
(1999) 09 P&H CK 0169
In the Punjab And Haryana At Chandigarh
Case No : S.A.O. No. 15 of 1998

Gram Panchayat

APPELLANT

Vs

Chambel Singh

RESPONDENT

Date of Decision : 21-09-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23

Citation : (2000) 125 PLR 11 : (1999) 4 RCR(Civil) 420

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Bikram Singh, for the Appellant; S.K. Sood, for the Respondent

Judgement

R.L. Anand, J.—With the assistance rendered by the learned counsel for the parties, I have gone through the impugned judgment dated 14.2.1998, passed by the Court of Additional District Judge, Karnal, who remanded the case to the trial Court for the reasons given in para No. 10 of the judgment of the Additional District Judge reads as under:-

"Admittedly, the appellant-plaintiff is in possession over that suit property. It is also admitted case of both the parties that the suit property is situated in abadi deh of village Budhanppurabad. The appellant-plaintiff alleged his possession and ownership of the basis of long possession since his forefather. He also alleged that his possession is 100 years old. Not only this, this aspect that the appellant-plaintiff is in possession is evidence from the order dated 29.10.1992 passed by A.C.I.G. Karnal. The counsel for the appellant-plaintiff has alleged that in the order dated 29.10.1992 passed by A.C.I.G. Karnal as well as the order in appeal dated 9.6.1993 also it is to be decided whether the possession of the plaintiff-appellant is since when and this fact is very material to the case. Because the appellant-plaintiff has come in the Court claiming his ownership on the basis of long possession even amounts to adverse possession. This fact is again to be ascertained if his possession is even prior to 1950 then of course he can be termed as owner. However, on the other hand the respondent-defendant is

alleging that his (appellant-plaintiff) possession is only 2-3 years old. According to the respondent-defendant the suit property is abutting the residential house of appellant-plaintiff and is also near the chaupal. The respondent-defendant alleged that it is a part of chaupal where barati etc. used to park their vehicle and was being used for common purpose. It belongs to the respondent-defendant, while appellant-plaintiff is alleging that it is being used by him since long for tethering the cattle etc. Although it can be said that "the appellant-plaintiff is not owner yet possession is of the appellant-plaintiff. It is well settled law that even if for the sake of arguments if anyone is in unauthorised possession even then his possession can be disturbed only in accordance with law. The learned Law Officer for the respondent-defendant has contended that they were disturbing his (appellant-plaintiff) possession through legal process that is why the respondent-defendant has filed an ejectment proceedings, in the Court of A.C.I.G. Karnal. However, the learned trial Court has dismissed the application alleging and relying on Chander Parkash and Another Vs. Gram Panchayat and Another, where the jurisdiction of the civil Court is barred. But the counsel for the appellant-plaintiff has alleged that although there is, no quarrel regarding the observation made in this authority but evidently the civil Court jurisdiction only is barred when the officer passes the order not in accordance with the law and not according to the provisions of Act. But where the orders by A.C.I.G. Karnal dated 29.10.1992 and of Collector dated 9.6.1993 have been passed in summary way without giving any opportunity to the appellant-plaintiff. As is evident from the orders dated 29.10.1992 and 9.6.1993 passed by A.C.I.G. Karnal and Collector Karnal respectively. The Appellant-plaintiff has not been given any opportunity to lead evidence. The order was passed in the summary way on going to the spot. Even at the spot the finding of A.C.I.G. Karnal is that possession of the appellant-plaintiff was there. He has also mentioned in the order that parnalas, Khassi and window open in the suit property. So, in that situation when the appellant-plaintiff " is alleging his possession since long and the respondent-defendant is taking the possession, then the course; it is not purely a legal question. Rather it was a question which is based on facts and law. This fact that since when the appellant-plaintiff is in possession over the suit property is the real bone of contention and can be proved only by leading evidence. The learned trial Court although if had not been satisfied and there was no material for granting injunction and dismissed the injunction application. But the issue of maintainability has been decided Without-going into the facts and merits of the case. Although while deciding issue of maintainability, the jurisdiction point has also been touched. But as earlier discussed by me, to discuss the issue of jurisdiction and maintainability the learned trial Court should have gone in appreciating the evidence and by giving opportunity of leading evidence to the parties."

2. I have gone through the reasons advanced by the learned first Appellate Court and am of the considered opinion that the learned appellate Court was not justified in remanding the case to the trial Court. The lacunas are not supposed

to be filled in by the appellate Courts. The re-trial in this case was not necessary. In this view of the matter, I allow this appeal, set aside the judgment of the first appellate Court, dated 14.2.1998 and direct the first appellate Court to re-admit the appeal to its original number and dispose of the same according to law after giving notice to both the parties.

3. The parties through their counsel are directed to appear before the first appellate Court, Karnal, on 15.10.1999. Copy of the order be given Dasti.

Copy of the order be also sent to Additional District Judge, Karnal, for compliance.