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Court : Punjab and Haryana

Decided On : Aug-11-2014

Appellant : “1. Whether the Plaintiff Is Entitled for the Decree of

Respondent : Ram Sarup

Judgement :

Rs.No.4101 of 2014 (O&M) -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Rs.No.4101 of 2014 (O&M) Date of Decision:11.08.2014 Gram Panchayat, Village Duliana ..Appellant versus Ram Sarup ..Respondent CORAM : HON'BLE Mr.JUSTICE RAMESHWAR SINGH MALIK Present : Mr.Yadvinder Singh Turka, Advocate for the appellant.

\*\*\*\* 1.

To be referred to the Reporters or not?.

2.

Whether the judgment should be reported in the Digest?.

\*\*\*\* RAMESHWAR SINGH MALIK J.

Present appeal, at the instance of defendant-Gram Panchayat, is directed against the judgment of reversal passed by the learned fiRs.appellate court, whereby the fiRs.appeal of the plaintiff was partly allowed, declaring his suit for declaration and

permanent injunction.

Briefly put, facts of the case as noticed by the learned fiRs.appellate court in paras 2 and 3 of the impugned judgment, are that, plaintiff filed this suit for declaration to the effect that he is in possession of land comprised in khewat/khatauni No.388 min/475, khaSr.No.34//15/2, 16/2, 17 total measuring 13 kanals 16 marlas situated in village Duliana, Tehsil Barara, Distt.

Ambala (hereinafter referred to as the suit land) and revenue entries showing the defendant as owner of the land and Parama Nand in possession of the same are incorrect, null and void, ineffective qua the rights of the plaintiff and the mutation in the name of Gram Panchayat on Thakral Rajeev 2014.08.21 15:37 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4101 of 2014 (O&M) -2- the basis of the notification is null and void, in effective qua the rights of the plaintiff with consequential relief of rectifying the same in the name of the plaintiff in the column of cultivation instead of Parma Nand and restraining the defendant from dispossessing the plaintiff from the suit land forcibly and illegally or in the alternative suit for possession of the suit land.

Briefly stated, the plaintiff came with the averments that he was in possession of the suit land for the last more than 20 yearRs.Previously one Parma Nand son of Beli Ram was in possession of the suit land who delivered the possession of suit land vide writing dated 28.11.1985.

Parma Nand died issue less leaving behind no legal heir.

The revenue entries could not be changed in the name of the plaintiff in the revenue record despite of said writing.

The plaintiff filed an application for correction of khaSr.girdawari in the court of Assistant Collector Second Grade, Barara and the khaSr.girdawari was ordered to be corrected in the name of plaintiff from the name of Parma Nand and the order was handed over to the Patwari Halqa.

The plaintiff also planted poplar and safeda trees in the suit land.

The plaintiff had been cultivating the suit land and remained in possession of the same throughout, but recently in February 2005 he had come to know that Halqa Patwari had not changed the khaSr.girdawari in his name as share holder, despite of the order of AC Second Grade and he further came to know that defendant was shown to be the owner of suit land in the revenue record in the column of ownership on the basis of some notification of the Government of Haryana.

The plaintiff being illiterate person was not aware about the mischief of the Halqa Patwari.

The revenue entries showing the defendant as owner and Parma Nand in possession are wrong and without any basis, these entries are liable to be rectified by inserting the name of Thakral Rajeev 2014.08.21 15:37 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4101 of 2014 (O&M) - 3- share holder in the column of ownership land, the name of the plaintiff in the column of cultivation, as the notification of the State of Haryana declaring the Gram Panchayat as owner of sult land/property and the mutation in consequence of the alleged notification are also null and void.

The plaintiff requested the defendant several times to get the revenue entries corrected, but it is adamant and rather threatening to dispossess the plaintiff from suit land forcibly and illegally on the basis of wrong revenue entries.

Hence, the suit was filed.

On notice, defendant-Gram Panchayat appeared and filed written statement raising the preliminary objections regarding maintainability, locus standi, jurisdiction, suppression of true and material facts and limitation.

On merits, it was denied that plaintiff was in possession of the suit land for the last more than 20 yeaRs.It was also denied that Parma nand son of Bali Ram was in possession of suit land.

Said Parma Nand and the plaintiff have got no right, title or interest in the suit land which was owned and possessed by the defendant-Gram Panchayat of village Duliana exclusively.

Said Parma Nand had got no right to deliver the possession of the suit land and to execute any writing regarding the same.

The alleged writing was illegal and not binding upon the defendant in any manner.

The illegal possession from suit land had already been removed through competent authority.

The suit land was owned and possessed by the defendant-Gram Panchayat, Duliana, therefore, there was no question of correcting the khaSr.girdawari in the name of the plaintiff of Parmanand.

It was denied that plaintiff had planted poplar and Safeda trees in the suit land.

The alleged order if any passed by the AC II Gr.

Barara, behind the defendant was not binding upon the defendant in any manner and same was Thakral Rajeev 2014.08.21 15:37 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4101 of 2014 (O&M) -4- illegal as defendant was never summoned by the court of AC II Gr.

