

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.116

Case No. : CR-2051-2024 (O&M)

Date of Decision : May 29, 2024

Vikram Randhawa

.... Petitioner

vs.

Gram Panchayat, Village Tangori, Tehsil
Shahbad Markanda, District Kurukshetra

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Vikram Singh, Advocate
for the petitioner.

Mr. Jai Parkash Sharma, Advocate
and Mr. Krishan Mohan, Advocate
for the respondent.

* * *

GURBIR SINGH, J. :

1. CM-9163-C-II-2024 :

This is application under Section 151 CPC for placing on record affidavit of the petitioner dated 14.05.2024. For the reasons stated in the application, the same is allowed and affidavit of the petitioner dated 14.05.2024, filed in compliance of the order dated 02.05.2024 passed by this Court, is taken on record. The application stands disposed of.

2. Main Case :

Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 13.03.2024 (Annexure P-7),

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02.01.2024 (Annexure P-5), passed by learned Civil Judge (Junior Division), Shahbad, vide which the application filed by the petitioner under Order 39 Rule 1 and 2 CPC has been dismissed.

3. The parties hereinafter shall be addressed as per their original status in the suit before the Courts below.

4. The brief facts of the case, necessary for proper adjudication of the instant revision petition, are that the plaintiff/petitioner filed suit for permanent injunction restraining the defendant/respondent Gram Panchayat from interfering into peaceful possession, use and enjoyment of the plaintiff over the suit land measuring 08 kanal 14 marla comprised in Khewat No.159//154, Khatoni No.298, Khasra No.1029//636 min (8-14), situated at Village Tangori, Tehsil Shahbad Markanda, District Kurukshetra (hereinafter referred to as – the suit land), on the ground that the plaintiff has been in exclusive and cultivating physical possession of the suit land as owner, without payment of any *lagan*, since the times of their forefathers. It is so recorded in the concerned revenue record since the last more than 100 years. The suit land was never used for the common purposes by inhabitants of the locality.

5. The defendants contested the application by filing reply, submitting therein that the plaintiff had forcibly ploughed the land of *Gair Mumkin Bandh* comprised in Khewat No.159, Khatoni No.305, Panchayat Deh, Makbuja Nahar, Khasra No.1029//636 min land, measuring 12 kanal 08 marla, as shown in *jamabandi* for the year 2021-22 and also damaged the



plaintiff, under the guise of interim order of this Court, forcibly restrained the defendant from carrying out the plantation work on the land of *Gair Mumkin Bandh*. He has got false demarcation report prepared regarding the suit property during the pendency of the suit. On the contrary, when defendant examined the old record, it transpired that the suit property as well as the other property, which is *Gair Mumkin Bandh* is owned by defendant Gram Panchayat, as per *jamabandi* for the year 2021-22 and the same is being used and utilized by it, besides being leased out every year for cultivation to various auction purchasers/inhabitants of village for the last more than 23 years. On 24.06.1998, the grandfather of the plaintiff also took part in the auction proceedings to take the land on lease for one year and thereafter, on expiry of aforesaid lease deed, from 1999 to the year 2022-23, it has been leased out to other inhabitants of village. The defendant is owner of the suit property. It has further been averred that after finalization of the scheme of consolidation, the rights of the proprietors, which were existing pre-consolidation, stood extinguished. Thus, even it is presumed that at some point of time, the plaintiff, through his ancestors, was in possession of the land in the suit as its owner and in lieu of his holdings, the plaintiff or his ancestors had got the land of equal value at the time of consolidation, even then, at this belated stage, the plaintiff is not entitled to claim any title. In case, there was any grievance of the plaintiff qua scheme of consolidation, he could have challenged the same before the Consolidation Officer. Earlier, Onkar Singh – grandfather of plaintiff filed a



suit was dismissed vide judgment and decree dated 19.02.2007. The plaintiff concealed the said fact from the Court. It is the further submission of defendant that the Court has no jurisdiction to try the suit, in view of Section 13 of the Punjab Village Common Lands (Regulation) Act 1961 (hereinafter referred to as – the Act).

6. Learned counsel for the petitioner has argued that earlier, predecessor-in-interest of the plaintiff and now, the plaintiff, is in exclusive possession of the suit property, which has never been auctioned and given on lease. The Gram Panchayat never came in possession of the suit property. The plaintiff has every right to protect his established possession. He has further argued that if a person is in established possession, then he cannot be dispossessed without following due process of law. In the Revenue Record, predecessor-in-interest of plaintiff are continuously being shown in possession of the suit property. The land, which is being auctioned by the defendant is different and the suit land was never auctioned.

