

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 06.02.2024
Pronounced on: 27.02.2024

1. RSA-3919-2017 (O & M)

STATE OF HARYANA Appellant

Versus

MAHARANA PARTAP CHARITABLE TRUST AND ORS.
....Respondents

2. RSA-2947-2017 (O & M)

GRAM PANCHAYAT VILLAGE PALUWAS Appellant

Versus

MAHARANA PARTAP CHARITABLE TRUST AND ORS.
....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
 HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Ankur Mittal, Addl. A.G., Haryana with
 Mr. P.P.Chahar, Sr. DAG, Haryana and
 Mr. Saurabh Mago, DAG, Haryana
 for the appellant (in RSA-3919-2017).
 for respondent No. 7 (in RSA-2947-2017).

Mr. Sunil Kumar Pandey, Advocate and
Mr. N.R.Dahia, Advocate
for the appellant (in RSA-2947-2017).

Mr. Anand Chhibbar, Sr. Advocate with
Ms. Attev Raj Sandhu, Advocate with
Ms. Khyati Avnish, Advocate
for respondents No. 2 to 4 (in RSA-2947-2017).

SURESHWAR THAKUR, J.

of law, besides, when the judgment and decree challenged in both the appeals is also common, thus, they are amenable to be decided through a common verdict.

2. In civil suit no. 58 of 2006, a dis-affirmative decree was made by the learned Civil Judge concerned, on 23.09.2015, vis-a-vis the relief claimed in the said suit, inasmuch as, for the rendition of a decree of mandatory and permanent injunction qua the suit lands, whereas the defendants counter claim was decreed.

3. The said affirmative decree became assailed by the appellants-respondents herein, before the learned First Appellate Court concerned. The learned First Appellate Court through an verdict made on 01.04.2017, upon the apposite first appeal, allowed the appeal and set aside the judgment and decree passed by the lower Court.

4. Feeling aggrieved from the verdict of the learned First Appellate Judge, whereby he set aside the judgment and decree passed by the learned lower Court, thus the Gram Panchayat and the State of Haryana have instituted the instant two RSAs before this Court.

Facts of the case

5. Before proceeding to make an adjudication upon the matter, it is necessary to cull out the necessary facts.

6. That a suit for permanent prohibitory injunction became filed by the plaintiff-Trust, against, defendant no. 1 (Gram Panchayat), for thus a decree being passed upon the said co-defendant No. 1-Gram Panchayat, to execute and to get registered a gift deed in favour of the plaintiff-Trust, regarding the land described in the plaint measuring 237 kanals 02 marlas situated at village Paluwas, Tehsil and District

7. Moreover, a declaratory relief became also espoused in the said suit for declaring null and void the resolution No. 1 dated 06.05.2006, passed by the defendant-Gram Panchayat, on the ground that the same is thus contrary to the earlier resolution no. 1 dated 08.08.2001.

8. In addition, relief also became espoused, thus for rendition of a decree of permanent injunction thereby restraining defendant no 1- Gram Panchayat, to act upon the said resolution and for restraining it, to reverse and set aside mutation No.9387 dated 20.12.2001, as attested in favour of the Trust, by the revenue officials, in terms of the gift resolution dated 08.08.2001.

9. That it has been averred that respondent no. 1 is duly constituted Trust vide trust deed dated 13.7.2000. The Gram Panchayat passed a resolution dated 08.08.2001 to give the land in dispute to respondent Trust by way of gift, subject to the approval of the State Government as per Rules. On the recommendation of Deputy Commissioner, Bhiwani, the requisite sanction was granted by the Government of Haryana but on certain conditions.

