
(2012) 04 P&H CK 0179

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1565 of 2012 (O and M)

Narain Singh and Others

APPELLANT

Vs

Gram Panchayat, Village Babupur

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Citation : (2012) 4 RCR(Civil) 248

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Aman Pal, for the Appellant;

Final Decision : Dismissed

Judgement

L.N. Mittal, J.

CM No. 4226-C of 2012

1. For reasons mentioned in the application, which is accompanied by affidavit, delay of 16 days in filing the appeal is condoned.

RSA No. 1565 of 2012

This is second appeal by legal representatives of Baljeet Singh original plaintiff since deceased, having been non-suited by both the courts below.

2. Baljeet Singh-plaintiff filed suit against defendant-respondent-Gram Panchayat alleging that suit land measuring 17 Kanals 16 Marias and some other land was given to plaintiffs father out of Bachat land i.e. surplus land left out after utilization for common purposes during consolidation of holdings. Since then plaintiffs father was in possession of the suit land and after his death, plaintiff is owner in possession thereof. Plaintiff has been cultivating the same. Plaintiffs father was proprietor in the village. Land was taken for common purposes pro-rata from the land of proprietors of the village during consolidation of holdings. The land left out after utilizing for common purposes was re-distributed among

proprietors and in this manner, plaintiffs father got the suit and other land. However, defendant threatened to take forcible possession of the suit land from the plaintiff. Accordingly, plaintiff sought permanent injunction restraining the defendant from interfering in plaintiffs possession over the suit land in any manner.

3. Defendant-Gram Panchayat controverted the averments of the plaintiff and raised certain objections. However, subsequently none appeared for the defendant. Accordingly the defendant were proceeded ex parte.

4. Learned Civil Judge (Junior Division), Gurgaon vide judgment and decree dated 15.01.2011 dismissed the plaintiffs suit. First appeal preferred by plaintiffs legal representatives has been dismissed by learned District Judge, Gurgaon vide judgment and decree dated 13.12.2011. Feeling aggrieved, legal representatives of plaintiff have filed this second appeal.

5. I have heard learned counsel for the appellants and perused the case file.

6. The plaintiff claimed ownership and possession over the suit land on the ground that it was allotted to his father out of Bachat land. However, no record of consolidation of holdings has been produced to depict that land for common purposes was taken out from the land of proprietors and that after utilising for common purposes, suit land and other land left surplus was distributed among the proprietors and that in the said distribution, the suit land was given to plaintiffs father. Consequently whole basis of the plaintiffs claim is completely knocked out.

7. In addition to the aforesaid, jamabandis placed on record by the plaintiff in his ex parte evidence depict defendant-respondent Gram Panchayat to be owner as well as in possession of the suit land. Consistent revenue entries recorded since jamabandi for 1962-63 till jamabandi for 1998-99 depicting Gram Panchayat to be owner as well as in possession of the suit land are sufficient to prove that plaintiff is not in possession of the suit land and never remained in possession thereof. Presumption of correctness attached to entry in jamabandi has been further strengthened by continuity of the same entries in favour of defendant-respondent for a long period. Said presumption has not been rebutted by oral evidence of the plaintiff.

8. It is also worth mentioning here that plaintiff claimed to be in cultivating possession of the suit land. However, the suit land is recorded to be Banjar Kadeem in jamabandis. Consequently, the suit land was never cultivated and is not cultivable. Thus plaintiffs claim is further negated. It may also be mentioned that there is also entry in jamabandi that the suit land was leased out for one year by Gram Panchayat. It again confirms possession of defendant Gram Panchayat over the suit land.

9. Thus examined from any angle, it becomes manifest that plaintiff never remained in possession of the suit land and was also not in possession thereof at

the time of filing of the suit. Concurrent finding recorded by the courts below to this effect is fully justified by the evidence on record. The said finding is not shown to be perverse or illegal nor it is based on misreading or misappreciation of evidence. On the contrary, said finding is the only reasonable finding that can be arrived at on the basis of the evidence on record. Consequently the said finding does not warrant any interference.

10. Counsel for the appellants contended that issues were not framed by the trial Court. However, issues were not framed by the trial Court because defendant was proceeded ex parte before framing of issues. Moreover, omission to frame issues has not caused any prejudice to the plaintiff because the plaintiff led his ex parte evidence in support of his claim and the same has been appreciated by the courts below.

11. Counsel for the appellants also contended that lower appellate Court observed that Civil Court has no jurisdiction to entertain the suit regarding question whether the suit land vests or does not vest in Gram Panchayat, but still the court proceeded to adjudicate the suit on merits. The contention apparently is very attractive but in fact it is devoid of substance. Civil Court does not have jurisdiction to determine the vesting or non-vesting of the suit land in Gram Panchayat. However, the instant suit was instituted for relief of permanent injunction only based on alleged possession of plaintiff over the suit land. Only civil Court has jurisdiction to determine the question of possession and grant of injunction. Consequently, jurisdiction of civil Court to decide the suit for permanent injunction is not barred. If question of ownership has to be touched upon collaterally while adjudicating the suit for permanent injunction, the civil Court is not barred from doing so. However, ultimate decision regarding vesting or non-vesting of the suit land in Gram Panchayat is to be given by competent authority in appropriate proceedings if any under the Punjab Village Common Lands (Regulation) Act, 1961. For the reasons aforesaid, I find no merit in this second appeal. No question of law, much less substantial question of law, arises for determination in this second appeal. Accordingly the appeal is dismissed in limine.