



RSA-1070-2017 (O&M)

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

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**RSA-1070-2017 (O&M)
Reserved on:-26.08.2025
Date of Decision : 01.09.2025**

District Social Welfare Officer, Panipat and Another Appellants

VERSUS

Rishi Pal (Ex. Sarpanch) and Others Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Vaibhav Sharma, AAG Haryana.

Mr. Lekh Raj Sharma, Mr. Vikram Pundir and
Mr. Abhishek Sharma, Advocate for respondent No.1.

None for proforma respondents No.2 and 3.

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MANDEEP PANNU,J.

1. The present Regular Second Appeal is directed against the judgment and decree dated 4.11.2016 passed by the learned Additional District Judge, Panipat, whereby the appeal filed by the plaintiff/respondent No.1- Rishipal was partly allowed and the judgment and decree dated 12.3.2015 passed by the learned Civil Judge (Junior Division), Panipat dismissing the plaintiff's suit was set aside.

Brief facts

2. The plaintiff/respondent No.1- Rishi Pal was an elected Sarpanch of Village Palheri, District Panipat, for two consecutive terms between 2000 and 2010. The case of the plaintiff was that certain letters bearing No.331 dated 10.1.2013 and reminder No.1566 dated 1.2.2013 were issued by the District Social Welfare Officer, Panipat, calling upon him to deposit an amount of Rs.66,706/-

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towards the widow pension wrongly drawn by defendant No.3 Smt. Kamlesh and Rs.49,107/- towards helpless pension wrongly drawn by defendant No.4 Smt. Shanti, along with interest at the rate of 12% per annum. According to the plaintiff, these letters were wholly illegal, null and void and not binding upon his rights in any manner. His stand was that the pensions had been sanctioned by the competent authorities in accordance with the Government procedure and he had no role in recommending the names of the proforma defendants. He claimed that the task of Sarpanch was limited to distribution of pensions once the list of eligible beneficiaries was sent by the competent committee, which included the Tehsildar, Patwari and Doctor. It was further the stand of the plaintiff that he had never received any pecuniary benefit out of the pensions and had merely acted in his official capacity in disbursing pensions. On these averments, he prayed for a decree of declaration declaring the impugned letters as illegal and void, along with relief of mandatory injunction and permanent injunction restraining the authorities from making recovery from him.

3. On notice, defendants No.1 and 2, i.e. the District Social Welfare Officer and Deputy Commissioner, contested the suit. They raised preliminary objections of maintainability, want of cause of action, suppression of true facts and non-issuance of notice under Section 80 CPC. On merits, their case was that the plaintiff, while acting as Sarpanch, colluded with the proforma defendants and allowed them to receive pension despite their ineligibility. It was alleged that Smt. Kamlesh had performed a Kareva/karepa marriage with Krishan Lal, brother of her deceased husband, and was, therefore, not entitled to widow pension, yet she continued to receive it with the connivance of the plaintiff/respondent No.1-Rishi Pal. Similarly, it was alleged that Smt. Shanti's husband had returned alive from



abroad, rendering her ineligible for helpless pension, yet she too continued to draw the same. It was thus asserted that the plaintiff was guilty of dishonesty and embezzlement of government revenue, and recovery had rightly been ordered from him.

4. On the basis of the pleadings, the trial court framed the following issues :-

- 1) Whether the plaintiff is entitled to the decree for declaration as prayed for? OPP
- 2) Whether the plaintiff is entitled to the relief of mandatory injunction with consequential relief of permanent injunction as prayed? OPP
- 3) Whether the plaintiff has no cause of action and no locus standi to file the present suit? OPP
- 4) Whether the plaintiff has suppressed the true and material facts from the Court? OPD
- 5) Relief.

5. In evidence, the plaintiff examined himself as PW1 and reiterated that he had merely performed the ministerial duty of disbursing pensions on the directions of the Government, and that the names of proforma defendants were included by the official committee or by the Nambardar of the village. He relied upon the fact that as early as 2002 the pensions had been sanctioned on the identification of the then Nambardar Mam Chand and not on his recommendation. He also asserted that since 2006 the pensions of Kamlesh and Shanti had been stopped by the Department itself, and therefore fastening recovery on him in 2013 was wholly unwarranted.



