

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

RSA No.1421 of 1993 (O&M)

Reserved on:20.03.2024

Pronounced on: 02.04.2024

Hazura Singh and another

.....Appellants

Vs.

Municipal Committee, Kalanwali

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sumit Sinha, Advocate for the appellants.

Ms. Samina Dhir, Advocate with Ms. Geeta Rani,
Advocate for the respondent.

DEEPAK GUPTA, J.

By way of this Regular Second Appeal, the unsuccessful plaintiffs have approached this Court, challenging the concurrent findings of the Courts below, dismissing their suit for declaration.

2. Lower Court record has been called and the same has been perused. In order to avoid confusion, the parties shall be referred as per their status before the trial Court.

3. According to plaintiffs (*appellants herein*), they were in cultivating possession of 33 Kanal 10 Marlas of land detailed in headnote of the plaint as tenants since Kharif 1957 on payment of 1/3rd batai under Gram Panchayat, Kalanwali. Said land was allotted after consolidation in lieu of land measuring 05 bighas 04 biswas comprised in Khasra No.446 min. It was averred that there was litigation between the plaintiffs and the Gram Panchayat regarding this land; and that Director, Consolidation of Land

Holdings vide order dated 19.09.1986 Ex.P7 had held them (plaintiffs) to be tenants under Gram Panchayat on payment of 1/3rd batai and that this order was never challenged. However, Gram Panchayat filed an application under Section 7(2) of the Punjab Village Common Lands Act, 1961 (for short, 'the Act') seeking ejectment of the plaintiffs from the suit land. It is alleged that without having any authority to entertain the petition, the Assistant Collector First Grade, Sirsa allowed the application vide order dated 28.05.1988 Ex.P8 and ordered the eviction of the plaintiffs from the suit land. On the strength of this order, the defendant – Municipal Committee, Kalanwali (*respondent herein*), the successor-in-interest of the Gram Panchayat wanted to oust the plaintiffs from the suit land. With these submissions, prayer was made to restrain the defendant- Municipal Committee from dispossessing the plaintiffs from the suit land.

4. The defendant- Municipal Committee, Kalanwali in its written statement raised preliminary objection to the effect that the Civil Court did not have jurisdiction in the matter, as it was barred under Section 13 of the Act. It was stated further that the plaintiffs were not in possession of the suit land as tenants and rather, their possession was unauthorised and so, they were rightly ejected by Assistant Collector Ist Grade, Sirsa and that appeal preferred by the plaintiffs against the order of the Assistant Collector Ist Grade, Sirsa was dismissed by the Collector, Sirsa. It was pleaded further that order of the Director, Consolidation was non-speaking and without jurisdiction and so, not binding upon the rights of the Gram Panchayat.

5. The necessary issues were framed, material being as to whether the order dated 28.05.1988 passed by Assistant Collector Ist Grade, Sirsa was illegal, against law, without jurisdiction and so, was liable to be set aside. The other material issue was as to whether the Civil Court had no

jurisdiction to entertain the suit. Evidence produced by the parties was taken on record. After hearing both the sides, learned trial Court found that no interference was called for in the impugned order dated 28.05.1988 passed by the Assistant Collector First Grade, Sirsa and as such, the issue was decided against the plaintiffs. The finding on the other issue relating to jurisdiction went in favour of the defendant by holding that the Civil Court did not have any jurisdiction in the matter. The suit was accordingly dismissed on 20.09.1991.

6. In the appeal preferred by the plaintiffs, the First Appellate Court referred to the revenue record and came to the conclusion that though the plaintiffs were recorded to be in possession of the suit land but said possession was not in capacity of the tenant and rather, unauthorised and so, the order dated 28.05.1988 rendered by the Assistant Collector First Grade, Sirsa was perfectly legal. As far as the order dated 19.09.1986 passed by Director, Consolidation of Holdings was concerned, the same was held to be not binding on the defendant. The First Appellate Court also upheld the finding of the trial Court to the effect that the Civil Court did not have jurisdiction in the matter. Appeal was accordingly dismissed on 09.02.1993.

7. Assailing the afore-said concurrent findings, it is contended by the appellants that both the Courts below have failed to appreciate the fact that against the order of Director, Consolidation of Holdings (Ex.P9), the respondent had not filed any appeal and so that order holding the appellants to be tenants in possession in respect of the suit land was binding. It is contended further that once the appellants were accepted as tenants by the order of the Director, Consolidation, the Gram Panchayat did not have the right to move an application under Section 7 of the Punjab Village Common Land Act for ejectment and that the only course open to them was to seek

appropriate remedy against the order of the Director, Consolidation of Holdings.

