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**(2014) 01 P&H CK 0039**

**In the Punjab And Haryana At Chandigarh**

**Case No : R.S.A. Nos. 2252 of 1990, 50 and 53 of 1991 (O&M)**

Gram Panchayat, Jakholi and Others

APPELLANT

Vs

Banwari and Others

RESPONDENT

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**Date of Decision : 09-01-2014**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100

Criminal Procedure Code, 1973 (CrPC) — Section 145

**Citation : (2015) 1 RCR(Civil) 714**

**Hon'ble Judges : Rameshwar Singh Malik, J**

**Bench : Single Bench**

**Advocate : Bikram Choudhary, Advocates for the Appellant; Bhoop Singh, Advocates for the Respondent**

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## **Judgement**

Rameshwar Singh Malik, J.—Three connected appeals are proposed to be decided together as all are arising out of same set of facts involving the identical issues. However, for the facility of reference, facts are being culled out from RSA No. 2252 of 1990. Briefly put, facts of the case are that the appellant-Gram Panchayat filed a suit for injunction on the ground that the defendants were in unauthorised possession over the suit land. Ejectment application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, ("VCL Act" for short), titled as Gram Panchayat v. Nafe Singh and others was allowed by the Assistant Collector, 1st Grade, Kaithal, vide order dated 25.7.1983 and the appeal filed by the defendants was also dismissed by the Collector vide order dated 23.1.1984. It was further pleaded case of the appellant-Gram Panchayat that in compliance of the ejectment orders, possession of the suit land was obtained on 28.11.1983, vide Report No. 117 entered in the Daily Diary by the Patwari.

2. Upon notice, the defendants appeared and filed their written statement controverting the assertion made by the plaintiff-appellant, raising many preliminary objections including about the maintainability of the suit. Defendants

claimed that they were continuing in cultivating possession on the suit land and have sown their crops of cotton, jawar etc., which were standing in the fields. They planted numerous trees in the land and they also dug the tubewells. It was also pleaded that a similar suit was already pending filed by Nafe Singh etc. against this very Gram Panchayat Jakholi. The learned Civil Court vide its order dated 24.12.1983 rejected the plaint of Nafe Singh etc. on the ground that it had no jurisdiction. Appeal was filed, which was accepted by the learned Additional District Judge, Kurukshetra vide its order dated 4.4.1984 holding that the suit land does not vest in the Gram Panchayat. The possession of the suit land was still with the defendants and the Daily Dairy Report No. 117 dated 28.11.1983 was manipulated document. It was further asserted that nobody had gone to the spot to take the possession of the suit land from the defendants.

3. On completion of pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to recover Rs. 10,000/- as alleged in the plaint? OPP.
2. Whether the Gram Panchayat Jakholi took possession on 28.11.1983 as alleged in the written-statement? OPD.
3. Whether the land was lying unsown on 28.11.1983? OPD
4. Whether the Gram Panchayat Jakholi is a necessary party? OPD
5. Whether Sham Kumar B.D. & P.O. Shri Bishan Singh SHO, PS Pundri and Karam Singh ASI Pundri are also necessary party? OPD
6. Relief.

4. To substantiate their respective stands taken, both the parties led their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that plaintiff-Gram Panchayat never took the possession of the suit land from the defendant on 28.11.1987 and the document bearing Report No. 117 dated 28.11.1983 was a manipulated and bogus document. Plaintiff failed to prove its case and finally the suit was dismissed vide judgment and decree dated 11.1.1989. Feeling aggrieved, plaintiffs-appellants filed appeal before the learned lower appellate court, which was also dismissed vide impugned judgment and decree dated 28.7.1990 passed by the learned Additional District Judge, Kurukshetra. Hence, this appeal.

