

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2407 of 2017 (O&M)

Date of Decision: 01.12.2022

Karam Singh and Others

... Petitioner(s)

Versus

Gram Panahayat, Village Aterna and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Arihant Jain, Advocate
for the petitioner(s).

Mr. Jaspal Singh Pannu, Assistant Advocate General,
Haryana, for the respondent No.2 and 3.

Anil Kshetarpal, J.

1. The petitioners before this Court are the plaintiffs in a suit for grant of decree of declaration that they have become owners of the property as per the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter referred to as “the 1952 Act”). During the pendency of the suit, their application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) for grant of temporary injunction has been dismissed by the trial Court vide impugned order dated 13.12.2016 which has subsequently been affirmed in the appeal by the Additional District Judge vide impugned order dated 31.01.2017. It has come on record that one of the plaintiffs has already been ordered to be ejected by the Assistant Collector Ist Grade in a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act,

1961 (hereinafter referred to as “the 1961 Act”). It has also come on record

that the Gram Panchayat is recorded as the owner of the suit property. Moreover, the plaintiffs have not been found in the possession of the property.

2. The present revision petition has been filed challenging the correctness of the orders passed by the Courts below while dismissing their application under Order XXXIX Rule 1 & 2 CPC.

3. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

4. The learned counsel representing the petitioners contends that as per the entry in the jamabandi, the plaintiffs continue to be in the possession of the property. He further contends that the First Appellate Court has wrongly observed that a civil suit is not maintainable for the grant of decree of declaration, with regard to ownership of the suit property, in terms of the 1952 Act.

5. This Court has considered the submissions. Before granting temporary injunction, the plaintiffs are required to satisfy the following three parameters:-

- i) The plaintiffs should establish a *prima facie* case in their favour.
- ii) The balance of convenience should lie in favour of the plaintiffs.
- iii) The plaintiffs would suffer an irreparable loss and injury if the injunction is not granted to them

6. If we test this case on the aforesaid three parameters, it is evident that the plaintiffs have neither established any *prima facie* case nor the balance of convenience lies in their favour. In the revenue record, the

property is recorded as *shamlat deh*. The Court of Collector, having competent jurisdiction, has already passed an order of ejectment against one of the plaintiffs. A civil suit to challenge the said order is not maintainable in view of Section 13 of the 1961 Act, as applicable to the State of Haryana, which is extracted as under:-

“13. Bar of Jurisdiction.--No civil court shall have jurisdiction----

(a) to entertain or adjudicate upon any question whether----

(I) any land or other immovable property is or is not shamlat deh;

(ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under this Act;

(b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or

(c) to question the legality of any action taken or matter decided by any revenue court, officer or authority empowered to do so under this Act.”

7. Moreover, an entry in the revenue record only carries a presumption of correctness, which is rebuttable in nature. In this case, the trial Court, after appreciating the material available on the record, has found that the plaintiffs are not proved to be *prima facie* in possession of the suit property.

8. In any case, the plaintiffs have filed a suit claiming ownership under the provisions of the 1952 Act which can be decided even if they are not granted an injunction.

9. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned orders. Hence, the present revision petition is dismissed.

10. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

December 01, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No