7. Learned counsel for the respondent has argued that both the Courts have rightly held that the plaintiff is not entitled for injunction. The plaintiff is entitled to injunction, only if he proves his title. The title cannot be decided in the instant case because jurisdiction of Civil Court regarding the title is barred. Plaintiff can get the title decided by moving application under Section 13 of the Act. The predecessor of plaintiff earlier filed suit for permanent injunction of the suit property. The same was dismissed. The plaintiff cannot raise the same dispute again.



have perused the case record.

9. The suit land is measuring 08 kanal 14 marla comprised in Khewat No.159//154, Khatoni No.298, Khasra No.1029//636 min (8-14). In the *jamabandi* for the year 2021-22, the suit property is shown to be owned by Gram Panchayat but in Column No.5, predecessor of plaintiffs are shown as *Gair Maurasian makbuja wasindgan deh*. However, in Column No.8, the entry qua said share is shown as *Billa Lagan Bawajah Tasvar Malkietkhud*. Thus, both the entries are different. The title of the property cannot be decided in the instant Civil suit. It is nowhere recorded that Gram Panchayat ever came in the possession of the suit property.

10. Vide order dated 02.05.2024, passed by this Court, specific direction was given to the Sarpanch of defendant – Gram Panchayat to file affidavit with regard to leasing of the suit land w.e.f. the year 2018 up to the year 2022.

11. In the affidavit filed, two properties are mentioned, one is suit property i.e. the land measuring 08 kanal 14 marla Chahi comprised in Khewat No.159//154, Khatoni No.298, Khasra No.1029/636 Min (8-14), and other is 12 kanal 08 marla Gair Mumkin Bandh which is in possession of Makbuja Nahar. Both properties are having Khasra no.1029/636 Min. In the affidavit, it is also mentioned that small parcels of land were auctioned from Khasra No.1029/636 Min. but it is not specifically mentioned that land measuring 08 kanal 14 marla was ever auctioned or not. When there was a specific direction given to the Sarpanch of the Gram Panchayat regarding



need to explain the auction of the other property. The affidavit itself is vague. The earlier suit filed by predecessor of plaintiff stood dismissed. The question is whether Gram Panchayat ever came into possession of the suit property. No document is placed on the file that Gram Panchayat ever got possession of the suit property from the plaintiff. Even after dismissal of earlier suit, the Gram Panchayat was to get possession in accordance with law. Title is not to be decided in the instant case. The plaintiff is prima facie proved to be in established possession, so, the plaintiff cannot be dispossessed without following due process of law. I draw support from a judgment of Hon'ble Supreme Court titled **Rame Gowda (D) by LR's vs. Mr. Varadappa Naidu (D) by LR's and another – 2004(1) RCR (Civil) 519.**

12. The next question is whether suit for permanent injunction is maintainable or not. In case **Jhagru Ram vs. Jagan and others – 2010(36) RCR (Civil) 886,** it is held by this Court that under Section 13 and Section 13-A of the Act, jurisdiction of Civil Court is barred, in case there is a legitimate dispute with regard to question of title of Shamlat Deh and not otherwise. The AC Ist Grade has limited power under Section 7 of the Act but has no power to issue injunction. Only Civil Court has power to issue mandatory and permanent injunction. In case **Sandeep and others vs. State of Haryana and others – 2018(3) RCR (Civil) 96,** it is held by this Court that even if possession of the plaintiff is found unauthorized, plaintiff cannot be ejected except by due course of law. In that case, plaintiffs

So, no proceedings of eviction were initiated against forefathers of plaintiffs and plaintiffs were held entitled for grant of permanent injunction.

13. For grant of injunction, the Court is to see three basic ingredients – the prima facie case, balance of convenience and irreparable loss and injury.

14. In the case in hand, prima facie the plaintiff is in possession of the suit property and if he is forcibly dispossessed from the suit property, he shall suffer irreparable loss and injury. Balance of convenience is also in favour of the plaintiff.

15. In the light of the above discussion, the present revision petition is allowed. The defendant Gram Panchayat is restrained from dispossessing the plaintiff from the suit property or interfering in the peaceful possession of the plaintiff over the suit property, during pendency of the case, except in due course of law. However, defendant Gram Panchayat is free to initiate proceedings in accordance with the law to get possession of suit property.

16. Pending applications, if any, shall stand disposed of along with this judgment.

May 29, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.