

(2013) 11 P&H CK 0284

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1194 of 1984 (O and M)

Mothu Ram (since deceased, through his L.Rs.) and Others	APPELLANT
Vs	
Jagdish Ram (since deceased, through his L.Rs.) and Others	RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0284

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The following substantial questions of law arises for consideration in the second appeal:- i) Whether the plaintiffs are entitled to maintain an action for injunction challenging an exchange brought between the gram Panchayat and the 1st defendant pursuant to Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964?

ii) Whether the plaintiffs have shown the property to be in their possession to sustain the relief of injunction?

iii) Whether the civil court had jurisdiction to decide on the claim for injunction that challenged the exchange between the gram Panchayat and the 1st defendant in view of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961?

The second appeal is at the instance of the plaintiffs, who sought for relief of injunction restraining the defendants from altering the revenue entries on the basis of an alleged illegal exchange between defendants 2 and 3 on the one hand and the 1st defendant on the other and that their physical possession of the property in respect of a site described in the plaint as situate within AB CD and EFGH shall be protected. The plaintiffs would refer to the property of an extent of 3 kanals in Khasra No. 36/23 as the property set apart at the time of consolidation for extension as abadi for non-proprietors of the village as

complete owners thereof. The plaintiffs would contend that the properties were shown as being in their possession in the jamabandis of the year 1976-77 and the cause of action for the suit was that the defendants were making an attempt to forcibly dispossess the plaintiffs from the property.

2. The defendants took a common line of defence to the effect that the gram panchayat owned various parcels of land measuring about 35 kanals 7 marlas and it wanted to establish a focal point providing for several facilities and it had secured the said extent by way of exchange from the 1st defendant who owned property of an extent of 33 kanals 7 marlas in one block. The suit was originally decreed and in the appeal filed by the 1st defendant, the appellate Court held that there could be no challenge to an action of exchange done through a procedure established by law and the civil court itself did not have a jurisdiction to decide on the plaintiffs' possession and grant the relief of injunction. The Court also adverted to the proceedings of the Collector under which the property had been granted to the defendants and it observed that there was no valid basis for the plaintiffs to claim the property to be in possession and seek for injunction.

3. When the matter was in appeal before this Court, it has called for a status report in respect of the property and the District Development and Panchayat Officer has given a report stating that the property is lying vacant and no construction has been carried out on the said land. This report was on account of a specific contention taken by the defendant that the plaintiffs had not been in possession and that it was merely vacant. The Deputy Commissioner has also given an affidavit which is to the effect that for the year 2006-07, the ownership as per khewat No. 374 was comprised in 37 shares, out of which 17 shares were of the panchayat deh and 20 shares were of Jagdish the 1st defendant. The entries also referred to some names of persons as gair marusi and making a specific reference to Khasra No. 22/13/2 min of an extent of 1 kanal, the report stated that a mutation of inheritance had been carried out in favour of Jagdish's sons and that the khasra number was lying vacant at the site.

4. In respect of the vacant land, possession must follow title. If the admitted situation is that the property vested in the gram panchayat, then the right of the gram panchayat to deal with it is provided under Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964 that states as follows:-

5. Exchange of land.--A Panchayat, if it is of opinion that it is necessary so to do for the benefit of the inhabitants of the village may with the prior approval of the Government, transfer any land in shamilat deh by exchange with the land of an equivalent value.

5. I have seen through the proceedings of the Collector that were issued on 20.07.1978 granting an extent of 35 kanals 7 marlas that includes the suit property of an extent of 1 kanal. If the plaintiffs' own possession or right was threatened by the exchange, the appropriate remedy ought to have been under the Act itself which provides for a forum of adjudication if a title to the property

was required to be adjudicated. In this case, the plaint proceeds on an averment that the exchange made by the 1st defendant with the gram panchayat was illegal, without reference to their own rights. Section 12 of the Act gives finality to the order passed by the Collector or Commissioner and states it shall not be called in question in any court by way of appeal or revision or in any original suit, application or execution proceedings. The order approving the exchange by the Collector could not be avoided by the plaintiffs by couching the relief as one for injunction. Section 13 is more specific in that it clearly lays down that civil courts shall have no jurisdiction to entertain or adjudicate upon any question whether any property or any right or interest in the property is or is not shamlat deh vested or deemed to have vested in the panchayat. The bar also extends through clause (b) "to question the legality of any action taken by the Commissioner or the Collector or the panchayat under this Act."

6. The suit for injunction itself is an equitable remedy which only the civil court grant. If the suit was for the relief of injunction on a contention that the 1st defendant had no right to enjoy the property under the exchange, then the plaintiffs cannot succeed without proving that the 1st defendant had no right to the property and that the attempt by him to dispossess the plaintiffs would require to be thwarted in law. The plaintiffs were asking for the relief of injunction by challenging the order of exchange without setting out such a prayer which the civil court could not have granted. If the suit were to be considered as a mere suit for injunction where the issue of title was irrelevant, the relief of injunction by the civil court would be possible only if the plaintiff had a right to hold his possession against a person, who was setting up title in himself under the proceedings of the Collector. The suit for injunction ought to answer an important legal precept that the plaintiff who seeks for injunction cannot secure such a relief against the true owner when his ownership is denied. I have already observed that the property had at all times remained vacant and even the report shows the property as vacant land. The assessment of possession over a vacant land ought to follow title and the possession must therefore be taken to be in the hands of the 1st defendant, who had title to the property under the proceedings of the Collector. The injunction relief could not have been availed to the plaintiffs against the 1st defendant and the appellate Court was justified in finding that the plaintiffs cannot maintain the suit for injunction. The points of law which are taken are answered against the plaintiffs and the decision already rendered by the appellate Court is confirmed. The second appeal is dismissed with costs. Counsel's fee Rs. 5,000/-.