

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

RSA-4080-2018 (O&M)
Reserved on: 29.01.2025
Pronounced on: 03.02.2025

GRAM PANCHAYAT VILLAGE MANDKOL

. . . .APPELLANT

Vs.

RAM RATTAN AND ANOTHER

. . . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Abhinav Sood, Advocate, for the appellant.

DEEPAK GUPTA, J.

Suit for declaration filed by plaintiffs Ram Rattan and another (*respondents herein*) was dismissed by the trial Court vide judgment and decree dated 06.09.2016. However, the appeal filed by the said plaintiffs was partly allowed by the Id. District Judge, Palwal vide judgment dated 01.08.2017 by holding that they were entitled to the declaration to the extent that they are in possession of the suit property, and that their names are liable to be incorporated in the Revenue Record in the column of possession. However, the relief seeking declaration that they were owners of the suit property and entries in the revenue record in their name in the column of ownership were liable to be rectified, was declined.

2. Against the aforesaid reversal, defendant i.e. Gram Panchayat Village Mandkol (*appellant herein*) has filed this appeal.

3. Trial Court record was called. The same has been perused. In order to avoid confusion, parties shall be referred as per their status before the Trial Court.

4. Claiming to be *Biswedars* of the village Mandkol, plaintiffs asserted their ownership and possession over the suit property since the time of their father, on which their father had initially raised katcha house in 1956-57 and

then made it pucca in 1965-66. It was asserted that plaintiffs have been residing in the suit property with their father and after his death, they had become co-owners in possession of the same by way of inheritance. It was further submitted that in 1995, one Kishan Chand son of Lala Ram had filed an ejectment petition against their father Chunni Lal and Gram Panchayat of Village Mandkol, titled '*Kishan Chand Vs. Chunni Lal and others*' before Assistant Collector 1st Grade, Palwal, wherein ejectment order dated 28.07.1997 was passed against the father of the plaintiffs. However, the appeal filed by him was accepted by the District Collector vide order dated 13.05.1999, thus setting aside the aforesaid order of Assistant Collector 1st Grade, Palwal. It was pleaded that in this order, District Collector, Faridabad, specifically observed that plaintiffs were proved to be in possession of the suit property, over which they had raised construction of pucca house more than 25-30 years ago and it was also held that property in dispute did not vest in Gram Panchayat and that the same did not fall within the definition of *Shamlat Deh* and as such, plaintiffs could not be ejected from the same. Said order passed by the District Collector was not challenged by the defendant. Plaintiffs further pleaded that due to inadvertence, in the revenue record, the name of defendant-Gram Panchayat Village Mandkol continued to be recorded in the column of ownership and the same has not been rectified and taking advantage of the said wrong entry, defendant started claiming to be owner of the suit property and was threatening to interfere in the ownership and possession of plaintiffs over the suit property. Suit for permanent injunction was previously filed by the plaintiff Ram Rattan which was decreed on 30.08.1994. Plaintiffs now prayed for a decree of declaration that they are co-owners and in possession of the suit property and were entitled to get their names incorporated in the revenue record as such.

5. Contesting the suit, defendant-Gram Panchayat Village Mandkol (*appellant herein*) disputed the entire claim of the plaintiffs. They denied the plaintiffs to be owners or in possession of the suit property. They even denied the orders passed in the previous litigation.

6. Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court dismissed the suit on 6.9.2016 by holding that plaintiffs had failed to prove their case. However, in the appeal preferred by the plaintiffs, it was observed by the First Appellate Court that though plaintiffs were able to prove their settled possession over the suit property since the time of their forefathers, but they had failed to prove the title to the suit property. As such, the appeal was partly accepted and the suit was partly decreed to the extent as indicated earlier.

7. Assailing the abovesaid judgment of the First Appellate Court, it is contended by Id. counsel for the appellant (*defendant in the suit*) that suit filed by the plaintiffs-respondents was not maintainable and that in the previous suit filed by them seeking permanent injunction, they could have sought the declaration as sought in the present litigation and as such, suit was liable to be dismissed on this ground itself.

7. After considering the submissions of Id. counsel for the appellants and the trial Court record, this Court does not find any merit in the appeal.

8. Before considering the contention raised by the appellant-defendant, it will be useful to reproduce the observations made by the First Appellate Court, which are as under: -

“12. On a careful perusal of record, it emerges that the appellants - plaintiffs claimed that previously, the disputed property which is comprised in khasra nos.225/2 and 225/3 and is measuring 3 kanals 4 marlas was owned and possessed by their father and who had raised construction of a katcha and subsequently pucca house over the same and now, they had inherited the same and had become its co- owners. They sought a relief for declaration to this effect and also prayed for getting the revenue entries showing the respondent-defendant Gram Panchayat as owner in possession of the disputed property rectified. The respondent-defendant Gram Panchayat in its written statement denied the stand taken by the appellants-plaintiffs, but it was nowhere pleaded that it was either owner or in possession of the disputed