10. That subsequently, another resolution dated 24.01.2002 was passed by the Gram Panchayat and possession of the land became handed over to plaintiff- Trust, on 19.12.2001. Mutation bearing No 9387 dated 20.12.2001 became sanctioned in favour of the plaintiff-Trust, on the basis of approval given by the Government. Since then, plaintiff-Trust has been continuing in possession of the suit property and has also raised construction and is also running an educational institution.

residents of the village, whereby the said resolution of the Gram Panchayat, and, the approval thereto granted by the Government, rather became challenged. However, the said writ petition was dismissed as infructuous by this Court vide order dated 15.12.2003, in view of amendment in Section 5A of Punjab Village Common Lands (Regulation), Haryana Amendment Act. The villagers also filed letters patent appeal against the said decision of the learned Single Bench of this Court, however, the same was also dismissed as infructuous by this Court vide order dated 12.07.2006 but with liberty to challenge the vires of the said amended Section 5A of Act (supra).

12. That defendant-Gram Panchayat contested, the suit as well as injunction application inter alia on the ground, that suit is not maintainable in the present form, and that the civil Court, is having no jurisdiction to try and decide the present suit. It was contended that Gram Panchayat is the owner of the land in dispute and the previous resolution was not validly passed, as per the Acts and the Rules and the land of Gram Panchayat was illegally gifted by the then Sarpanch to respondent Trust, who was facing allegations of embezzlement of public funds and plaintiff No. 4, who is a member of the Trust, being a sitting MLA in the ruling Government, had assured him to save him from legal consequences. Further, it was contended that the impugned resolution No. 1 dated 08.08.2001 was the outcome of collusion between the plaintiff and the then Sarpanch of the Gram Panchayat.

13. Furthermore, it was contended that the Gram Panchayat was legally entitled to set aside the illegal gift resolution dated 08.08.2001.

to hand over the land in dispute to Panchayat and for setting aside the mutation No 9387 dated 20.12.2001. It was also pleaded that neither any gift deed has been executed by Gram Panchayat in favour of respondent-Trust in terms of Transfer of Property Act nor any such gift deed has been registered under the Registration Act. Hence, the possession by plaintiffs' over the disputed lands, and, the mutation sanctioned in favour of Trust rather is completely illegal.

15. Further, it was submitted that the suit land is in the form of agricultural land and no sanction of the competent authority has been obtained for the CLU of the suit land. It was also mentioned that part of the land was given on contract for cattle fair and remaining land on lease for agricultural purpose by the Gram Panchayat.

16. After hearing the rival contentions of both the parties, the learned trial Court decreed the counter claim filed by defendant No. 1-Gram Panchayat and directed the plaintiffs-Trust to deliver the vacant possession of the suit property to defendant No. 1, whereas, the learned trial Court non suited the plaintiff-Trust.

17. The said order of the learned trial Court was challenged by the plaintiffs-Trust before the learned First Appellate Court and, the learned First Appellate Court through a verdict drawn on 01.04.2017, after allowing the plaintiffs-Trust appeal thus, decreed the plaintiffs' suit, and, rather dismissed the defendant-Gram Panchayat's counter claim.

Submissions of the learned counsel for the appellant(s).

18. That the plaintiffs procured the resolution dated 08.08.2001 in collusion with the then Sarpanch of Village, because

Government, and, had assured the then Sarpanch to save him from the embezzlement charges against him. That the then Sarpanch, passed the impugned resolution dated 08.08.2001 besides the sanction order dated 12.12.2001 both have been passed under political pressure, because plaintiff No 4-Sh. Shashi Ranjan Parmar, was an MLA in the ruling party.

19. That the entire proceedings relating to the gift of the suit property were conducted in an hasty manner and in violation of the provisions of The Punjab Village Common Lands (Regulations) Act, 1961 (as applicable to Haryana) (hereinafter for short called as the 'Act of 1961'). That the order of Hon'ble High Court dated 15.12.2003 and dated 12.07.2006 have no effect on the merits of the present case, because these were not passed on merits.

20. That the revenue officials incorporated the impugned mutation No. 9387 dated 20 12 2001 (Ex P-9) in blatant violation of the provisions of Section 123 of Transfer of Property Act, 1882 and of The Punjab Land Revenue Act 1887, inasmuch as, despite the imperative or compulsorily registerable deed of gift, rather neither being executed nor becoming presented for registration nor becoming accepted for registration, yet the order of mutation becoming attested in favour of the plaintiff-Trust, thereby, the said mutation is a clear paper entry, thus not being backed by the registered deed of gift.

