

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

RSA No.10 of 2019 (O&M)
Date of decision : 08.01.2019

Charan Singh and others

...Appellants

Versus

Ajaib Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.S. Bhandohal, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for permanent injunction filed by the plaintiffs restraining the defendants from interfering in their possession.

The defendants claimed that the property in dispute is part of Khasra No.79 which has been reserved for pond and Khasra No.90 which has been reserved for animals/cattles.

Learned trial Court appointed a Senior Revenue Official as Local Commissioner who demarcated the area and found that the village's pond is situated in Khasra No.79 and there is no encroachment. He also demarcated Khasra No.90 and it was found complete.

Keeping in view the aforesaid facts, both the Courts have restrained the defendants from interfering in the possession of the plaintiffs

except in due course of law.

This Court has heard learned counsel for the appellants at length.

Learned counsel for the appellants submitted that the Local Commissioner who demarcated the area, did not report about the fact that whether the property in dispute is part of Khasra No.90 or not. He submitted that in absence of any evidence to that effect, the suit could not be decreed.

This Court has considered the submissions, however, does not find substance therein.

Undisputedly, land comprised in Khasra No.79 is a village's pond whereas land comprised in Khasra No.90 is within the red line (*lal lakeer*)-abadi deh. Kanungo i.e. Local Commissioner who went on the spot, demarcated the area and found no encroachment. In any case, if someone is in unauthorized occupation of the land reserved for common purpose which vests with the Gram Panchayat, the remedy is to file a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred as "the Act of 1961"), as applicable to the State of Punjab. The defendants, if aggrieved of unauthorized encroachment of the common land have an effective remedy of approaching the competent authority under Section 7 of the Act of 1961, referred to above.

Learned counsel for the appellants further submits that the Panchayat is colluding with the respondents and, therefore, they are not entitled to file a petition.

On careful perusal of Section 7 of the Act of 1961, it is apparent that not only the Panchayat but an Officer duly authorized by the

State Government by general or special order can also file the petition. The defendants-appellants would be at liberty to make a request to the State Government for appointing an Officer for initiating the proceedings under Section 7 of the Act of 1961.

In absence of any unimpeachable evidence to prove that the property in possession of the plaintiffs is a public property and not part of their residential houses, the Courts have correctly granted the decree for injunction to the limited extent. Such decree does not debar the defendants to have recourse under the law for seeking possession of the property after proving that the property is a public property and vests with the Gram Panchayat.

Needless to say that any observations made by this Court while deciding the appeal would not affect the decision of the competent authority under the Act of 1961.

In view of what has been observed above, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

08.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No