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**(2010) 11 P&H CK 0529**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 2768 of 2010

Gram Panchayat

APPELLANT

Vs

Sadhu Ram and Others

RESPONDENT

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**Date of Decision:** Nov. 25, 2010

**Hon'ble Judges:** Gurdev Singh, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Gurdev Singh, J.

The suit was filed against the present Appellant-Gram Panchayat by Respondent No. 1/Plaintiff, in which Respondents No. 2 to 9 were arrayed as Defendants No. 2 to 9, for recovery of Rs. 1,81,000/-paid by the Plaintiff to Defendant No. 1 on 12.11.2002, vide receipt No. 10 book No. 01165, on account of the lease money for the land measuring 97 kanals 7 marlas for the year 1995-96. The suit was decreed by the Civil Judge (Jr. Divn.), Ludhiana, vide judgment and decree dated 9.2.2008. Against that judgment and decree the first appeal preferred by Defendant No. 1/Appellant and another was dismissed by the Additional District Judge, Ludhiana, vide judgment and decree dated 26.8.2009. This second appeal by the Defendant No. 1 has been preferred against those judgments and decrees.

2. The facts, in brief, are that the Plaintiff filed suit for recovery of the afore-mentioned amount. He pleaded in his plaint that an open auction was held by Defendant No. 1 for leasing out the land in dispute and it was assured to him that there is no dispute regarding the ownership or possession of the land. He gave the highest bid and the land was leased out to him for six months for Rs. 1,81,000/-and the entire amount was paid by him to Defendant No. 1. He had no knowledge about the litigation which was already going on between Defendant No. 1 and Gurjit Singh and others. When he tried to cultivate the land, he was stopped from doing so by Gurjit Singh and others, who had shown the order of status quo passed by this Court and as per that order, status quo was to be maintained regarding the

possession. After coming to know about the order, he went to the Sarpanch Inderjit Singh and requested him to return the lease money and he assured him to do so but failed. Ultimately, the writ petition was decided by this Court in favour of Gurjit Singh and others on 29.1.2003 and Defendant No. 1 was restrained from interfering in their possession. He served a legal notice upon Defendant No. 1 for the return of the lease money but the same was not done and, therefore, he filed the suit for the recovery thereof, alongwith interest @ 12% per annum.

3. The suit was contested by Defendants No. 1 and 2. In their written statement they admitted that public auction was held for leasing out the land in dispute and the same was leased out to the Plaintiff, who gave the highest bid. They denied the other contentions made in the plaint and, inter-alia, pleaded that the possession of the land was duly taken by the Plaintiff in the presence of BD and PO and Panchayat Secretary and the proceedings to that effect were reduced into writing. He had the knowledge of the litigation between the Gram Panchayat and Gurjit Singh and others. The Plaintiff continued to be in possession of this land during the lease period and the suit has been filed by him with a malafide intention in collusion with Gurjit Singh and others. The order passed by this Court dated 29.1.2003 is not legal, valid and binding upon them. They also took up preliminary objections to the effect that the suit is not maintainable and the Plaintiff has no locus standi or cause of action to file the same. The same is bad for non-joinder and mis-joinder of parties and is barred by law. The civil court has no jurisdiction to entrain and decide the same.

4. In the replication to the written statement, the Plaintiff denied the contentions raised therein and reiterated all the averments made in the plaint.

On the pleadings of the parties, the following issues were framed by the trial court:

1. Whether Plaintiff is entitled to recover Rs. 1,81,000/- paid by the Plaintiff on 12.11.2002 vide receipt number 10, book number 01165 to Defendant No. 1 through its Sarpanch Defendant No. 2 on account of lease amount of the suit land, alongwith interest at the rate of 12% per annum which comes to Rs. 9000/- (Rs. Nine thousand), i.e. totalling Rs. 1,90,000/- ? OPP

2. Whether suit is not maintainable in the present from OPD

3. Whether Plaintiff has no locus standi to file the instant suit ? OPD 1-2

4. Whether Plaintiff has no cause of action against the Defendants to file the present suit, on the dates and manner as alleged ? OPD 1-2

5. Whether suit of Plaintiff is bad for non joinder and mis-joinder of parties ? OPD 1-2

6. Whether suit of Plaintiff is barred under law ? OPD 1-2

6 Whether Plaintiff is estopped by his acts and conduct to claim the relief ? OPD 1-2

8. Whether suit of Plaintiff is not properly valued for the purpose of court fee and jurisdiction nor proper court fee stamps have been affixed on the plaint ? OPD 1-2

9. Whether this Court has no jurisdiction to entertain, try and decide the present suit ? OPD

10. Relief.

5. To prove his case, the Plaintiff examined himself as PW-1, Sarabjit Singh (PW-2), Harpal Singh (PW-3) and Bant Dhaliwal (PW-4). On the other hand, Defendant examined Tarsem Lal (DW-1).

6. After going through the evidence so produced on the record and hearing learned Counsel for both the sides, the trial court decided all the issues in favour of the Plaintiff and resultantly, decreed his suit.

7. I have heard learned Counsel for Defendant No. 1.

8. This Court has gone through the judgments of the lower courts with the help of learned Counsel for Defendant No. 1. Concurrent finding of facts were recorded by both the courts below. Learned Counsel has not been able to satisfy this Court that the findings so recorded by the lower courts are the result of misreading of the evidence or are perverse. It has rightly been concluded by the lower courts that there was no question of delivery of possession of land in dispute to the Plaintiff in view of the status quo order passed by this Court in the petition filed by Gurjit Singh and others against Defendant No. 1 which was ultimately decided in favour of Gurjit Singh and others and they were held to be in possession of the land in dispute. Two persons cannot be in possession of the same land simultaneously. No substantial question of law arises in this appeal. The same is hereby dismissed.