

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

RSA-1674-2017(O&M)

Date of decision:-21.3.2023

Rajesh Kumar and another

...Appellants

Versus

Gram Panchayat of village Ballah and another

...Respondents

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

Present: Ms.Sonia G.Singh, Advocate
for the appellants.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Rajesh Kumar and his father Rajpal both residents of village Ballah, District Karnal had brought a suit against defendants Kabul son of Ram Chander as well as Gram Panchayat of village Ballah, Tehsil, Assandh through its Sarpanch, seeking a decree for permanent injunction restraining the defendants from dispossessing the plaintiffs from the suit property situated within red line/adadhi-deh of village Ballah, bounded as under:

North : Khasra No.1074 Gora Deh Gram Panchayat

South : Plot Ratna son of Jeetu, Tejbir son of Maya, Balo Devi widow

East : Gali Sare-aam

West : Plot of Balraj etc.

The plaintiffs claimed themselves to be owners in possession of the suit property since the time of their forefathers using it for the purpose of tethering cattle and preparing dung cake. According to the plaintiffs, defendant No.1 having no concern with this property in collusion with defendant No.2 Gram Panchayat had been trying to dispossess the plaintiffs from the suit property illegally and forcibly; defendant No.2 had got registered a false FIR No.68 dated .1.2.2013 under Sections 447 and 511 IPC against the plaintiffs with Police Station Assandh, however after inquiry the FIR was cancelled; the plaintiffs had filed an application before Tehsildar, Ballah to demarcate the suit property, which was found to be within abadi deh of village; when the defendants persisted in interfering in possession of the plaintiffs over the suit property, they brought the suit in question.

2. On notice, the defendants put in appearance. Defendant No.2 filed a written statement contesting the suit raising various legal objections including maintainability of the suit; plaintiffs lacking locus standi to file the suit; the Civil Court lacking jurisdiction to try the suit etc. On merits, the answering defendant denied that the plaintiffs are owners in possession of the suit property, rather answering defendant No.2 Gram Panchayat claimed itself to be owner in possession of the suit property contending that as per provisions of Section 2G(4a) of Punjab Village Common Lands (Regulation) Act, 1961 any vacant land situated within abadi deh or gorah deh is included in the shamilat deh. It was submitted that FIR No.68 dated 1.2.2013 for the offences under Sections 447 and 511 IPC was registered on the basis of true facts, however since

after registration of the FIR the plaintiffs had removed the encroachment from the suit property, the said FIR was got cancelled. Denying the remaining allegations, such defendant prayed for dismissal of the suit.

3. On the pleadings of the parties following issues were framed:

1. Whether plaintiff is entitled for a decree for permanent injunction restraining defendants from dispossessing the plaintiffs from suit property and further restraining him from interfering in peaceful possession of plaintiffs over the suit property? OPP.
2. Whether suit is not maintainable in the present form? OPD.
3. Whether plaintiffs have no locus standi to file and maintain the present suit? OPD.
4. Whether the suit is bad for want of mis-joinder and non-joinder of necessary parties? OPD.
5. Whether the plaintiffs have not fixed appropriate Court fee? OPD.
6. Relief.

4. Both the parties led evidence in support of their respective claims.

5. After hearing the learned counsel for the parties, the trial Court of Civil Judge (Jr.Divn.), Assandh gave issue-wise findings and resultantly decreed the suit of the plaintiffs restraining the defendants from dispossessing the plaintiffs from the suit property illegally and forcibly and from interfering in peaceful possession of the plaintiffs over the suit property. This was so done vide judgment and decree dated 7.5.2016.

6. Feeling aggrieved by such judgment and decree passed by the

trial Court, the defendant No.2 had preferred an appeal before District Judge, Karnal, which was assigned to Additional District Judge, Karnal, who vide judgment and decree dated 18.3.2017 accepted the appeal, set aside the judgment and decree passed by the trial Court and as a result dismissed the suit filed by the plaintiffs/respondents with costs.

7. Being dissatisfied with the judgment and decree passed by the First Appellate Court, the plaintiffs have filed the present regular second appeal before this Court, notice of which was issued to the respondents, who did not appear despite service.

8. I have heard learned counsel for the appellants besides going through the record and I find that there is absolutely no merit in the appeal.

9. The trial Court by misappraisal of evidence and wrong interpretation of law had held the plaintiffs to be in possession of the suit land thereby restraining the defendants from interfering in possession of the plaintiffs over the suit property. The trial Court did not adopt a judicious approach in deciding the suit. However, that error was rectified by learned Additional District Judge, Karnal, who by careful consideration of the factual position and in depth analysis of the evidence as well as correct interpretation of law has arrived at a conclusion that the suit property within abadi deh of the village, which was vacant land vested in the village Gram Panchayat in terms of Section 2G[4a] of the Punjab Village Common Lands (Regulation) Act, 1961 and a casual use of the vacant land like tethering of cattle, preparing of cow dung cakes and placing of bricks etc. does not go to show the established possession

of the plaintiffs over the same. The judgment passed by this Court in case **Bhag Singh Versus Tej Singh 1997(1) RCR(Civil) 46** has also been relied upon while coming to this conclusion.

10. In that way, the suit of the plaintiffs was rightly dismissed by the Additional District Judge, Karnal by accepting the appeal filed by Gram Panchayat, setting aside the judgment and decree passed by the trial Court, which could not stand judicial scrutiny.

11. 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 judgment passed by the Additional District Judge, Karnal.

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

13. The appeal stands dismissed accordingly.

Interim order passed on 20.8.2018 directing the parties to maintain status quo regarding possession over the suit property thus comes to an end.

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

21.3.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No