6. On the other hand, the defendants examined Ashwani Madan, DSWO, as DW1, who proved the impugned letters. However, in his cross-examination DW1 admitted that the pensions of Kamlesh and Shanti had already been stopped in 2006 and that recovery was to be effected from the actual recipients of the pensions. The defendants also examined Kamlesh as DW3 and Shanti as DW4. Certain affidavits purported to be signed by them were produced as Mark C and Mark D, but both Kamlesh and Shanti denied having executed those affidavits. DW5 Rajender Tyagi was also examined. The defence sought to establish that the plaintiff had colluded with the proforma defendants for illegal disbursement of pension.

Findings of the trial Court

7. Upon consideration of the material, the trial Court vide judgment dated 12.3.2015 dismissed the suit. It held that the plaintiff, being Sarpanch, was under duty to discharge his functions diligently, but he had failed to do so and was in knowledge of the ineligibility of proforma defendants. It was concluded that the recovery ordered against him was justified. Accordingly, the issues relating to declaration and injunction were decided against the plaintiff, whereas the objections as to cause of action and suppression of material facts were not pressed and were held in his favour. Relief was denied and the suit was dismissed.

Findings of the Appellate Court

8. The plaintiff preferred appeal, which was heard by the learned Additional District Judge, Panipat. The Appellate Court examined the evidence afresh. It noted that both Kamlesh and Shanti had categorically denied the affidavits produced by the defence. It further noticed that DW1, the District Social Welfare Officer, had himself admitted in cross-examination that recovery ought to



be made from the persons who had actually drawn the pension, and not from any other person. It was also observed that no show cause notice or opportunity of hearing had been given to the plaintiff before issuing the impugned recovery letters, which was in violation of the principles of natural justice. The appellate court emphasized that after 2006 the pensions of Kamlesh and Shanti had already been stopped and, therefore, it was wholly unjustified to fasten liability upon the plaintiff in 2013. It was concluded that there was no cogent evidence to prove that the plaintiff had colluded with proforma defendants for any pecuniary benefit. On these findings, the appellate court reversed the judgment of the trial court and partly decreed the suit, declaring that the impugned letters were illegal and restraining defendants No.1 and 2 from effecting recovery from the plaintiff.

9. The present Regular Second Appeal has been filed by the State challenging the judgment and decree dated 04.11.2016 passed by the learned lower Appellate Court.

10. Notice of the present regular second appeal has been issued to the respondents. Upon notice, only respondent No.1 chose to contest the appeal.

Submissions of behalf of the appellants

11. Learned counsel appearing on behalf of the appellants submitted that the lower Appellate Court had gravely erred in setting aside the well-reasoned judgment of the trial court. It was urged that the plaintiff, while acting as Sarpanch, had dishonestly disbursed widow pension to Smt. Kamlesh and helpless pension to Smt. Shanti despite their ineligibility, and that such disbursement was done in collusion with the said beneficiaries for his own pecuniary benefit. It was further contended that the trial court had correctly held the plaintiff guilty of negligence



and embezzlement of government revenue and, therefore, recovery was rightly ordered against him.

12. Learned counsel further argued that the lower appellate court misread and misconstrued the statement of DW1 Ashwani Madan. The testimony of DW1, read as a whole, showed that the plaintiff did not discharge his duty honestly and diligently, and in collusion with the proforma defendants caused loss to the State Exchequer. The findings of the lower appellate court that recovery ought to be made from the actual recipients and not from the plaintiff were alleged to be based upon selective reading of evidence and conjectures.

13. It was also contended that the suit filed by the plaintiff was not maintainable for want of mandatory notice under Section 80 of the Code of Civil Procedure. The objection had been specifically raised by the State before the trial court, but the lower appellate court failed to appreciate this important aspect. According to learned counsel, in the absence of notice, the decree passed by the appellate court is wholly unsustainable in law.

14. Learned counsel further argued that the appellate court ignored material evidence, particularly the affidavits of Smt. Kamlesh and Smt. Shanti, which clearly indicated collusion and mala fide conduct on the part of the plaintiff. The approach of the appellate court, in brushing aside such material, was described as perverse and contrary to law. It was also contended that the impugned recovery orders were issued after due inquiry by the competent authority and that the plaintiff's remedy lay in responding to the notice rather than challenging the orders by way of civil suit. It was thus prayed that the judgment of the lower appellate court be set aside and the judgment of the trial court be restored.