5. Exactly similar was the position in RSA No. 50 of 1991, wherein suit for injunction filed by Nafe Singh etc. against Gram Panchayat, Jakholi, was decreed by the learned trial Court vide judgment dated 11.1.1989. On exactly similar set of facts, Gram Panchayat Jakholi, filed its appeal before the learned lower appellate court, which was dismissed vide judgment and decree dated 28.7.1990. In the third case, i.e. RSA No. 53 of 1991, Baljit Singh was the

plaintiff, who filed a suit for permanent injunction, which was decreed vide judgment dated 11.1.1990. The defendants/appellants filed their appeal, which was dismissed by the learned Additional District Judge, Kurukshetra vide judgment of even date, i.e. 28.7.1990. It is pertinent to note here that in all these three cases, it was the same report No. 117 dated 28.11.1983 vide which the Gram Panchayat was claiming to have taken possession pursuant to the ejectment orders, whereas the defendants in two case and plaintiff-Baljit Singh in third case were claiming that they had never been dispossessed pursuant to the ejectment orders and they had been continuing in physical cultivating possession over the suit land.

6. Learned counsel for the appellant-Gram Panchayat submits that the learned courts below have failed to appreciate the true factual as well as legal position while passing the impugned judgments. He further submits that since during the consolidation holdings, the suit land was reserved for income of the Gram Panchayat, it was entitled for possession thereof because the defendants-respondents were continuing in unauthorised possession. He also submits that presumption of correctness was attached to the report entered by the Patwari and the learned courts below have failed to appreciate the same in the correct perspective while passing the impugned judgments which were liable to be set aside. He next contended that in another suit for damages filed by Baljit against Mani Ram etc. it was held that possession had been taken by the Gram Panchayat. In such a situation, the learned courts below have recorded contradictory findings which were liable to be set aside. He also prays for allowing the application for additional evidence moved by way of CM No. 873-C-91 in RSA No. 2252 of 1990 and similar applications in other connected RSAs. Finally, he prays for setting aside the impugned judgments by allowing these three appeals.

7. Per contra, learned counsel for the respondents vehemently contended that once the suit for injunction filed by Nafe Singh etc. against Gram Panchayat was already pending, the instant suit at the instance of Gram Panchayat was not at all maintainable. He further submits that in fact the Gram Panchayat was not the owner of the land in question. The suit land vests in the proprietary body. Having been recorded in the revenue record as Shamlat Deh, the suit land does not vest in the Gram Panchayat in view of the definition contained in Section 2 of the VLC Act and also as per the law laid down by the Hon"ble Supreme Court in numerous judgments on the subject. It was the own set up case of the Gram Panchayat that the land was reserved for its income at the time of consolidation of holdings. Thus, the Gram Panchayat itself did not claim the ownership of the suit land. The Report No. 117 dated 28.11.1983 was nothing but a bogus and fabricated document, as held by the courts. Respondents had never been dispossessed from the suit land, who have been continuing in cultivating possession to the extent of their shares in the Shamlat Deh being members of the proprietary body of the village. He prays for dismissal of the appeals.

8. Having heard the learned counsel for the parties at considerable length, after going through the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that no interference is warranted at the hands of this Court while exercising its appellate jurisdiction under Section 100 Code of Civil Procedure because no question of law much less substantial question of law thereof has been found involved in the present cases. To say so, reasons are more than one, which are being recorded hereinafter.

9. It is a matter of record and not in dispute that earlier suit for injunction filed by Nafe Singh etc. against the present Gram Panchayat was already pending, having been filed on 15.6.1983. Once it was so, the plaintiff-appellant was at liberty to contest that very suit and in such a situation learned counsel for the respondents was right to contend that the instant suit for injunction at the hands of Gram Panchayat was not maintainable. Thus, all these three appeals are liable to be dismissed for this reason alone.

10. It is the settled proposition of law that the first appellate court is the final court of facts. In the present case, the learned trial Court recorded the cogent findings before dismissing the suit of the Gram Panchayat. The learned lower appellate court again re-appreciated the facts as well as the evidence available on record and rightly upheld the judgment rendered by the learned trial Court by recording its findings which are based on sound reasons because of which the impugned judgments deserve to be upheld.

