

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

RSA-578-2021(O&M)

Date of decision:-2.12.2022

Harpal Singh

...Appellant

Versus

Gram Panchayat, Dulheri

...Respondent

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

Present: Mr.Sushil Bhardwaj, Advocate
for the appellant.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Harpal Singh had filed a civil suit against Gram Panchayat village Dulheri, Tehsil Tosham, District Bhiwani through its Sarpanch, seeking a declaration that he is owner in possession of plot marked with letters ABCDEF, which is part of Khewat No.227, Khatoni No.376, Khasra No.315(2-0), 316(1-0) total measuring 3 kanals situated at village Dulheri and the entries shown in the revenue record in the name of defendant Gram Panchayat are wrong, which are liable to be corrected. He further sought relief of permanent injunction restraining the defendant from taking illegal possession of the plot from him or obstructing the plaintiff from using the plot or dismantling the shed and wall already constructed there by the plaintiff.

2. As per the version of the plaintiff, the plot in dispute had been allotted to his predecessor-in-interest by defendant Gram Panchayat

many years ago and the plaintiff has been possession of the plot as owner where he has constructed a shed, installed a tubewell and is using it for storing wood; the defendant has no concern therewith; the members of the Gram Panchayat had executed a writing regarding giving of possession to forefathers of the plaintiff, however entries in the revenue record in the name of Gram Panchayat continued, taking advantage of which the defendant threatened to dispossess the plaintiff from the plot in suit, giving rise to a cause of action to the plaintiff to bring the suit in question.

3. On notice, the defendant appeared and filed written statement taking various legal objections, to wit that the suit was not maintainable; the plaintiff had no locus standi to file the present suit; no cause of action arose to the plaintiff to file the suit. On merits, the defendant- Gram Panchayat claimed itself to be owner in possession of the plot in dispute alleging that the plaintiff has no concern therewith and it was never allotted to forefathers of the plaintiff; a notice has also been issued to the plaintiff for removal of the encroachment; the plaintiff had filed the suit only to harass the defendant. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

4. Replication was not filed. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to the relief for declaration, as prayed for? OPP.
2. If issue No.1 is proved whether plaintiff is entitled to relief of permanent injunction, as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in the present

form?OPD

4. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD

5. Whether the plaintiff is estopped from his own act and conduct from filing the present suit? OPD

6. Whether the suit of the plaintiff is bad for non filing of notice under Haryana Panchayat Raj Act? OPD

7. Relief.

5. During the trial of the suit, the defendant absented from the Court and was proceeded against ex-parte. The case was fixed for evidence of the plaintiff.

6. During the course of his evidence, plaintiff got his on statement recorded as PW1 and in his affidavit Ex.PW1A, he repeated on oath his case as given in the plaint. He further examined Sh.Kartar as PW2, Sh.Tejpai, Lamberdar as PW3, who supported the version of the plaintiff. Another witness examined by the plaintiff was PW4 Sh.Amir Chand Taneja, who proved site plan as Ex.P1.

7. After hearing arguments, the trial Court gave issue-wise findings deciding issues No.1 and 2 against the plaintiff and in favour of defendant, issues No.3 to 6 were decided against the defendant being not pressed. As a result of findings on issues, the suit of the plaintiff was dismissed with costs. This was so done vide judgment and decree dated 2.1.2018.

8. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Bhiwani, which

was assigned to Additional District Judge, Bhiwani, who vide judgment and decree dated 7.1.2020 dismissed the same upholding the judgment and decree passed by the trial Court.

9. Still feeling dissatisfied, the plaintiff has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and his suit be decreed.

10. I have heard learned counsel for the appellant besides going through the record.

11. Both the Courts below by giving proper reasoning and keeping in view the settled legal position have come to the conclusion that the plaintiff is not entitled to be declared as owner in possession of the plot in suit and he is not entitled to a decree for permanent injunction as prayed for. It has been noticed that though according to the plaintiff the plot in suit had been transferred to his forefathers by defendant Gram Panchayat, however no specific document in that regard has been pleaded or proved. As per law, the transfer of immovable property of the value of Rs.100/- or more can be done only by way of registered document. No such document much less registered one has been proved in evidence by the plaintiff. The plaintiff has not proved in evidence any revenue record showing him owner in possession of the plot in suit. As a matter of fact, the Gram Panchayat is shown to be owner in possession of the suit land. Therefore, the plaintiff had no right to seek any declaration or permanent injunction more particularly when the plaintiff has failed to prove on record that on which date any force was used by the defendant against the

plaintiff. The defendant Gram Panchayat being true owner of the plot in suit, the plaintiff having no right or title in the plot in suit is not entitled to get injunction against defendant Gram Panchayat, Dulheri.

12. The findings given by both the Courts below are based upon proper appreciation and correct interpretation of law. Both the Courts had rejected the claim of the plaintiff. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees.

13. No substantial question of law or fact arises in this appeal.

14. 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 and decrees passed by the Courts below.

15. The appeal stands dismissed with costs accordingly.

2.12.2022

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No