

(2013) 09 P&H CK 0414

High Court Of Punjab And Haryana At Chandigarh**Case No:** C.R. No. 5332 of 2013

Raj Singh

APPELLANT

Vs

Gram Panchayat, Village
NindanaRESPONDENT

Date of Decision: Sept. 4, 2013**Acts Referred:**

- Constitution of India, 1950 - Article 227
- Punjab Village Common Lands (Regulation) Act, 1961 - Section 13

Citation: (2014) 173 PLR 577**Hon'ble Judges:** L.N. Mittal, J**Bench:** Single Bench**Advocate:** N.K. Malhotra, for the Appellant;**Final Decision:** Dismissed

Judgement

L.N. Mittal, J.

Having failed to secure temporary injunction from both the courts below, plaintiff Raj Singh has filed this revision petition under Article 227 of the Constitution of India assailing order dated 12.07.2013 passed by the trial court and judgment dated 12.08.2013 passed by the lower appellate court, thereby declining temporary injunction to the plaintiff-petitioner. Plaintiffs case is that he is Proprietor in the Village and has share in Shamlat Deh. The plaintiff is in possession of the suit land, which is Shamlat Deh. Defendant-respondent Gram Panchayat threatened to dispossess the plaintiff from the suit land forcibly and illegally. Plaintiff sought permanent injunction restraining the defendant from doing so. Plaintiff also sought temporary injunction to the same effect during pendency of the suit.

2. The defendant resisted the suit and application for temporary injunction and pleaded that defendant is owner in possession of the suit land and plaintiff is neither owner nor in possession of the suit land. Both the courts below have

declined the temporary injunction to the plaintiff, who has, therefore, filed this revision petition to challenge the orders of the courts below.

3. I have heard counsel for the petitioner and perused the case file.

4. Counsel for the petitioner, referring to copy of jamabandi (Annexure P-1), contended that plaintiff is Proprietor/Bisweddar in the Village and has, therefore, share in Shamlat land. It was also argued that jurisdiction of the Civil Court to try the suit for injunction against interference in possession is not barred by Section 13 of the Punjab Village Common Land (Regulation) Act, 1961 (in short-the Act), as held by this Court in the case of [Jhagru Ram Vs. Jagan and Others](#) It was also argued that possession of the plaintiff on the suit land stands admitted, and therefore, plaintiff is entitled to injunction because he cannot be dispossessed, except in due course of law. Reliance in support of this contention has been placed on a judgment of this Court namely Isher Singh vs. Badan Singh alias Battan Singh and others reported as 1988(1) RLR 84.

5. I have carefully considered the aforesaid contentions. Even if the plaintiff is Bisweddar in the Village, the jurisdiction to determine whether the suit land is Shamlat land vested in Gram Panchayat or not, does not vest in the Civil Court. Jurisdiction of the Civil Court to determine the said question is barred by Section 13 of the Act. In the instant case, the whole claim of the plaintiff is based on his alleged right in Shamlat land. However, for adjudicating the said right, jurisdiction of the Civil Court is barred. Judgment in the case of Jhagru Ram (supra), therefore, is not attracted.

6. However, even assuming that jurisdiction of the Civil Court to decide the suit for injunction is not barred, even then the plaintiff has failed to make out the necessary three ingredients for grant of temporary injunction i.e. prima facie case, balance of convenience and irreparable loss and injury. There is no material on record to even remotely depict that plaintiff is in possession of the suit land. His mere assertion in this regard is not sufficient to grant temporary injunction against the defendant. Contention of counsel for the petitioner that respondent-defendant has admitted possession of the petitioner-plaintiff is completely misconceived, erroneous and meritless. Counsel for the petitioner is unable to refer to any such admission on the part of defendant-respondent. Consequently, judgment in the case of Isher Singh (supra) is not attracted at all because neither possession of the plaintiff over the suit land has been admitted by the defendant-Gram Panchayat nor there is any material whatsoever on record to depict his prima facie possession on the suit land.

7. In addition to the aforesaid, it may be mentioned that the plaintiff, in order to depict his alleged possession over the suit land, has alleged that he has been using it for storing dung cakes, agricultural implements etc. However, mere placing of dung cakes and garbage etc. in the suit land does not amount to possession of the plaintiff thereon nor it means dispossession of the defendant therefrom.

Admittedly, the suit land is Shamlat land. Consequently, the same prima facie vests in defendant Gram Panchayat. Resultantly, the defendant being owner of the suit land is also presumed to be in possession thereof because the plaintiff has miserably failed to even depict that he is prima facie in possession of the suit land. For the reasons aforesaid, I find that the plaintiff has not made out any case for grant of temporary injunction. Consequently, temporary injunction has been rightly declined to the plaintiff by the courts below. There is no perversity, illegality or jurisdictional error in the impugned orders of the courts below so as to warrant interference by this Court in exercise of power of superintendence under Article 227 of the Constitution of India. The revision petition lacks any merit and is accordingly dismissed in limine. However, nothing observed hereinbefore shall be construed as expression of opinion on merits of the suit.