

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

RSA-704-2020(O&M)

Date of decision:-6.2.2023

Braham Prakash and others

...Appellants

Versus

Jagdish and others

...Respondents

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

Present: Mr.S.K. Tripathi, Advocate
for the appellants.

Mr.Madhur Panwar, Advocate for
Mr.Aman Pal, Advocate
for respondents No.1 to 4.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Jagdish and three others, in representative capacity in terms of Order 1 Rule 8 CPC had brought a suit against defendants Braham Parkash and three others impleading Gram Panchayat village Jhal, Tehsil Kosli, District Rewari and Block development & Panchayat Officer, Block Nahar, Tehsil Kosli, District Rewari as proforma defendants. *Inter alia* in the suit, they had sought relief of permanent and mandatory injunctions.

2. As per the version of the plaintiffs, defendant No.5 Gram Panchayat is owner of Gair Mumkin plot bearing khewat No.745, Khatoni

No.748, Khasra No.149(5-6) situated at village Jhal, which has nature of *shamlat deh* and all inhabitants of the village including the plaintiffs have got right in the same; the predecessors in interest of contesting defendants, namely, Sh.Mohar Singh and Sh.Rampal were in possession of the suit property as Gair Morusi using it as Gatwar for storing cow-dung cakes, fuel wood etc.; Sh.Mohar Singh and Sh.Rampal had died about 28-29 years back, thereafter the suit property remained vacant and none of their legal heirs ever used it, however, defendants No.1 to 4, Braham Parkash, Parveen, Dhanpat and Ashok being strong headed persons wanted to take forcible possession of this property taking advantage of the fact that Gram Panchayat was dissolved at the time when suit was filed and all the powers had devolved upon BDPO, who was busy in Panchayat elections to be held on 17.1.2016; such defendants No.1 to 4 took advantage of the situation and stored building material in that property on 9.1.2016; thereafter they started digging foundation with JCB Machine, not listening to the requests of plaintiffs and other inhabitants of the village to desist from doing so and taking advantage of second Saturday and Sunday on 9/10.1.2016, defendants enclosed the suit property with a boundary wall, to which they had no right because nature of the suit property could not be changed without consent of village Gram Panchayat. Feeling aggrieved the plaintiffs had brought a suit in question.

3. On notice, the contesting defendants put in appearance. Defendants No.1 to 4 filed a joint written statement in which they took preliminary objections that the suit was not maintainable; the plaintiffs had no locus standi to bring the suit; the defendants had acquired

ownership rights over the suit property; no cause of action arose to the plaintiffs to bring the suit etc. On merits, the answering defendants admitted the plaintiffs to be residents of village Jhal and suit property having nature of *shamlat deh*. According to such defendants, they are owners in possession of that property having constructed their houses there; their predecessors were owners in possession of this very property soon after the consolidation of holdings; after death of Sh.Mohar Singh and Sh.Rampal, now the answering defendants are in possession of the property, which is reflected in the revenue record even. It was denied that after death of Sh.Mohar Singh and Sh.Rampal the suit property was lying vacant, rather according to the defendants, they had constructed their houses in the suit property; they have taken electricity connection to their houses; the village Gram Panchayat never sought their ejectment from this property for the last 50 years; as a matter of fact Gram Panchayat has nothing to do with the suit property; it had filed a case under Section 7 of Village Common Land Act qua khasra No. 152 on 24.7.2014 but it was declined. Refuting the remaining allegations, the answering defendants prayed for dismissal of the suit.

4. In the separate written statement filed by defendant No.5, it conceded that the suit property is owned by it. It was denied that the predecessor in interest of contesting defendants were in possession of the suit property as Gair Morusi. It was pleaded that plaintiffs and contesting defendants have colluded with each other or they are ignorant of the real fact that suit property was Gair Mumkin Kabristan at the time of partition of the country; that a piece of land was lying vacant; however it was under

control of Gram Panchayat since 1952; Mohar Singh etc. got their names incorporated in column of cultivation with collusion of the revenue staff, although they had no title over the suit property; on account of non-existence of Gram Panchayat, Jhal on 9.10.2016, the contesting defendants tried to take forcible possession of the suit property.

