panchayat. Pursuant to the judgment passed by this Court in writ petition No. 8272 of 2003 titled as 'Pala Ram vs. State of Haryana', the defendant in the presence of SDO (Civil), Panipat and the police force took over the possession of the suit land from the plaintiffs. After passing a resolution dated 23.7.2013, most of the land had been leased out by Gram Panchayat. In this backdrop, the suit of the plaintiffs has been rightly dismissed. However, liberty has already been granted to the plaintiffs to file a suit before the Collector under the Punjab Village Common Land (Regulation) Act, 1961.

In view of all that has been discussed above, present regular second appeal is dismissed.

18-09-2019  
*ritu*

( RITU BAHRI )  
JUDGE

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether reportable        | No  |