**Submissions of behalf of the respondents**

15. On the other hand, learned counsel appearing for respondent No.1 supported the judgment of the lower Appellate Court and submitted that the trial Court had misdirected itself in saddling the plaintiff with liability without any cogent evidence. It was pointed out that even the Department's own officer, DW1 Ashwani Madan, in his cross-examination had admitted that recovery is to be effected from the actual recipients of pension and not from any other person. Once such an admission was on record, there was no basis to hold the plaintiff liable.

16. It was further argued that the affidavits relied upon by the defendants had no evidentiary value since both Smt. Kamlesh and Smt. Shanti had denied execution of the same in their depositions. The trial court erred in acting upon such disowned documents, whereas the lower appellate court rightly discarded them.

17. Learned counsel also argued that the plaintiff had not played any role in recommending the names of proforma defendants. The pensions in question had been sanctioned way back in the year 2002 on the identification of the village Nambardar and in accordance with Government procedure. The Sarpanch was merely tasked with distribution of pensions once the names were finalized by the authorities. There was thus no evidence to prove any collusion or dishonest intention on part of the plaintiff.

18. It was also pointed out that the pensions of Kamlesh and Shanti had already been stopped since 2006, and, therefore, the attempt to recover amounts from the plaintiff in 2013 was wholly arbitrary. More importantly, no show cause notice or opportunity of hearing had ever been given to the plaintiff before issuing the impugned recovery letters, which was a clear violation of the principles of



natural justice. For this reason alone, the learned lower Appellate Court was justified in setting aside the recovery.

19. Accordingly, learned counsel submitted that the findings of the lower Appellate Court were based on proper appreciation of evidence and law, and did not call for interference in second appeal.

Findings of this Court

20. I have heard learned counsel for the parties and carefully perused the record.

21. The material question for consideration is “Whether the Appellate Court was justified in setting aside the trial court’s judgment and in holding that recovery cannot be effected from the plaintiff?” The pleadings and evidence are not in dispute. What requires scrutiny is the appreciation thereof.

22. The learned trial Court proceeded primarily on the basis of conjectures that the plaintiff, being Sarpanch, must have been in collusion with the proforma defendants and was aware of their ineligibility. However, there was no reliable documentary or oral evidence to substantiate such a finding. The affidavits produced against him were disowned by their alleged executants. On the contrary, the cross-examination of DW1 Ashwani Madan, the District Social Welfare Officer, clearly established that the Department itself was of the view that recovery was to be made from the actual recipients of pension, namely Kamlesh and Shanti. This testimony was vital and ought to have been given due weight. The trial court failed to appreciate the significance of this admission.

23. Further, the admitted position is that the pensions in question had been sanctioned way back in 2002 on the identification of the Nambardar, and not at the instance of the plaintiff. The procedure followed by the Government made it



clear that selection of beneficiaries was by a committee consisting of Tehsildar, Patwari and Doctor, and later by the Nambardar, and that the Sarpanch's role was limited to distribution. Moreover, pensions of both Kamlesh and Shanti had been stopped since 2006. If at all any wrongful benefit was received thereafter, it was the recipients alone who could be made liable. To hold the plaintiff personally liable for recovery in 2013, seven years after cessation of pensions, is wholly unjustified.

24. The learned lower Appellate Court rightly noticed that no show cause notice or opportunity of hearing had been afforded to the plaintiff before issuing recovery orders. The principles of natural justice are foundational to any penal or recovery action. In the absence of such opportunity, the impugned letters were vitiated.

25. Thus, the findings of the trial court suffer from serious infirmities. They were based on assumptions and on evidence which was either inadmissible or denied. In contrast, the appellate court undertook a thorough analysis of the evidence, appreciated the admissions made by DW1, examined the denial of affidavits by Kamlesh and Shanti, and recorded a balanced finding that the plaintiff cannot be saddled with recovery. The reasoning of the appellate court is well-founded in law as well as in fact.

Conclusion

26. In view of the above discussion, I am of the considered opinion that the judgment of the learned Additional District Judge, Panipat, does not suffer from any illegality or perversity. The trial court erred in fastening liability on the plaintiff without adequate evidence, whereas the appellate court's conclusions are

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consistent with the record and the settled principles of law. This Court finds no ground to interfere.

27. Consequently, the Regular Second Appeal is dismissed. The judgment and decree dated 4.11.2016 passed by the learned Additional District Judge, Panipat, are affirmed.

28. Pending application(s), if any, also stands disposed of.

September 01, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No.