11. Before arriving at a judicious conclusion, the learned lower appellate court recorded cogent reasons. The relevant observations made by the learned lower appellate Court in paras, 6, 7 and 8 of the impugned judgment, read as under:-

"6. This suit was filed by the Gram Panchayat against Jai Singh, Nafe Singh, Dhira sons of Ranjit Banwari son of Sheo Chand and Balwa alias Baljit son of Didara for permanent injunction restraining them from interfering into the plaintiff-Gram Panchayat's possession over the suit land measuring 96 kanals 6 marlas. It may be mentioned here that Nafe Singh and Jai Singh ss/o Ranjit also filed suit for permanent injunction against the Gram Panchayat. Nafe Singh and Jai Singh had already filed the suit on 15.6.1983, and Baljit Singh filed the suit on 9.3.1984. So, the present defendants had already filed suits against the Gram Panchayat and the suit titled Nafe Singh etc. v. Gram Panchayat was pending in the Court for the last about one year against the Gram Panchayat. So, the Gram Panchayat could contest the suit filed by Nafe Singh etc. or Baljit Singh and had no necessity to file separate suit.

7. The Gram Panchayat has taken a stand in this case that the suit land vests in the Gram Panchayat and the defendants were in unauthorised possession of the suit land because their lease period has expired and so they moved application under Section 7(2) of the Punjab Village Common Lands Act, 1961 and vide order dated 17.11.1983, the Assistant Collector 1st Grade, Kaithal ordered the

ejection of the defendant and their appeal was dismissed by the Collector on 25.1.1984. However, in the meantime, the Gram Panchayat obtained possession of the suit land on 28.11.1983. Report roznamcha No. 117 was entered by the Patwari. From the Report roznamcha it is evident that the Gram Panchayat obtained possession of a big chunk of land of which several persons were in possession. So, they filed the suits. It also appears that some writ petition is pending before the Hon'ble High Court regarding the validity of the proceedings under Section 7(2) of the Punjab Village Common Lands Act.

8. It has been admitted by the Gram Panchayat that the suit land besides some other land was reserved for the income of the Gram Panchayat at the time of consolidation of holdings. Thus, it belonged to the proprietary body of the village and was reserved for that purpose. So, it does not fall in the definition of shamlat land as defined in Section 2(g) of the Act. As such the Act was not application to the land. It is also important to note that Nafe Singh and Jai Singh filed their suit on 15.6.1983 but the learned Sub Judge, Kaithal returned the plaint on 24.12.1983 observing that the question of vesting of the land in the Gram Panchayat was involved and the civil court has no jurisdiction to entertain and try the suit. So, he returned the plaint to be presented in the Revenue Court. Jai Singh and Nafe Singh etc. preferred appeal against that order and the appeal was accepted by Shri V.M. Jain, the then learned Additional District Judge, Kurukshetra vide his order dated 6.4.1984. He set aside the order and remanded the case for trial according to law on the conclusion that as the land was reserved during consolidation of holdings for the income of the Gram Panchayat, it did not constitute shamlat land as defined in Section 2(g) of the Punjab Village Common Lands Act and so it did not vest in the Gram Panchayat. It could lease out the same in favour of any person and utilise the income for the benefit of the village proprietary body and could seek ejection of the lessees/tenants in accordance with law. He put reliance in that behalf on the law laid down in 1984 HRR 129 Kola Singh v. Commissioner Hissar Division, Hissar that where the land has been reserved for the income of the Panchayat during consolidation of holdings, such land belong to the proprietary body and does not vest in the Gram Panchayat and it cannot be termed as shamlat land as defined in Section 2(g) of the Act. The law laid down by Hon'ble Supreme Court in Bhagat Ram and Others Vs. State of Punjab and Others, was also relied upon. On the basis of the aforesaid facts and circumstances of the case and the law laid down on the point, Shri V.M. Jain, the then learned Additional District Judge, Kurukshetra came to the conclusion that the title of such land vests in the proprietary body and only income from such land is to be sued for the benefit of the village community and that it was only the management of such land which vests in the Gram Panchayat for the benefit of the village community. That order was not challenged by the Gram Panchayat in appeal. So, it has become final so far as this court is concerned of course subject to the result of writ petitions, if any pending in the Hon'ble High Court. Thus, the proceedings under Section 7(2) of the Act were not legal nor any valid ejection order could be passed."