21. That there cannot be an estoppel against law. In other words, a promise made against law is not enforceable on the principle of estoppel. That defendants are not bound by The Doctrine of Promissory Estoppel in any manner, because on 08.08.2001 there was

could gift *Shamlat Land* to an educational or charitable institution. The plaintiffs suit was required to be dismissed as aptly done.

22. Further, there is no provision in The Specific Relief Act 1963, thus enabling the plaintiffs to seek a mandatory injunction directing the true owner to execute and register a gift deed in their favour.

23. That the plaintiffs have otherwise also failed to show any other statutory provisions or case law whereunder the claim of mandatory injunction is legally sustainable. The aforesaid facts are also sufficient to hold that the present suit is not legally maintainable

24. That in the absence of a registered gift deed, the plaintiffs cannot claim any right, title, or interest in the suit property

25. The impugned resolution dated 08.08.2001 and sanction order dated 12.12.2001 are nothing but a desire of defendant No.1, to gift the suit property to plaintiff No. 1. The question whether the said desire was *malafide* or *bonafide* is also to be seen.

26. That the revenue officials sanctioned the impugned mutation, in the absence of a registered a gift deed, thereby the order making the mutation in favour of the plaintiffs is null and void.

Substantial Questions of Law.

27. After perusing the judgment and decree as became passed by the learned Civil Judge concerned on 23.09.2015, upon civil suit No.58 of 2006, and, also upon the counter claim, as made by defendant No. 1 - Gram Panchayat, wherebys the plaintiffs suit was dismissed and the defendant's counter claim was decreed, besides after perusing the judgment and decree passed by the learned First Appellate Court, on

decree passed by the learned Civil Judge, the learned First Appellate Court decreed the plaintiffs suit and dismissed the defendants counter claim, this Court frames the hereinafter substantial questions of law.

1) Whether the Panchayat resolution No. 1 dated 08.08.2001, to which approval became granted by the Competent Authority whereby the suit lands were gifted to the Plaintiff-Trust was null and void in the face of, especially when rather at the stage of passing of panchayat resolution and/or at the time of approval thereto becoming accorded by the competent authority, there was no statutory provision in the 'Act of 1961', qua the makings of any gift in favour of the plaintiff-Trust ?

2) Whether the attestation of mutation recorded by the revenue officials on 20.12.2001, whereby, title as owner became conferred upon the plaintiff-Trust rather was valid, thus without the compulsorily registerable instrument of gift, thus remaining neither executed nor presented nor becoming accepted for registration by the Sub Registrar concerned, besides whether in the wake of the above, it was tenable for the learned First Appellate Court concerned, to yet direct the defendant-Panchayat to execute a registered deed of conveyance in favour of the plaintiff-Trust, especially when through resolution dated 06.05.2006, as made in terms of the relevant statutory provisions, rather the earlier resolution dated 08.08.2001 became annulled ?

3) Whether the First Appellate Court could endow to the plaintiff-Trust any legitimate expectation and/or whether it was tenable for the learned First Appellate Court to, on the basis of defective Panchayat resolution No. 1 dated 08.08.2001 and a

defective approval thereto becoming granted, thus to also create a promissory estoppel against the defendant Panchayat ?

For the reasons to be assigned hereinafter all the above substantial questions are answered against the plaintiff-Trust and in favour of the appellants, thereby both the appeals are allowed and the plaintiff's-Trust suit is dismissed and the defendants counter claim is decreed.

28. The reason for making the above conclusion arises from the stark factum, that evidently at the time of passing of panchayat resolution dated 08.08.2001, besides, at the stage of approval thereto becoming granted by the competent authority, there was no statutory mandate existing in the 'Act of 1961' whereby there could be any gift of the disputed lands vis-a-vis the plaintiff-Trust, thus for charitable or educational purposes.

