

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

RSA-5271-2017 (O&M)

Date of reserved:29.02.2024

Date of Pronouncement: 03.04.2024.

Zile Singh

...Appellant.

Versus

Gram Panchayat and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

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

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/
plaintiff No.3 against the concurrent findings recorded by both the Courts
below, vide which the suit of the plaintiffs was dismissed.

2. The plaintiffs by way of present suit sought decree of
permanent injunction restraining the defendant from interfering into the
possession, user of the plaintiffs and other co-sharers and from constructing
any drain forcibly over the *Gair Mumkin* plot comprised in Khewat No.04
Khatoni No.06 Khasra No.127/1 Kita 01 measuring 0 Kanal 14 Marlas *Gair
Mumkin Abadi*, situated within the revenue estate of Village Janjariwas,
Tehsil and District Mohindergarh, as per jamabandi for the year 2002-03
(hereinafter referred to as the suit property).

3. Brief facts of the case as per plaint are that the plaintiffs and other co-sharers are owners in possession over the suit property and they are using the same for storing the fuel wood and for tethering of their cattle. The same is being used by them as 'guwara'. It was alleged that the defendant-Gram Panchayat has no concern with the suit property but due to political grudge of present Sarpanch with the plaintiffs, the defendant wants to construct drain through the suit property and to occupy the same forcibly and to change the nature and user of the same, for which the defendant has no right. In case the defendant succeeds in doing so then the plaintiffs will suffer irreparable loss and injury which can not be compensated in any manner and will also give rise to multiplicity of proceedings.

4. The suit of the plaintiffs was dismissed by the trial Court, vide judgment and decree dated 07.11.2014. The appeal preferred by the appellant/ plaintiff No.3 before the First Appellate Court was also dismissed, vide judgment and decree dated 20.03.2017. Hence, the present Regular Second Appeal has been filed by the appellant/ plaintiff No.3.

5. Learned counsel for the appellant/ plaintiff No.3 has contended that the plaintiffs have proved that they are owners in possession over the disputed land alongwith other co-sharers by producing oral as well as documentary evidence, which has been wrongly ignored by both the Courts below. He has further contended that the jamabandi Ex.P1, also strengthens the case of the plaintiffs but both the Courts below have erroneously the same. The plaintiffs also produced on record report of Local Commissioner Ex.P2, site plan prepared by Local Commissioner Ex.P3, which also proved that except the area within the constructed boundary walls, the remaining

area is in possession of the plaintiffs, but no relief has been granted to the plaintiffs qua the open area owned and possessed by them. He has further argued that as the possession of the vacant land goes with the owner, so the plaintiffs should have been granted the relief qua the said area and has contended that the impugned judgments and decrees are liable to be set aside.

6. I have heard learned counsel for the appellant and gone through the record thoroughly.

7. In the instant case on the basis of jamabandi for the year 2002-03 Ex.P1 the plaintiffs have sought the injunction, as per which, Surajbhan son of Natha, the father of the present appellant/plaintiffs had 657/3943 share in total land measuring 172 Kanal 4 Marla and the land comprised in Khasra No.127/1 measuring 0 Kanal 14 Marla *gair mumkin abadi* also formed part of this total land and after death of Surajbhan, the share of Surajbhan was inherited by the plaintiffs.

8. But the plaintiffs have concealed the fact of earlier litigation qua the same land. Father of appellant/plaintiffs had earlier filed a suit for injunction against Gram Panchayat and the said suit was dismissed as withdrawn. Gram Panchayat, Janjariwas also filed one civil suit against Surajbhan, father of plaintiffs, and his brother Devdutt and three other persons Matadin, Surajbhan son of Kalu Ram and Ram Narain. The written statements Ex.D2 and Ex.D3, which were filed in the said suit, by Matadin son of Kalu Ram as well as Surajbhan and Devdutt have been produced on record. The perusal of the aforesaid written statements reveals that there is admission of Surajbhan, father of plaintiffs, in the said written statement

that Gram Panchayat had constructed a water tank in Khasra No.127/1 and the same be got dismantled and decree of possession be granted to the defendants. Copy of judgment dated 15.12.2008 Ex.P4 in suit bearing No.76 RT of 2000/05 titled 'Gram Panchayat, village Janjariwas vs. Matadin and others' has also been produced on record. So when the possession of defendant has been admitted by the Court in the previous suit filed by the predecessor of the plaintiffs then the plaintiffs cannot agitate the matter again regarding the same subject matter. The plaintiffs have also not come to the Court with clean hands when they have concealed the previous litigation, regarding the same property, filed by their predecessor and have thus suppressed the material facts.

9. Otherwise also, the relief claimed by the plaintiffs is contradictory. On the one hand, they are claiming to be in exclusive possession over the Khasra No.127/1 and have sought injunction for restraining the defendant from interfering into the possession and on the other hand, they have sought the relief of possession alleging that if during pendency of the suit, the defendant succeeds in raising construction of drain then the same be got dismantled and decree of possession be passed. PW1-Jagrup had admitted that there was water tank in the land of the Gram Panchayat.

10. As per the report of Local Commissioner Ex.P2 also wall on area 47 feet x 6 inches x 4 feet has been shown and a passage of Gram Panchayat has also been shown. Nothing has been produced on record to prove that the said construction was raised by the defendant during pendency of the suit. Rather this construction appears to be old one, as in

the previous suit filed by the Gram Panchayat, the construction by Gram Panchayat was accepted and injunction was granted, vide judgment Ex.D4 and decree Ex.D5 and predecessors of plaintiffs were restrained from interfering into possession of the plaintiffs of that suit. PW1-Jagrup firstly denied filing of any suit by the Gram Panchayat against Matadin, Surajbhan son of Kalu Ram, Devdutt son of Natha and Ram Narain, but thereafter in the later part of his cross-examination, he has admitted that in the said suit, Devdutt son of Natha his father, was party and he was the only son of Devdutt. PW7-Zile Singh also feigned ignorance in his cross-examination regarding civil suit bearing No.76 RT of 2000/05 titled as 'Gram Panchayat, village Janjariwas vs. Matadin and others' decided on 15.12.2008 but then he admitted that defendant No.3 Surajbhan son of Natha, was his father. PW3-Rohtash, who is also one of the co-sharers, had also admitted regarding filing of suit bearing No.76 RT of 2000/05 titled 'Gram Panchayat, village Janjariwas vs. Matadin and others' decided on 15.12.2008.

11. So it has been proved that earlier also a suit was filed by the Gram Panchayat regarding the same property. From judgment Ex.D4, it is proved that earlier the suit was filed by the predecessor of plaintiffs, which was dismissed as withdrawn. So when the plaintiffs have concealed the facts of this previous litigation qua suit property and have not come to the Court with clean hands, then they are not entitled to relief of permanent injunction.

12. It has been rightly held by the Courts below that when plaintiffs are not in possession of Khasra No.127/1 and when construction of

respondent/defendant is existing in the property in dispute, then plaintiffs should have sought the relief of possession instead of injunction. When the plaintiffs are not in possession of the suit property, then they are not entitled to the relief of injunction.

13. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

14. Appeal stands dismissed.

15. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

03.04.2024.
komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No