12. Again, the learned Additional District Judge has recorded strong reasons explaining as to how the appellant-plaintiff Gram Panchayat could not take possession from the respondents on the basis of alleged Report No. 117 dated 28.11.1993 and the reasons read as under:-

"....The injunction order was also obtained restraining the Gram Panchayat from interfering in their possession. On the appearance of the Gram Panchayat injunction order was modified ordering the parties to maintain status quo regarding possession. Thus, there was no question of the Gram Panchayat taking possession on 28.11.1983 as upto that date there was injunction order. So, no possession could be obtained when the stay order was continuing.

There is substance in the aforesaid observations of the learned trial court. In case the possession had been taken in violation of the injunction order, the defendant-respondents must have moved application for contempt proceedings. But no such application was ever moved. Thus, no possession was taken at the spot and report roznamcha was entered at the back of the defendants. The defendants have installed their tubewells and have also raised constructions of Kotha and as such when the injunction was in their favour, they would not have allowed the transfer of possession. In proceedings under Section 145 Cr.P.C., the Executive Magistrate concluded on 10.4.1987 that report roznamcha dated 28.11.1983 was a bogus document and that the lessees (defendants) were in possession of the suit land. As already mentioned the Gram Panchayat has not led any evidence regarding its possession nor it examined any lessee."

13. During the course of hearing, learned counsel for the appellant(s) failed to point out any jurisdictional error or patent illegality apparent on the record of the case in either of the impugned judgments so as to convince this Court to take a different view than the one taken by the learned courts below. The learned courts below have recorded concurrent findings of fact. Thus, there is no scope for interference at the hands of this Court while exercising its appellate jurisdiction under Section 100 C.P.C. because there is no question of law, much less substantial question of law thereof, found involved.

14. The view expressed here-in-above is also supported by the consistent view taken by the Hon"ble Supreme Court in a catena of judgments and particulars of some of them are: Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah, ; Smt. Satya Gupta Alias Madhu Gupta Vs. Brijesh Kumar, ; Chandrabhagabai and Others Vs. Ramakrishna and Others, ; Ram Prasad Rajak Vs. Nand Kumar and BOrs. and Another, ; State of Rajasthan Vs. Harphool Singh (Dead) Through His L.Rs., ; M. Nadar Kesavan Nadar v. Narayanan Nadar Kunjan Nadar, (2000) 10 SCC 244; Baidyanath Bhattacharya v. S. Karmakar, (2000) 9 SCC 505; Manorama Thampuratti Vs. C.K. Sujatha Thampuratti and Others, ; Chandragouda and Another Vs. Shekharagouda S. Pittanagoudar (Dead) by Lrs. and Others, ; Thimmaiah and Others Vs. Ningamma and Another, ; Mohd. Abdul Muqtadar v. Sk. Fakruddin, (2000) 9 SCC 384; G. Thankamma Amma and Another Vs. N. Raghava Kurup and Others, ; Ananta Kalappa Jaratakhane Vs.

Krishtappa and Another, ; Kempaiah (Dead) by Lrs. Vs. Doddanaraiah and Others, ; Mohd. Hadi Hussain v. Abdul Hamid Choudhary, (2000) 10 SCC 248 and Shri Ajit Chopra Vs. Shri Sadhu Ram and Others, .

15. The consistent view taken by the Hon''ble Supreme Court in the above-said judgments came to be reiterated further in the case of Narayanan Rajendran and Another Vs. Lekshmy Sarojini and Others, . The relevant observations made by the Hon''ble Supreme Court in paras 63 to 72 of the judgment in Narayanan Rajendran's case (supra), which can be gainfully followed in the present case, read as under:-

"63. The analysis of cases decided by the Privy Council and this court prior to 1976 clearly indicated the scope of interference under Section 100 C.P.C. by this Court. Even prior to amendment, the consistent position has been that the courts should not interfere with the concurrent findings of facts.