29. Since the existence of the said statutory provision, but was imperative rather for the valid makings of the panchayat resolution besides for enabling the same to acquire legal force, besides to make the approval as made thereto to also likewise acquire legal force, whereas, with at both the stages (supra), rather no enabling statutory provision becoming borne in the relevant statute, thereby both the panchayat resolution and the approval thereto thus do become rendered null and void.

30. The disputed lands are *shamlat* lands and thereons the entire village proprietary body has right to make common users thereof. Resultantly, the rights vested in the entire village proprietary body, thus could not be curtailed or whittled down, thus through the makings of a defective and legally flawed panchayat resolution on 08.08.2001, nor

through a defective or invalid approval thereto becoming granted by the competent authority.

31. Necessarily so, because therebys there were but an unjust expropriation of the lawful entitlement(s) of the entire village proprietary body over the disputed lands. Contrarily, the above rights may have been expropriated or snatched, but only through sufficient monetary recompenses being made vis-a-vis the village proprietary body, thus in the panchayat resolution besides in an alike thereto approval becoming granted by the approving authority.

32. Reiteratedly when through donation of the disputed lands being made to the petitioner-Trust, through the panchayat resolution and through an approval thereto becoming granted by the approving authority, rather no monetary recompense is made to the village proprietary body, who hold an interest over the disputed lands. Resultantly, thereby financial prejudice or financial detriment becomes caused to the village proprietary body and the same was undone through a subsequent rescinding resolution becoming passed in the year 2006.

33. Therefore, the resolution as passed subsequently, by the panchayat whereby it annulled the earlier resolution, rather does acquire force, as therebys, there is an endeavour to protect the interests of the village proprietary body over the *shamlat* land, which are the subject matter of the suit.

34. Since at the stage of passing of the panchayat resolution, on 06.05.2006, whereby, the earlier resolution became rescinded, the apposite statutory provision did become engrafted, through an

as, thereby the makings of gift(s) of the shamlat lands, for the purposes of hospital, dispensaries or educational or charitable institutions or for such other purposes as may be approved by the State Government, thus for the benefit of the inhabitants of the village concerned, rather became assigned validity.

35. Contrarily when the said resolution dated 06.05.2006, did not make any echoings, rather for the suit lands being gifted to the plaintiffs-Trust. In sequel, the subsequent resolution when does have statutory backing, thereby it has but superseded the earlier defective and flawed resolution, which untenably expropriated the right, title and interest of the entire village proprietary body over the disputed lands. Therefore, the subsequent resolution has force and resultantly there was no occasion for the learned First Appellate Court, to make a mandatory injunction upon the defendant-Panchayat to execute a registered deed of conveyance, vis-a-vis, the plaintiff-Trust.

36. For a valid mutation of ownership becoming attested on 20.12.2001, vis-a-vis the plaintiff-Trust, though enjoined upon the attesting revenue official to ensure that the registered deed of conveyance is also presented before him, but the attesting revenue officer concerned, without the registered deed of conveyance becoming presented before him, thus merely on the basis of a legally flawed panchayat resolution, and, upon an equally legally defective approval thereto becoming granted by the competent authority, thus made a defective non est and void mutation on 20.12.2001. Necessarily thereto no validity could be fastened as untenably done by the learned First Appellate Court.

has been awakened vis-a-vis the plaintiff-Trust, rather by the learned First Appellate Court, but was not legally permissible, to become assigned to the plaintiff-Trust.

38. The reason for making the said conclusion, is but mobilized from the trite factum that, unless the panchayat resolution and the approval thereto both became made in terms of the relevant statutory provision, besides when on sheer mala fides or on evident proven dilatory tactics, on the part of the defendant-Gram Panchayat, thus to execute the compulsorily registerable deed of conveyance, vis-a-vis, the plaintiff-Trust, thereupon, alone the apposite decree of mandatory injunction was renderable vis-a-vis the plaintiff-Trust.