The revenue entries regarding suit property were rightly going on in the name of the defendant as the suit land vests in the Gram Panchayat.

Denying the rest of the averments, dismissal of the suit was prayed for.

On completion of pleadings of the parties, learned trial court framed the following issues:- 1.

Whether the plaintiff is entitled for the decree of declaration along with consequential relief as prayed for in the head note of the plaint?.

OPP2 Whether the suit is not maintainable?.

OPD3 Whether this court has no jurisdiction to try and entertain the present suit?.

OPD4 Whether the plaintiff has suppressed the true and material facts from the court?.

OPD5 Whether the suit of the plaintiff is hopelessly time barred?.

OPD6 Relief.

In order to prove their respective stands taken, both the parties led their documentary as well as oral evidence.

After hearing both the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has failed to prove his case.

Accordingly, suit was dismissed vide judgment and decree dated 02.03.2012.

Feeling aggrieved, plaintiff filed his fiRs.appeal which came to be partly allowed by learned fiRs.appellate court, vide impugned judgment and decree dated 7.3.2014.

Hence, this second appeal, at the instance of defendant.

Learned counsel for the appellant submits that plaintiff was neither the owner nor in possession of the suit land.

In the year 1985, one Parma Nand was recorded as co-sharer of the suit land.

He was alleged to Thakral Rajeev 2014.08.21 15:37 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4101 of 2014 (O&M) -5- have furnished an affidavit dated 28.11.1989 in favour of the plaintiff- respondent surrendering the possession in favour of the plaintiff.

However, plaintiff never got recorded the said affidavit in the relevant revenue record.

Such an affidavit was of no use.

He further submits that mutation was entered in favour of the appellant-Gram Panchayat on the basis of notification issued in the year 1992.

Thus, Gram Panchayat became owner of the suit land.

He refers to Rapat Roznamcha dated 20.6.2000 which shows that possession was taken by the Gram Panchayat.

Since the learned fiRs.appellate court has proceeded on a misconceived approach, while partly allowing the fiRs.appeal of the plaintiff, impugned judgment and decree were not sustainable in law.

He prays for setting aside the impugned judgment passed by the learned fiRs.appellate court, by allowing the present appeal.

Having heard the learned counsel for the appellant at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, no interference is warranted at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure ('CPC' for short).To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that the appellant-Gram Panchayat has already initiated the proceedings under Section 13-A of the Punjab Village Common Lands (Regulation) Act 1961 (for short VCL Act.).Thus, the issue of title is pending decision before the competent authority under the VCL Act.

So far as the possession over the suit land was concerned, Thakral Rajeev 2014.08.21 15:37 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4101 of 2014 (O&M) -6- learned counsel for the appellant has placed reliance on the Rapat Roznamacha dated 20.6.2000, to contend that possession of the suit land was taken by the Gram Panchayat.

However, when a pointed question was put as to in compliance of which order this Rapat Roznamcha was recorded and possession was taken, he had no answer and rightly so, because there was no order passed by any competent authority in favour of the appellant- Gram Panchayat, to take possession from the plaintiff.

Further, learned counsel for the appellant also could not point out as to how and in which manner the suit land was being used by the Gram Panchayat.

In the absence of any ejectment order passed by the competent authority, the Rapat Roznamcha dated 20.6.2000 would be totally insignificant.

Having said that, this Court feels no hesitation to conclude that learned fiRs.appellate court committed no error of law, while passing the impugned judgment, partly allowing the fiRs.appeal of the plaintiff and the same deserves to be upheld.

It is also a matter of record that Parma Nand was recorded as co-sharer in possession of the suit land.

Appellant-Gram Panchayat was no where in picture.

Appellant came at the scene for the fiRs.time in the year 1992 and that too on the basis of notification issued by the State Government, pursuant to the amendment in the VCL Act vide Act No.9 of 1992.

The amendment was challenged before this Court and the notification of 1992 was set aside by the Full Bench of this Court in Jai Singh and others v.

State of Haryana; (2003) 134 PLR658 holding that the land which was under the ownership of proprietors of the village concerned, would not vest in the Gram Panchayat.

Land which was "jumla mustarka malkan wa digar hasab rasad arazi khewat" and was left during the Thakral Rajeev 2014.08.21 15:37 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4101 of 2014 (O&M) -7-consolidation proceedings for a particular common purpose, will not revert back to the propriet ORS.However, said issue is not directly involved herein because collector is seized of the matter so far as the issue of title between the parties is concerned.

It is the appellant-Gram Panchayat, who has filed the petition under Section 13-A of the VCL Act, claiming title over the suit land.

In this view of the matter, it is unhesitatingly held that neither the title of the appellant-Gram Panchayat is clear so far nor the document i.e.Rapat Roznamcha

dated 20.6.2000 is of any use so far as the issue of possession is concerned.

Learned fiRs.appellate court partly allowed the fiRs.appeal of the plaintiff and while doing so, the learned fiRs.appellate court did nothing wrong, in view of the peculiar facts situation of the case referred to here-in- above.

