

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

(105)**RSA No.350 of 1992 (O&M)****Date of Decision: 01.09.2023**

Har Narain

.....Appellant

Versus

Satbir and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Dhruv Mittal, Advocate, for the appellant.

Mr. Balraj Singh Dhull, Advocate,
for the respondent-Gram Panchayat.

Mr. R. K. Gupta, Advocate, for the respondents No.12.

Mr. RKS Brar, Addl. A.G. Haryana.

HARKESH MANUJA, J.(ORAL)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 29.10.1987 and 08.06.1991 passed by the Courts below; whereby a suit for recovery of damages as well as permanent injunction filed at the instance of appellant/plaintiff was dismissed.
2. It may be pointed out here that the relief qua recovery of damages was withdrawn during the pendency of the first appeal, however, cause regarding injunction was contested.
3. Briefly stating, the appellant/plaintiff, claiming himself to be in possession over the suit land sought permanent injunction against the private respondents with the averments that on 02.01.1984, the respondents entered the suit land in wrongful and unlawful manner and destroyed his standing crops and thus they be restrained from interfering in his possession and from entering into it forcibly.

4. In response, the suit was contested while submitting that the suit land was owned by *Gram Panchayat* and the possession of the suit land except Killa No.20, already stood surrendered in its favour in pursuance to eviction order dated 23.01.1976, whereas possession of Killa No.20 Rectangle No.43 was taken over by the Gram Panchayat on 02.01.1984 with police help and thus, there was no question of grant of permanent injunction in favour of appellant/plaintiff.

5. The trial Court vide judgment and decree dated 29.10.1987, dismissed the suit filed by the appellant/plaintiff. Aggrieved thereof, an appeal was filed, however, the same was also dismissed vide judgment and decree dated 08.06.1991.

6. Impugning the aforementioned judgments and decrees, learned counsel for the appellant submits that though eviction proceedings were initiated against the appellant/plaintiff at the instance of *Gram Panchayat* however, the eviction orders were set aside by this Court vide order dated 11.09.1979 passed in CWP No.8161 of 1976 and the matter was remanded back to the Assistant Collector for its fresh adjudication by considering the reply filed by Gram Panchayat in the writ petition to be a petition under Section 13-B of the Punjab Village Common Lands (Regulation) Act, 1961, however, no fresh order of eviction was passed, thereupon and the appellant/plaintiff is still in possession of the property. He also submits that neither any date, month or year regarding surrender of possession of suit land by appellant-plaintiff was mentioned by the respondents nor any such report was even proved on record. He also points out that even the order dated 11.09.1979 no where even mentions this fact.

7. On the other hand, learned counsel for the respondents submits that admittedly the *Gram Panchayat* is owner of the property in question and

thus, in its absence suit for injunction, filed at the instance of appellant/plaintiff qua the same was not maintainable. He also submits that as per the revenue records available on the file, Gram Panchayat has been recorded to be in its possession. In addition, Mr. Balraj Singh Dhull, Advocate, has appeared on behalf of Gram Panchayat, though being not a party to the present appeal, however, an application seeking impleadment on its behalf pending consideration, however, no records of proceedings post the order dated 17.09.1979 has been brought to the notice of this Court.

8. I have heard learned counsel for the parties and have gone through the paper book. I find substance in the submissions made on behalf of the appellant.

9. A perusal of the judgments and decrees passed by the Courts below shows that no conclusive finding has been recorded as regards the possession of the property in question having been surrendered by the appellant/plaintiff in favour of *Gram Panchayat*. Admittedly, eviction proceedings qua the suit property were initiated against the appellant-plaintiff wherein vide order dated 23rd of January 1976, passed by the Assistant Collector, First Grade, eviction was ruled. The same was affirmed by the Collector vide its order dated 27th July, 1976, however, this Court vide order dated 11th September 1979 passed in CWP No.8161 of 1976 passed the following order:

“In view of the Division Bench Judgment of this Court in Tara Chand in Tara Chand Vs. Gram Panchayat and Gram Sabha of Village Atil and others, 1979 P.L.J., we allow this petition, set aside the orders of the Assistant Collector, Ist Grade, Jind dated 23rd January, 1976 (Annexure P/3) and Collector, Jind, dated 27th July, 1976 (Annexure P/4) and direct the Assistant Collector

to treat the reply of the petitioner as a petition under section 13-B of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1974, and thereafter to proceed to decide the same in accordance with the said provision. No Costs.”.

Filing of eviction proceedings by the Gram Panchayat against the appellant-plaintiff qua the property in question presupposes his possession over the same. The plea regarding surrender of possession by the appellant-plaintiff in favour of Gram Panchayat has not been established on record. Neither any date, month or year of surrender of possession has been pleaded or proved nor any proof of taking over of possession in pursuance to the eviction orders passed against the appellant-plaintiff has been proved on record except Killa number 20. Even the order dated 11th of September, 1979 passed by this Court, nowhere records the fact regarding surrender of possession of the suit property by the appellant-plaintiff in favour of *Gram Panchayat* in pursuance to the eviction orders and this finding in this regard by the Courts below is thus ordered to be reversed. No doubt, the respondents have been able to establish on record the surrender of possession qua *kill*a number 20, rectangle number 43 vide *rapat* dated 2nd January 1984, however, the same regarding the remaining land has not been established on record. Moreover, the entries in the *khasra girdawari* qua the suit property were recorded in favour of appellant- plaintiff were changed in the name of *Gram Panchayat*, without issuance of any notice or even in the absence of any orders having been passed by the competent Court of jurisdiction and thus, the *nehri girdawari* entries showing the appellant-plaintiff to be in possession were of some relevance as a corroborative piece of evidence.

10. I am unable to find substance in the submissions made on behalf of respondents/defendants that the suit for injunction in the absence of *Gram*

Panchayat would not be maintainable. Once the appellant/plaintiff claims himself to be in possession of suit property having threat of dispossession at the hands of respondents/defendants from the land in question, suit for permanent injunction at his instance was maintainable against respondents/defendants even in the absence of *Gram Panchayat* which in any case had been pursuing for recovery of its possession having initiated eviction proceedings against the appellant/plaintiff. In any case, the *Gram Panchayat* not being a party to the suit, the findings herein are not going to bind it in any manner.

11. In view of the discussion made hereinabove, the finding of the first appellate Court as regards surrender of possession of the property in question by the appellant/plaintiff in favour of *Gram Panchayat* except land falling in *Killa* No.20, rectangle No.43, being against the records is reversed. The present appeal is thus partly allowed and the judgments and decrees passed by the Courts below are set aside except for the land falling in *Killa* No.20, rectangle No.43 thereby granting decree for permanent injunction in favour of plaintiff, however, the *Gram Panchayat* shall be at liberty to carry out possession proceedings against appellant/plaintiff in accordance with law.
12. Pending applications, if any, shall stand disposed of.

(HARKESH MANUJA)
JUDGE

01.09.2023
anil

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No