

Kishna alias  
Kishan Singh

v.  
Mata Din  
and others

Grover, J.

section 2(1) (f) to mean a share or portion of an estate held by one landlord or jointly by two or more such landlords, the Partition Commissioner was given the power to decide dispute relating to title between the occupancy tenants *inter se*. There seems to be no error whatsoever in the decision given by the learned Single Judge on the aforesaid point.

In the result, the appeal is dismissed but in the circumstances the parties are left to bear their own costs.

**B.R.T.**

CRIMINAL MISCELLANEOUS

*Before H. R. Khanna, J*

SHERU,—*Petitioner*

*versus*

SARWAN SINGH AND OTHERS,—*Respondents*

**Criminal Miscellaneous No. 579 of 1964.**

March, 11th.

1965

*Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 66—Panchayat convicting a person for an offence under S. 447, I.P.C.—Whether can order the accused to deliver back possession to the complainant—Code of Criminal Procedure (Act V of 1898)—S. 522—Whether applicable—Constitution of India (1950)—Art. 227—High Court—Whether can re-appraise evidence.*

*Held*, the provisions of section 522 of the Code of Criminal Procedure, 1898, do not strictly apply to the proceedings before the Gram Panchayat but the Panchayat can order the restoration of the possession of the immovable property from which the complainant has been forcibly dispossessed as such an order is essentially an order in accordance with justice, equity and good conscience and the Panchayat can pass such an order under section 66(1) of the Punjab Gram Panchayat Act. The object of such a direction is to prevent any person gaining wrongful possession of a site by his unlawful and forcible acts. It is an essential principal of all laws that a person in peaceful possession of a site should be protected against forcible dispossession and justice requires that a person, who flouts the law and relies on physical force and dispossesses a person in peaceful possession, should be made to restore back that possession. Section 522 of the Code of Criminal Procedure embodies this principle of justice, equity and good conscience, and even though section 522 may not be applicable to the proceedings before the Panchayat, there is nothing to prevent the

Panchayat from giving effect to the principle underlying that section.

*Held*, that the High Court cannot, in a petition under Article 227 of the Constitution, re-appraise the evidence and go into the question as to whether it is convincing or not.

*Petition under Article 227 of the Constitution of India, praying that the order dated 16th February, 1963 of Gram Panchayat, Dehroo, tehsil Samrala, district Ludhiana, be quashed.*

R. M. VINYAK, ADVOCATE, for the Petitioner.

S. S. KANG, ADVOCATE, for the Respondents.

#### ORDER

KHANNA, J.—This petition under Article 227 of the Constitution of India filed by Sheru is directed against the order dated the 16th February, 1963, of the Gram Panchayat of village Dehroo by which the petitioner and his brother Kartara and one other person Jagta were convicted under section 447 of the Indian Penal Code and each of them was sentenced to pay a fine of Rs. 10. It was also directed that the accused persons should remove their illegal possession within fifteen days. An appeal was filed by the petitioner against the order of the Gram Panchayat but it was dismissed by Magistrate I Class, Samrala.

Khanna, J.

The brief facts of the case are that on 23rd November, 1962, Sarwan Singh complainant filed a complaint on the allegation that the accused persons had taken forcible possession of his site by enclosing a *Bara* and fixing branches of trees and wooden pegs therein. According to Sarwan Singh the aforesaid site belonged to him and a gift deed in respect thereof had been executed in his favour by his mother on 27th July, 1961.

The accused in their statements admitted that they had made a *Bara* on the site in dispute but, according to them on the day of occurrence they were in possession of the site. The Panchayat, after examining Jagir Singh, Lambardar and Harbans Singh, who supported the allegations of Sarwan Singh complainant, and after inspecting the plot found that the accused had taken illegal possession of the site in dispute. The accused were, accordingly, convicted and sentenced as above.

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Khanna, J.

In this petition Mr. Vinayak has, at the outset, argued that the evidence produced on behalf of Sarwan Singh was not convincing and as such did not warrant the conviction of the accuse. In this respect, I am of the view that this Court cannot in this petition under Article 227 of the Constitution re-appraise the evidence and go into the question as to whether it is convincing or not. The argument of the learned counsel challenging the veracity of the evidence, in the circumstances, must fall to the ground.

It is then argued that the Code of Criminal Procedure is not made applicable to the proceedings before the Panchayat and as such the Panchayat could not order the accused to restore back possession to Sarwan Singh. In this connection I find that section 66(1) of the Punjab Gram Panchayat Act, 1952, reads as under:—

“66 (1) The provisions of the Code of Criminal Procedure, 1898, the Code of Civil Procedure, 1908, and of the Indian Evidence Act, 1872, shall not apply to proceedings before Panchayats, save to the extent mentioned in this Act, but the Panchayat may ascertain the facts of any criminal case or civil or revenue suit by all legitimate means in its power and thereafter pass such order, sentence or decree as may be in accordance with justice, equity and good conscience.”

Perusal of the above section makes it plain that the provisions of the Code of Criminal Procedure are not applicable to the proceedings, before the Panchayat and as such section 522 of the Code of Criminal Procedure would not strictly apply to the proceedings before the Panchayat. According to section 522 of the Code of Criminal Procedure whenever a person is convicted of an offence attended by criminal force and it appears to the Court that by such force any person has been dispossessed of any immovable property, the Court may, at the time of conviction or within one month from the date of the conviction, order the person dispossessed to be restored to the possession of the same. Although as observed above, the provisions of section 522 of the Code of Criminal Procedure would not strictly apply to the proceedings before the Gram Panchayat, I am still of the view that the Panchayat could order the restoration of the possession of the site from which Sarwan Singh had been forcibly dispossessed because I find that in section 66(1) of the Punjab Gram

Panchayat Act, reproduced above, it is clearly mentioned that the Panchayat can pass such order, sentence or decree as may be in accordance with justice, equity and good conscience. The restoration of possession of a site, from which a person has been forcibly dispossessed, is essentially an order in accordance with the principles of justice, equity and good conscience because the object of such a direction is to prevent any person gaining wrongful possession of a site by his unlawfull and forcible acts. It is an essential principle of all laws that a person in peaceful possession of a site should be protected against forcible dispossession and justice requires that a person, who flouts the law and relies on physical force and dispossesses a person in peaceful possession, should be made to restore back that possession. Section 522 of the Code of Criminal Procedure embodies this principle of justice equity and good conscience, and even though section 522 may not be applicable to the proceedings before the Panchayat, there is nothing to prevent the Panchayat from giving effect to the principle underlying that section. I would, therefore, hold that the Gram Panchayat was well within its competence to order restoration of the possession of the site in question to Sarwan Singh.

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I am also of the view that as substantial justice has been done in this case, this Court should in the exercise of its discretion refuse to interfere with the order of the Gram Panchayat, The petition, accordingly, fails and is dismissed.

**B.R.T.**

CIVIL MISCELLANEOUS

*Before Shamsher Bahadur, J*

HARDEVA,—*Petitioner*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents*

**Civil Writ No. 1731 of 1962.**

*Punjab Security of Land Tenures Act (X of 1953)—Ss. 5-B and 18—Area selected by lanlord—Whether can be purchased by tenant.*

1965

March, 11th.

*Held*, that a tenant is not entitled to purchase the land of a big land-owner which is included in his reserved area and the area "selected" under section 5-B of the Punjab Security of Land Tenures Act, 1953, is given the same status as a reserved area.