

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

**RSA No.5751 of 2017 (O&M)
Date of Decision.01.03.2019**

Baldev Singh and others

...Appellants

Vs

Gram Panchayat and others

.Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Divya, Advocate for
Mr. Navjot Singh, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.15213-C of 2017

For the reasons stated in the application, delay of 1 day
in filing of the appeal is condoned.

Application is allowed.

C.M. No.15214-C of 2017

For the reasons stated in the application, delay of 29 days
in re-filing of the appeal is condoned.

Application is allowed.

RSA No.5751 of 2017

Costs of Rs.6,000/- in pursuance of order dated
19.11.2018 has been deposited vide receipt dated 01.03.2019.

The present appeal has been preferred at the instance of
the appellants-defendants against the concurrent finding of fact
whereby the suit of the respondent-plaintiff/Gram Panchayat has been
decreed.

The respondent-plaintiff/Gram Panchayat sought injunction against the appellants-defendants in respect of land measuring 1299 kanals 7 marlas (about 162 acres) bearing following khata and khasra numbers situated in village Malikpur, Tehsil and District Nawanshahr:-

“Khata No.179/250, 255, 257, 258, 259, 260, 261, 262, 263,264, 265, 266, 270, 271, 276, 277, 289, 290, 291, 292, 293, 294 and khasra nos.33//2, 49//14, 15, 16, 35//1, 2, 3, 4, 5, 6, 48//1, 2, 3, 4, 5, 35//10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 36//11, 20, 46//2/1, 3/1, 4/1, 5/1, 35//21, 22, 23, 24, 25, 36//21, 37//2, 3, 4, 5, 6, 7, 8, 9, 37//12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 46//1/1, 13, 47//1, 36//2, 3, 8, 9, 12, 13, 19, 22, 23, 47//4, 47//5/1, 36//16, 25, 37//1, 10, 11, 36//4, 7, 46//10/2, 11, 47//6/2, 7/1, 7/3, 8/1, 8/3, 9/1, 9/3, 47//12, 13, 14, 15, 36//5, 6, 15, 36//14, 17, 24, 47//10/3, 11, 48//6/3, 7/3, 8/3, 9/3, 10/3, 11, 12, 13, 14, 15, 16, 17, 18, 19, 47//20, 21, 48//22, 23, 24, 25, 33//3, 4, 5, 6, 7, 8, 33//9, 12, 13, 14, 15, 16, 17, 18, 19, 23, 24, 25, 50//4/1, 5/1, 34//1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 19, 20, 34//5, 6, 7, 8, 15, 16, 17, 18, 25, 34//21, 22, 23, 24, 49//1/1, 2/1, 3/1, 4/1, 5, 35//7, 8, 9, 36//1, 10

being owner in possession. Prior to 1993, Village Malikpur and village Janian were having common Gram Panchayat but thereafter, villages were notified as independent Panchayats. The Gram Panchayat of village Malikpur has 667 acres of land under

cultivation and rest of the property uncultivated being river bed. Gram Panchayat had been leasing out the property in question in open auction on yearly basis and the lease money is utilized for the welfare of the village. In fact, the property in question was divided into different plots for the convenience of the auction. Even for irrigation, tubewell, is installed. Parkash son of Gobind, Sohan Singh, Devinder Singh, Balbir Singh and Bhajan Singh sons of Ram Singh etc. etc. as referred to in the plaint, in the year 2001 submitted an application under Section 4(3) of the Punjab Village Common Lands Act before the District Development and Panchayat Officer-cum-Collector, Nawanshahr (hereinafter referred to as DDPO). The jurisdiction of the DDPO was assailed in this Court vide CWP No.7726 of 2001 but was dismissed, as it was, without resolution. Review petition was also dismissed on 22.02.2002 but it was mentioned that if any fresh evidence is produced, it can always be examined on merits. DDPO allowed the application and an appeal was filed before the Commissioner Panchayat Lands. However, the Commissioner remanded the matter for fresh decision. An appeal was preferred before the Joint Development Commissioner, which was dismissed on 23.10.2003. Parkash filed civil suit against the Gram Panchayat bearing No.604/05, which as per the provisions under Order 9 Rule 8 CPC was dismissed on 6.12.2005. A complaint was submitted to the Deputy Commissioner, which was marked and the then SDM, Nawanshahr was appointed as Enquiry Officer and as per his report dated 29.01.2002 it was held that applicants were not residents of the village nor remained in possession. Since they were causing

interference into peaceful possession of the Gram Panchayat, suit aforementioned was filed.

Defendants opposed the suit and raised objection qua maintainability as it was in violation and disobedience of judgment/order dated 28.05.2001 of this Court passed in CWP No.7726 of 2001, therefore, liable to be stayed as per the provisions of Section 11 of CPC. The order dated 05.04.2001 of DDPO was upheld upto this Court and on the basis of order dated 05.04.2001, mutation No.1251 dated 03.03.2008 Ex.D3 was sanctioned in favour of defendants. Appeals filed against the same vide orders dated Ex.D4 and D5 were also dismissed. Another writ petition bearing No.19282 of 2003 is pending and there is interim stay.

Gram Panchayat examined five witnesses and brought on record various documents Ex.P1 to P185. Defendants examined one witnesses and tendered documents Ex.D1 to D5.

Learned counsel appearing on behalf of the appellants submitted that judgments and decrees of the Courts below are not sustainable once mutation proceedings has attained finality, Gram Panchayat could not seek injunction. The receipts of resolutions placed on record are neither here nor there. Defendants had been in possession of the suit property. In support of the memorandum of appeal raised following submissions:-

- (i) Gram Panchayat failed to place on record any material with regard to the leasing out of the land. In fact, jamabandi Ex.P8 and transaction of the same as Ex.P-8/A and P-9/A revealed that Gurbaz Singh son of Sardara

Singh was owner of 1/3rd share in the land measuring 143 bighas 19 biswas pukhta. In the absence of reference to the same, there is abdication.

(ii) The evidence of defendant No.2 has erroneously been rejected without assigning any reasons. Once there is already injunction granted by this Court, injunction suit was liable to be dismissed and at least ought to have been till adjudication of the writ petition, which stands admitted.

(iii) Mutation proceedings had already attained finality. The authenticity of the documents have not been proved in accordance with law.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit. No doubt this Court in writ petition bearing No.19282 of 2003 had granted stay but the same was vacated vide order dated 31.03.2009. It is matter of record that DDPO also faced departmental proceedings and FIR bearing No.46 of 2004, on conferring ownership upon defendants on the basis of alleged long and settled possession of more than 12 years, without any documentary evidence was registered. On examination of enquiry officer, it revealed that defendants were not residents of the village. This fact was admitted by DW1 Bladev Singh. If at all, defendant were in possession, nothing prevented them to place on record khasra girdawaries except orders in revenue record to establish the possession for the purpose of denying the claim of the Gram Panchayat and the injunction granted

was unconscious.

In such circumstances, the concurrent finding of fact cannot be said to be suffering from illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 01, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No