

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

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**RSA No.1599 of 1991 (O&M)
Date of Decision: 03.04.2024**

KARTAR SINGH

.....Appellant

Vs

KAUR SINGH AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Sonia, Advocate and
Mr. Raghav Chadha, Advocate
for the appellant.

None for the respondents.

HARKESH MANUJA, J. (Oral)

[1]. By way of present appeal, challenge has been laid to the judgment and decree dated 14.03.1991 passed by the Addl. District Judge, Sirsa, whereby judgment and decree dated 28.09.1990 passed by the Sub-Judge Ist Class, Sirsa was upheld, dismissing a suit for permanent injunction filed at the instance of appellant/plaintiff as regards the suit property marked as 'ABCD' in the plaint.

[2]. Briefly stating, the appellant/plaintiff filed a suit for permanent injunction claiming himself to be owner in possession of suit property against the respondents/defendants with prayer for restraining them from interfering in his possession over the suit property.

In response, the respondents/defendants contested the suit having filed detailed written statement while claiming themselves to be in possession of the

entire suit property, thereby praying for dismissal of the suit filed by the appellant/plaintiff.

[3]. The Trial Court vide judgment and decree dated 28.09.1990 while relying upon *jamabandi* Ex.P-5, pertaining to the year 1982 recorded a positive finding that the suit land was owned by the Gram Panchayat of village Thiraj, Tehsil and District Sirsa as the same was reserved for Gair Mumkin Dhab (Cattle Pond) for the benefit and utilization of village community and accordingly dismissed the suit. The Trial Court even went on to record that since the property in question was owned by the Gram Panchayat and was assigned a public purpose, the defendants/respondents even would not be considered to be in exclusive possession thereof.

Aggrieved thereof, the appellant/plaintiff filed first appeal, however the same was dismissed by the Lower Appellate Court while maintaining the judgment and decree passed by the Trial Court.

[4]. Impugning the aforesaid judgments and decrees passed by the Courts below, learned Senior counsel appearing for the appellant/plaintiff submits that the First Appellate Court went wrong while non-suiting the plaintiff/appellant while recording that the plaintiff failed to prove his dispossession over the suit property six months prior to the filing of suit in hand and, thus, his statutory remedy even under Section 6 of the Specific Relief Act was wrongly held to be barred.

[4.1]. Learned Senior counsel further submits that as per the Local Commissioner which was proved on record as Ex.P-1/A in addition to the site plan attached thereto as Ex.PA/b, the exclusive possession of the plaintiff over the suit land was duly proved, however the Courts below failed to appreciate the aforesaid

fact in its proper perspective and, thus prays that the present appeal needs to be allowed.

[5]. No one has chosen to appear on behalf of the respondents. I have heard learned Senior counsel for the appellant and gone through the paper book. I am unable to find substance in the submissions made on behalf of the appellant.

[6]. In the present case concurrent finding of fact has been recorded by the Courts below to the effect that the suit property forms part of Khasra No.153 measuring 57 Kanals 10 Marlas which was undisputedly owned by the Gram Panchayat, village Thiraj, Tehsil and District Sirsa. Ownership of the Gram Panchayat over suit property was even admitted by the plaintiff himself while appearing as PW-2. Furthermore the Courts below appreciated the report Ex.P-6 as well as the site plan Ex.P/A, submitted by the Local Commissioner, who appeared as PW-1, however, the same were rightly discarded, having recorded that tethering cattle or placing of certain cow dung cakes here and there by the appellant-plaintiff with one or two trees standing thereupon, in the absence of any overt act to exclude others from use, the land in question cannot be termed to be in his exclusive possession.

In view of law laid down by this Court in judgment reported as 1997(1) R.C.R. (Civil) Page 46 titled as 'Bhag Singh vs. Tej Singh' no illegality or perversity can be found with the aforesaid finding of fact recorded by the Courts below as regards non-reliance been placed upon by the Courts below on the aforesaid report and the site plan prepared by the Local Commissioner, towards the proof possession of the plaintiff-appellant over the suit property. Furthermore, no grievance has been raised by either of the parties as regards ownership of the

property being vesting with Gram Panchayat of Village Thiraj, Tehsil and District Sirsa and the same been kept reserved for the purpose of cattle pond.

[07]. Further, in the humble opinion of this Court, injunction is not to be granted in favour of the appellant/plaintiff as regards the suit property, especially the same being assigned public purpose for being used as cattle pond by the entire village community. Even the Trial Court in para No.5 of its judgment has gone on to record that neither the plaintiff nor the defendants can be considered to be in exclusive possession of the disputed portion of the suit property which admittedly is comprised in Khasra No.153 and is owned by Gram Panchayat, further the said finding was never even assailed by the defendants/respondents even. Having said that, and in view of the findings recorded by the Courts below, the Deputy Commissioner, Sirsa is directed to look into the matter and in case the suit property forming forming part of Khasra No.153 which is admitted owned by the Gram Panchayat of village Thiraj, is in possession of any private individual without any substantive right in his favour, proceedings in accordance with law regarding dispossession be initiated at the earliest and the same be restored in favour of Gram Panchayat.

[8]. In view of discussions made hereinabove, even no merit can be found in the submissions made on behalf of the appellant/plaintiff as regards his remedy of filing a suit for possession in terms of Section 6 of the Specific Relief Act, he having failed to establish his possession over the suit land. Thus, finding no illegality or perversity with the judgments passed by the Courts below, especially there being no misreading of evidence or any material evidence having been ignored, the present appeal is dismissed.

[9]. All pending application(s), if any, shall stand disposed of.

April 03, 2024

Atik

(HARKESH MANUJA)

JUDGE

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