64. Now, after 1976 Amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering under Section 100 C.P.C. only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law. The language used in the amended section specifically incorporates the words as "substantial question of law" which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble". The effect of the amendment mainly, according to the amended section, was:

(i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved;

(ii) The substantial question of law to precisely state such question;

(iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the appeal;

(iv) Another part of the Section is that the appeal shall be heard only on that question.

65. The fact that, in a series of cases, this court was compelled to interfere was because the true legislative intendment and scope of Section 100 C.P.C. have neither been appreciated nor applied. A class of judges while administering law honestly believe that, if they are satisfied that, in any second appeal brought before them evidence has been grossly mis-appreciated either by the lower appellate court or by both the courts below, it is their duty to interfere, because they seem to feel that a decree following upon a gross mis-appreciation of evidence involves injustice and it is the duty of the High Court to redress such

injustice. We would like to reiterate that the justice has to be administered in accordance with law.

66. When Section 100 C.P.C. is critically examined then, according to the legislative mandate, the interference by the High Court is permissible only in cases involving substantial questions of law.

67. The Judicial Committee of the Privy Council as early as in 1890 stated that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however, gross or inexcusable the error may seem to be and they added a note of warning that no Court in India has power to add to, or enlarge, the grounds specified in Section 100.

68. The High Court seriously erred in interfering with the findings of facts arrived at by the trial court and affirmed by the first appellate court.

69. The scope of interference by the High Court in second appeal under section 100 Civil Procedure Code after 1976 Amendment is strictly confined to cases involving substantial questions of law. The High Court would not be justified in dealing with any second appeal without first formulating substantial question of law.

70. The legislative intention has been clearly spelt out in a series of cases of this court. In *Gurdev Kaur (supra)*, this court exhaustively dealt with the cases before and after 1976 Amendment of C.P.C. This court clearly observed that the scope and ambit of section 100 Civil Procedure Code has been drastically changed after the amendment.

71. It is a matter of common experience in this court that despite clear enunciation of law in a catena of cases of this court, a large number of cases are brought to our notice where the High Court under section 100 Civil Procedure Code are disturbing the concurrent findings of fact without formulating the substantial question of law. We have cited only some cases and these cases can be easily multiplied further to demonstrate that this court is compelled to interfere in a large number of cases decided by the High Courts under section 100 C.P.C. Eventually this court has to set aside these judgments of the High Courts and remit the cases to the respective High Courts for deciding them de novo after formulating substantial question of law. Unfortunately, several years are lost in the process. Litigants find it both extremely expensive and time consuming. This is one of the main reasons of delay in the administration of justice in civil matters.

72. We have once again undertaken this exercise and tried to crystallize the legislative intention by referring to a number of cases decided by this court with the hope that now the High Courts would refrain from interfering with the concurrent findings of fact without formulating substantial question of law."

16. Reverting back to the facts of the present case and respectfully following the law laid down by the Hon"ble Supreme Court in the judgments referred to here-

in-above, it is unhesitatingly held that while exercising its appellate jurisdiction under Section 100 C.P.C., this Court will not interfere in the concurrent findings of fact recorded by the learned trial Court and affirmed by the first appellate court, particularly when the concurrent findings of fact are primarily based on oral evidence. This Court will be transgressing its jurisdiction while exercising its appellate jurisdiction under Section 100 C.P.C., if there is no substantial question of law involved. The learned counsel for the appellants could not raise any substantial question of law nor any has been found involved. Thus, the present one has not been found to be a fit case for interference at the hands of this Court.

17. No other argument was raised.

18. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that all the three appeals are bereft of merit and without any substance, thus, these must fail. No case for interference has been made out. Consequently, the impugned judgments and decrees passed by the learned courts below are upheld. Resultantly, all these three appeals stand dismissed. Pending applications also stand disposed of. No costs.