property. Though the factum of filing a petition for ejectment of the present appellants-plaintiffs Ram Rattan and his father Chunni Lal from the disputed property by one Kishan Chand and the decision given by Assistant Collector, Palwal in that petition as well as in the appeal filed by the present appellants-plaintiffs had been denied, but no evidence whatsoever was led by the respondent-defendant to rebut the claim of the appellants-plaintiffs. The oral as well as documentary evidence produced on record by the appellants-plaintiffs have gone unrebutted and unchallenged. From a perusal of documentary evidence produced on record, it is revealed that one Kishan Chand had previously filed a petition before Assistant Collector 1st Grade, Palwal under section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 seeking ejectment of the present appellant-plaintiff Ram Rattan and his father Chunni Lal from the disputed property by claiming that some part of this property was village Johar and the appellants-plaintiffs had illegally occupied the same. This petition had been allowed vide order Ex.P-7 as passed on 28.7.1997. However, an appeal was filed against the said order by the present appellants-plaintiffs Ram Rattan and his father Chunni Lal which had been allowed by the District Collector, Faridabad vide order Ex.P-8 dated 13.5.1999 and it was observed that the disputed property did not vest in respondent-defendant Gram Panchayat and the possession of the appellants-plaintiffs and their father was quite old and hence they could not be dispossessed from the same. It is proved from Ex.P-9 that the appellants-plaintiffs are biswedars of village Mandkol. The appellants plaintiffs claimed that the order Ex.P-8 had not been challenged by the Gram Panchayat and the respondent-defendant Gram Panchayat failed to produce any evidence to the contrary. Therefore, there is no reason to say that by virtue of order Ex.P-8 the appellants-plaintiffs were proved to be in possession of the disputed property and it was also held that the disputed property did not vest in Gram Panchayat. While giving findings on issues no.1 and 2 by the learned lower court that the appellants plaintiffs were in settled possession over the disputed property further observed that the evidence produced on record by the appellants-plaintiffs was insufficient to prove their title over the same. I would like to concur with the observations so made by

the learned lower court in view of the fact that no doubt, the respondent-Gram Panchayat failed to prove either before the Collector, Faridabad or before the learned lower court that it was lawful owner of the disputed property and the findings given by the District Collector, Faridabad vide order Ex.P-8 had not been challenged by the respondent-defendant, but in my opinion, this fact alone did not clothe the appellants-plaintiffs with title over the disputed property. Undisputedly, the property in dispute is having specific revenue numbers i.e. khasra nos.225/2 and 225/3. For the purpose of showing as to how the ownership of the disputed property had originated in favour of their father, and then themselves, the appellants-plaintiffs were required to produce cogent, convincing and reliable evidence on record and specially the documentary evidence. However, not only the pleadings were silent, but the appellants-plaintiffs also failed to produce any evidence on record to explain as to how they had become owners of the disputed property. It is not their version that this property was in their possession as owners even prior to the time when the specific khasra numbers were allotted to it or that the same had been produced by their predecessor from someone else. It was for them to explain the genesis of ownership in their favour by standing on their own legs and they could not take advantage of the weakness of the case of the respondent-defendant. The disputed property was, undoubtedly, not proved to be the property of shamlat deh nor it was proved to be vesting in Gram Panchayat. Moreso, possession is prima facie proof of title, but none-the-less, the onus of proof of factum of ownership in respect of this property was heavily lying upon the shoulders of the appellants-plaintiffs and they were required to bring convincing and reliable evidence to prove so, but they failed to discharge the burden. Even in a suit previously filed by them seeking relief of injunction over the same property, the judgment of which is placed on record as Ex.P-10, it was observed that the appellants-plaintiffs had failed to establish their title. The learned lower court, therefore, rightly held that the appellants-plaintiffs had failed to prove that they were owners of the disputed property, but in my opinion, the learned lower court committed an error in declining the relief as claimed by the appellants-

plaintiffs in toto. Undoubtedly, they were not proved to be owners of the disputed property, but none-the-less, the factum of their being in settled possession thereof stood established. Therefore, they were entitled to the relief of declaration to the effect that they were in settled possession over the disputed property. While being in respectful agreement with the ratio of law as laid down in the authorities cited by the learned counsel for the appellants-plaintiffs, I am of the considered opinion that the same are not applicable to the peculiar facts and circumstances of the present case and hence, no reliance can be placed upon them. Therefore, in my opinion, the suit as filed by the appellants-plaintiffs deserved to be partly decreed and they were entitled to a declaration in part as mentioned above. Hence, the appeal filed by them deserves to be partly allowed in their favour.

9. It is clear from the abovesaid observations made by the First Appellate Court, which are based upon the proper appreciation of evidence produced on record that plaintiffs had been able to prove their settled possession over the suit property. However, the suit property was comprised in specific revenue No. i.e. khasra No.225/2 and 225/3 and plaintiffs had failed to prove that how the title vested in them. Simply because, defendant-Gram Panchayat Village Mandkol was not able to prove its title, did not mean that only because of the possession of the plaintiffs, they had become owner thereof. As such, Id. First Appellate Court rightly held that plaintiffs were entitled to the declaration that they are in settled possession of the suit property and revenue record was liable to be rectified only to that extent i.e. by mentioning the name of the plaintiffs in the column of possession.

10. As far as the contention raised by Id. counsel for the appellant regarding maintainability of the suit is concerned, it has no merit, as the earlier suit filed by the plaintiffs was only for seeking a decree of permanent injunction, as they were apprehending threat in their possession of the suit property. In these circumstances, the fresh suit filed for seeking declaration regarding their title, cannot be held to be not maintainable.

11. On account of the entire discussion as above, this Court does not find any ground so as to interfere in the well-reasoned judgment passed by the first appellate Court, which is based upon proper appreciation of evidence on record. There is no illegality or perversity in the impugned judgment. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

03.02.2025

Vivek

**(DEEPAK GUPTA)
JUDGE**

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>