5. The Government Pleader by making a statement on 29.4.2016 adopted the written statement filed on behalf of defendant No.5 for defendant No.6.

6. The plaintiffs had filed replication to the written statement of defendants No.1 to 4 controverting the allegations in the written statement whereas reiterating the averments in the plaint.

7. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled for a decree of permanent injunction, as prayed? OPP.
2. Whether the plaintiff is entitled for decree of mandatory injunction as prayed for? OPP.
3. Whether the suit of the plaintiff is not maintainable? OPD.
4. Whether plaintiffs have concealed true and material facts from the Court? OPD.
5. Whether plaintiffs have no locus standi or cause of action to file this suit? OPD.
6. Relief.

8. The parties were afforded opportunities to lead evidence in support of their respective claims.

9. After hearing the learned counsel for the parties, the trial Court of Addl.Civil Judge (Sr.Divn.), Kosli vide judgment and decree dated 7.2.2019 decreed the suit of the plaintiffs restraining the defendants from changing the nature of the suit property by raising construction on the same without permission of proforma defendant No.5. The plaintiffs were held to be entitled for decree of mandatory injunction to the effect that construction so raised by contesting defendants over the suit property and as shown in site plan of the plaintiffs is liable to be removed by demolition. Such defendants were given one month time period to remove the construction, failing which, the plaintiffs would be at liberty to use Court machinery to get the construction demolished.

10. Feeling aggrieved by the said judgment and decree, the defendants No.1 to 4 had filed an appeal in the Court of District Judge, Rewari, which were assigned to Additional District Judge, Rewari, who vide judgment and decree dated 9.1.2020 dismissed the appeal upholding the judgment and decree passed by the trial Court.

11. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendants No.1 to 4 have filed the present regular second appeal before this Court, notice of which was issued to the respondents and respondents No.1 to 4 have put in appearance through counsel.

12. I have heard learned counsel for the parties besides going through the record.

13. In this case, both the Courts have returned concurrent findings to the effect that the suit property vests in Gram Panchayat Jhal,

which is proforma defendant No.5. This very possession is reflected in jamabandi Ex.PW3/I to Ex.PW3/O. The contesting defendants in para No.1 of the written statement filed by them had admitted the plaintiffs to be inhabitants of the village. The predecessors in interest of defendants No.1 to 4, namely, Sh.Mohar Singh and Sh.Rampal were recorded as Gair Morusi in the revenue record. Thus the suit property comes out to be *shamlat deh*. With regard to the case set up by the defendants, they claimed that the houses belonging to them are existing in the suit property. As per the revenue record the predecessors in interest of defendants No.1 to 4 were recorded to in possession of the suit property as Gair Morusi. The trial Court has observed that the suit property is owned by Gram Panchayat and plaintiffs being inhabitants of the village are interested in the common property, which should be used for common good and benefits of villagers. It has further been observed that defendants No.1 to 4 cannot be allowed to change the nature of the property by raising construction therein. They can certainly not usurp the public land in garb of the entry in the revenue recorded reflecting their possession as Gair Morusi.

14. Learned Additional District Judge, Rewari while affirming the findings recorded by the trial Court, dismissed the appeal vide judgment and decree dated 9.1.2020. Both the Courts have found that the Gram Panchayat of the village is owner of the property. Though the defendants claimed themselves to have become owners of the property in question but they could not establish that fact on record. Observing that defendants had no right to change the nature of the suit property by raising

construction etc., the plaintiffs were found entitled to decree for permanent and mandatory injunction.

15. With such concurrent findings being there, which are based on proper appraisal of evidence and correct interpretation of law and there being no illegality or infirmity with the impugned judgments and decrees passed by the Courts below, there is no ground to interfere with such impugned judgments and decrees in regular second appeal.

16. No substantial question of law arises in this appeal.

17. Finding no merit in the appeal, the same stands dismissed.

Since the main appeal is dismissed, the miscellaneous application(s), if any stands disposed of accordingly.

6.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No