39. Contrarily, it was not renderable as untenably done, in the evident wake of thus for the reasons (supra), both the panchayat resolution and the approval thereto being both flawed and/or both falling outside the domain of the, then in vogue relevant disabling statutory provisions, whereunders donations could not be made for educational or charitable purposes. As such, the decree of mandatory injunction is flawed and is required to be quashed and set aside.

40. Importantly also, assuming if the compulsorily registerable deed of conveyance became executed in terms of the defective panchayat resolution (supra) and in terms of the defective approval thereto becoming made by the Government, yet, besides also assuming that the mutation conferring title vis-a-vis the disputed lands became attested by the revenue officer, vis-a-vis the plaintiff-Trust. However, when the resolution and the approval thereto both for reasons (supra), are of no legal consequentiality, thereby even the compulsorily

assumingly became presented before the attesting officer concerned, besides yet assuming the relevant mutation also became attested. Nonetheless, the said attested mutation premised on the defective resolution (supra), besides defective approval thereto becoming granted rather would become capsized.

41. It appears that the learned First Appellate Court became led to, in terms of a verdict made by this Court in CWP-3000 of 2002 titled as '**Janak Singh and Others Versus State of Haryana and Others**' whereby this Court upheld the gift made in favour of the plaintiff-Trust, thus, validate the gift as made through the above defective panchayat resolution and the above defective approval thereto.

42. However, in the learned First Appellate Court rather anchoring or fastening legality to an otherwise defective panchayat gift resolution and the defective thereto approval, thus upon the above made order, is also, a legally in apt course. The said inference becomes garnered from though this Court earlier through an order drawn on the writ petition (supra) rather validating the apposite panchayat resolution yet the said verdict is per se, per incuriam the statutory provisions, especially when at the stages of passing of the panchayat resolution and of the approval thereto becoming granted, rather there was no enabling statutory provision manifestating itself in the 'Act of 1961', thus for well empowering the panchayat or well empowering the approving authority to respectively pass the apposite panchayat resolution and/or to grant approval thereto.

43. Therefore, any reliance on the verdict (supra), whereby, the

and thereto no significance was fastenable nor the said verdict could have well led the learned First Appellate Court to validate the ill action of the defendant-Panchayat to gift the disputed lands, to the plaintiff-Trust, through a defective panchayat resolution, and, an equally defective approval thereto being meted by the approving authority.

44. Therefore, the dependence upon the verdict (*supra*), by the learned First Appellate Court is an ill made dependence thereons. Reiteratedly, the reason becomes comprised in the factum that the verdict (*supra*) drawn by this Court rather was *per incuriam* qua the disabling statutory provisions concerned.

45. Lastly, therefore, there was no occasion for any legitimate expectation becoming endowed to the plaintiff-Trust, nor there was any occasion of any promissory estoppel working against the appellants against their reneging but obviously from a defective panchayat resolution and from the defective thereto approval becoming granted by the approving authority.

46. Moreso, when no explicit retrospectivity is assigned to the amendment as made to Section 5A of the Punjab Village Common Lands (Regulation), Haryana Amendment Act, through the Haryana Act No. 13 of 2003, by adding thereto sub section 1A, whereby, *shamlat deh* lands were made permissible to become gifted for the purposes of hospital, dispensaries or educational or charitable institution or for such other purposes as may be approved by the State Government to be for the benefit of the inhabitants of the village concerned. If so, there could not be any retrospective validation to the defective panchayat resolution nor to the defected approval thereto granted by the approving authority

Judge, to pass the decree for mandatory injunction vis-a-vis the plaintiff-Trust.

Final Order of this Court.

47.

In aftermath, both the appeals are allowed. The verdict passed by the learned First Appellate Court is quashed and set aside. The verdict passed by the learned trial Judge is maintained and affirmed.
48.

The substantial questions of law are accordingly answered.
49.

The counter claim filed by defendant No. 1 – Gram Panchayat is decreed to the effect that plaintiffs-Trust is directed to deliver the possession of the suit property to defendant No. 1 – Gram Panchayat but subject to the directions passed in CWP-6860-2007.
50.

Decree sheet be drawn accordingly.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

27.02.2024

kavneet singh

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No