Before arriving at a judicious conclusion, the learned fiRs.appellate court rightly appreciated the true facts of the case as well as the evidence available on record.

Cogent findings were recorded in paras 20 to 23 of the impugned judgment and relevant part thereof reads as under:- The defendant-Gram Panchayat examined Narender Sharma, DW-1.

He stated that disputed land measuring 13 kanals 11 marlas is situated in village Duliana.

It is owned by Gram Panchayat, Duliana.

However, entries were wrongly recorded in the name of Mustarqa malkaan.

The petition under Section 13-A of the Punjab Village Common Lands Act filed by the Gram Panchayat is pending before the Collector, Ambala.

The plaintiff is not a proprietor in the village.

The disputed land is in possession of the Gram Panchayat.

The plaintiff never cultivated this land.

The unauthorized possession has already been removed on 20.6.2000.

During cross-examination, he stated that Parmanand has now died.

His father Beli Ram was Thakral Rajeev 2014.08.21 15:37 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4101 of 2014 (O&M) - 8- proprietor in the village and Parmanand was in possession of the land in accordance with his share.

He has seen the khaSr.girdawari of suit land in accordance with his share.

He has seen the khaSr.girdawari of suit land wherein the entries are recorded in the name of Parmanand.

He has no knowledge that Parmanand has handed over the possession to Ram Sarup and further admitted that plaintiff has not surrendered the possession.

He also admitted that the mutation of ownership in the name of Panchayat for the fiRs.time was incorporated in the year 1992 on the basis of notification.

Now, the mutation is transferred in the name of proprietors of the village.

The Gram Panchayat has not filed any suit/petition against Ram Sarup under Section 7 of PVCL Act.

However, the Gram Panchayat has filed a suit against the proprietors before the Collector.

The land is lying vacant, it has not been cultivated since 2003.

It has also come in the cross-examination of plaintiff Ram Sarup that the disputed land measuring 13 Kanals 11 marlas is situated at one place.

Parmanand died long back.

He filed a suit for correction of KhaSr.girdawari against Parmanand.

He has not impleaded the Gram Panchayat as a party.

No notice was given to the Gram Panchayat for correct of khaSr.girdawari.

Later on he has not filed any application before Tehsildar for correction of khaSr.girdawari.

Thus, the entire evidence of both the parties reveal that there is entry in the column of cultivation in the name of Parmanand who executed an affidavit dated 28.11.1985 in favour of the present plaintiff/appellant vide which he has

surrendered the possession.

The mutation in the name of defendant-Gram Panchayat for the fiRs.time came into existence in the year 1992.

The plaintiff has also filed a suit titled as Ram Sarup versus Gram Panchayat, decided on 18.10.2011.

The Gram Panchayat was restrained from dispossessing the plaintiff except in due couRs.of law.

There is only Rapat Roznamcha dated 20.6.2000 placed on the file by the defendant without any order of the competent court/authority.

The entries are still Thakral Rajeev 2014.08.21 15:37 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4101 of 2014 (O&M) -9- recorded in the name of Parmanand.

Even after taking the Rapat Roznamcha dated 20.6.2000, the entries were not got changed by the Gram Panchayat in their favour.

The land recorded in the name of proprietors went back to the proprietary body of the village.

Parmanand was also a proprietor of the village and having a share in the proprietary body.

The Gram Panchayat has also initiated the proceedings under Section 13-A of the PVCL Act against the notification whereby the land was reverted back to the proprietary body.

As stated earlier, the Gram Panchayat has already initiated the proceedings under Section 13-A of the PVCL Act before the Collector, Ambala.

Thus, the plaintiff/appellant cannot be dispossessed from the suit land except in due couRs.of law.

The defendant-Gram Panchayat is at liberty to initiate the proceedings against him in accordance with law.

With these observations, the present appeal is partly allowed.

The parties are left to bear their own costs.

During the couRs.of hearing, learned counsel for the appellant could not point out any jurisdictional error or patent illegality apparent on the record of the case, in the impugned judgment passed by learned fiRs.appellate court.

He also failed to put into service any substantive argument so as to convince this Court to take a different view than the one taken by the learned fiRs.appellate court.

Further, no question of law much less substantial question of law has been found involved in the present case, which is sine quo non for interference at the hands of this Court, while exercising its jurisdiction under Section 100 CPC.

Thus, it is unhesitatingly held that the impugned judgement and decree passed by the learned fiRs.appellate court deserve to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case Thakral Rajeev 2014.08.21 15:37 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4101 of 2014 (O&M) -10- noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance, thus, it must fail.

No case for interference has been made out.

However, it is made clear that the observations made here-in- above will not prejudice the rights of either of the parties, qua the issue of title, which is pending

decision before the competent authority under the VCL Act.

Resultantly, instant appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK) JUDGE1108.2014 rajeev Thakral Rajeev  
2014.08.21 15:37 I attest to the accuracy and integrity of this document High Court  
Chandigarh

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