8. On the other hand, contention of learned counsel for the respondent is that jurisdiction of the Director, Consolidation under Section 42 of the Consolidation Act; and that of Assistant Collector Ist Grade under Section 7 of the Punjab Village Common Lands Act are distinct and not overlapping. Attention is drawn towards the fact that title of the Gram Panchayat, the predecessor of defendant Municipal Committee is not in dispute and, therefore, Assistant Collector First Grade could have passed the order under Section 7 of the Punjab Village Common Lands Act. Learned counsel contends further that finding of the trial Court to the effect that order of the Director, Consolidation of Holdings was not proved to be in respect of the same land, from which the ejectment of the appellants has been ordered, has not been set aside by the First Appellate Court. Learned counsel further submits that no substantial question of law is involved and, therefore, this Regular Second Appeal against concurrent finding of fact, is not maintainable.

9. I have considered the submissions of both the sides and have perused the record.

10. Title of the respondent – defendant Municipal Committee, Kalanwali, the successor-in-interest- Gram Panchayat has not been assailed before this Court. The sole dispute is as to whether the possession of the plaintiffs - appellants on the suit was in the capacity of tenant, or said possession was unauthorised. Appellants relied upon an order dated 19.09.1986 of Director, Consolidation (Ex. P.9) so as to contend that they were found to be tenants; whereas the respondent has referred to the order dated 28.05.1988 of the Assistant Collector First Grade, which has been

upheld by the Collector, holding the possession of the plaintiffs- appellants to be unauthorised.

11. In this regard, it will be relevant to reproduce the observations made by the First Appellate Court, based upon the evidence on record. The same reads as under:-

“13. After giving my careful thought to the arguments advance by both the sides, I do not find any force in the contentions advanced by the learned counsel for the appellants. The solitary statement of Hazura Singa appellant No. 1 made as P.W.1 that he was a tenant on the suit land does not inspire any confidence whatsoever. This is because Ex.P.1 is a copy of Jamabandi for the year 1983-84 showing the appellants in possession of the suit land under the gram-panchayat as gair maurusi. It is a matter of common knowledge that to prove the tenancy, what is significant, is column No. 9 of the jamabandi. This column is totally silent and it does not show any settlement regarding payment of batai by the appellants to the gram-panchayat, Kalanwali. Similar is the position in jamabandis for the years 1978-79 (Ex.P.11), 1973-74 (Ex.P-12) and 1971-72 (P13) Thus, throughout the revenue record, the appellants are simply shown in possession of the suit land as gair-maurusi but in the revenue record payment of any batai or lagan is not mentioned at all. The term 'tenant' has been defined under section 4(5) of the Punjab Tenancy Act, 1887 as a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person. There is neither any pleading and nor any evidence to the effect that there was a special contract between the parties, under which the appellants were not to pay any rent for the disputed land. The appellants, thus, cannot be said to be tenants on the suit land. Moreover, if one peruses the impugned order dated 28.5.1988 rendered by A.C.I. Grade, then the same reveals that the appellants had taken the stand that they were in unauthorised possession of the suit land and were cultivating the same as owners without payment of any batai to anybody. It now does not lie in their mouths to assert that they were tenants on the suit land under the gram-panchayat or the municipal committee, Kalanwali.

14. That being the position, the impugned order dated 28.5.1988 rendered by A.C.I. Grade, Sirsa is perfectly legal because under section 7-A of the Act, the A.C.I. Grade is competent to eject any person who is in wrongful or unauthorised possession of the shamlat-deh of the village, which vests in the gram-panchayat. There is no force in the plea raised by the learned counsel for the appellants that the A.C. I Grade could not render this order when the Director, Consolidation of Holdings had held otherwise in his order dated 19.9.1986 (Ex.P.9). This order had been rendered by the Director, Consolidation of Holdings under Section 42 of the Consolidation of Holdings Act. Under this Act, the decision rendered by the Director is not conclusive and binding upon the parties on this matter being on an altogether different plan. The same at any rate cannot have the over-riding effect upon the powers of A.C.I. Grade under Section 7-A of the Act”

12. As is evident from the above-said findings of the First appellate court, the possession of the plaintiffs- appellants on the suit land has been found to be unauthorised. As far as the order dated 19.09.1986 passed by Director, Consolidation is concerned, he could comment only about possession under Section 42 of the Consolidation of Holdings Act, 1962 but was not competent to decide as to in what capacity, the concerned person was in possession. As such, learned First Appellate Court rightly held that decision rendered by the Director, Consolidation was not conclusive and binding upon the parties, as far as capacity of the appellants to possess the land is concerned. Besides, the said order cannot have an overriding effect upon the decision of the Assistant Collector Ist Grade under Section 7-A of the Act.

13. Once the possession of the plaintiffs- appellants has been found to be unauthorised on the suit land and the title of the defendant- Municipal Committee is not in dispute, no illegality can be found with the concurrent

findings of fact as recorded by the Courts below. No substantial question of law is found to be involved in this appeal, calling for any interference by this court.

14. As such, finding no merit in the appeal, same is hereby dismissed.

April 02, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No